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Presidential Documents

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The President

Proclamation 10503 of December 2, 2022

International Day of Persons With Disabilities, 2022

By the President of the United States of America

A Proclamation

On International Day of Persons with Disabilities, we recognize and celebrate the equal rights and dignity of disabled people everywhere and reaffirm our commitment to building a world where people with disabilities are afforded the opportunities, independence, and respect they deserve.

This work has been a priority throughout my career. I was proud to co-sponsor the Americans with Disabilities Act (ADA) in 1990, a definitive endorsement of disability rights and bulwark against discrimination. It was also a powerful example of America's global leadership: in the years since the ADA became law, 180 nations have passed similar laws, delivering justice to millions worldwide.

But we have more work to do. Here in the United States, people with disabilities are three times less likely to be employed, and those who are employed often earn less than their peers for doing the same work. Public spaces, including transit systems and voting locations, are still often inaccessible. And across the globe, disabled people routinely face violence, harassment, exploitation, abuse, and other barriers to their full participation in society.

From the beginning, my Administration has made righting those wrongs a priority. I signed an Executive Order on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce to advance employment opportunities for communities facing barriers, including Americans with disabilities. Our American Rescue Plan is providing $25 billion to States to make it easier for seniors and people with disabilities to receive care in their own homes, and my Administration delivered vaccines, masks, tests, and therapeutics directly to people in their communities to protect Americans with disabilities and other preexisting health conditions from COVID–19. I also directed my Administration to accelerate progress toward understanding, diagnosing, and treating ''long COVID,'' a condition that has affected many Americans across the country.

The Bipartisan Infrastructure Law is our Nation's largest-ever investment in accessible transit, and it is also supporting the expansion of high-speed Internet across the country so people can work, study, and stay connected regardless of their ability to leave home. The bipartisan Honoring our PACT Act—the most significant expansion of services for veterans in more than 30 years—helps veterans harmed by toxic exposure access the health care and disability benefits they have earned. The Inflation Reduction Act is capping the cost of lifesaving prescription drugs for seniors and people with disabilities on Medicare and putting more money into Americans' pockets. And my Administration has made hearing aids available to Americans over the counter, lowering average costs by as much as $3,000 per pair.

Meanwhile, the Department of Labor is protecting the rights of workers with disabilities and fighting to end unjust sub-minimum wages. To strengthen these efforts, I signed an Executive Order requiring Federal contractors to pay a minimum wage of $15 per hour, including for employees with disabilities. And the Social Security Administration and Departments of

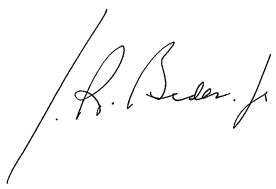
Education, Labor, and Health and Human Services are helping State and local governments, employers, and nonprofits access Federal funds to hire more Americans with disabilities.

We are also lifting up the dignity and rights of disabled people around the world. I reestablished the role of Special Advisor on International Disability Rights at the Department of State to prioritize this issue in our foreign policy. The United States Agency for International Development (USAID) is also advancing disability inclusion as part of its democracy, climate, humanitarian, and peacebuilding activities. For example, USAID is helping communities expand access to wheelchairs, eyeglasses, and hearing aids, which enable people to live productive, independent lives. As co-chair of the Global Action on Disability Network and a participant in the Global Disability Summit, the United States continues to stand for the equal human rights of people with disabilities worldwide.

In honor of the inherent dignity and worth of disabled people around the world and in recognition of the immeasurable contributions people with disabilities have made throughout history and still make today, we must continue to build a more inclusive, equitable, and just world. Let us increase access to health care, expand educational and job opportunities that offer dignity and respect, and break down stigmas that make it difficult for people to see each other's shared humanity. And let us remember that disability is a source of identity and power for over a billion people and that this movement is not only about disability rights but disability pride as well.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim December 3, 2022, as International Day of Persons with Disabilities. I call on all Americans to observe this day with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of December, 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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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 180

[Doc. No. AMS–LP–22–0065]

RIN 0581–AE22

Cattle Contracts Library Pilot Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the Cattle Contracts Library pilot program. Under this pilot program, the Agricultural Marketing Service will collect, maintain, and report aggregated information on contracts between packers and cattle producers for the purchase of fed cattle. The library will include different types of contracts and contract terms, including contract terms on any schedules of premiums or discounts, delivery and transportation, terms and payments, financing, risk-sharing or profit sharing, and other financial arrangements. In addition to contract term information, the Agricultural Marketing Service will also report on the number of head of cattle purchased under these contracts.

DATES: Effective January 6, 2023.

FOR FURTHER INFORMATION CONTACT: Michael E. Sheats, Director, Livestock, Poultry, and Grain Market News Division, AMS, USDA; phone: 202–690–3145 or email: *Michael.Sheats@usda.gov.*

SUPPLEMENTARY INFORMATION: The Agricultural Marketing Service (AMS) is establishing a Cattle Contracts Library pilot program (Pilot) to increase market transparency for cattle producers pursuant to sec. 779 of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103, March 15, 2022) (the Act). The Act directs AMS to establish a Cattle Contracts Library pilot that is similar to, as determined by the Secretary, the U.S. Department of Agriculture's (USDA) Swine Contract Library maintained pursuant to sec. 222 of the Packers and Stockyards Act (7 U.S.C. 198a).

Cattle Contract Library Pilot Program

Under the Pilot, packers are required to provide AMS with contract information for the purchase of cattle and the number of actual and estimated cattle purchased under active contracts within particular timeframes. To protect confidential business information, AMS will only collect contract terms without any personally identifiable information, not entire contracts. The contract clauses required to be submitted include contract method, contract start and end dates, base price source and adjustment, selling basis, premiums and discounts, specifications relating to cattle attributes, delivery and transportation terms and payments, financing, risk-sharing, profit-sharing or other financial arrangements, and volume provisions. Monthly, packers are required to submit the number of actual cattle purchased under active contracts in the prior month and the estimated maximum number of cattle to be purchased under active contracts for slaughter in the current calendar month.

On January 6, 2023, packers must submit the required contractual clauses for each active contract, whether the contract is oral or written. After the initial submission of information, packers will be required to submit the same information for each new active contract made available to a producer or producers as well as any changes to the terms of a previously submitted active contract and associated schedules or appendices within one business day of the contract being available. Because the packers prepare these contracts in advance of their offering those contracts to producers, AMS determined these submission timeframes to be reasonable.

Scope of Cattle Contract Library Pilot Program

Not all packers are required to submit this information. Generally, only packers that slaughtered an average of not less than 5 percent of the number of fed cattle slaughtered nationally during the immediately preceding five calendar years are subject to this Pilot. To determine the definition of packer for purposes of the Pilot, and thus the packers subject to the required reporting under the Pilot, AMS considered two approaches: (1) the Livestock Mandatory Reporting Act (LMR), also administered by AMS, covers packing plants that slaughtered an average of 125,000 head of cattle per year during the immediately preceding 5 calendar years, and (2) the proposed Congressional legislation, S. 4030—Cattle Price Discovery and Transparency Act of 2022, covers packing companies that have slaughtered during the immediately preceding five calendar years an average of not less than 5 percent of the number of fed cattle slaughtered nationally during the immediately preceding five calendar years.[1] AMS estimates that, under the LMR approach, approximately 40 packing plants operated by 16 packing companies would be subject to the Pilot. AMS estimates that under the S.4030 approach, approximately 18 packing plants operated by four packing companies would be subject to the Pilot.

AMS estimates that the LMR approach would cover approximately 90 percent of all fed cattle slaughter. AMS estimates the S. 4030 approach would cover 85 percent of total fed cattle slaughter.[2] When estimating the costs to all reporting entities, AMS estimated the total annual cost under the LMR approach to be $294,947, and the total annual cost under the S.4030 approach to be $122,752. Therefore, AMS estimates that requiring only packers slaughtering not less than 5 percent of the number of fed cattle slaughtered nationally annually to submit information results in a 42 percent reduction in cost burden to the industry while providing a library of contractual information covering 85 percent of the annual total fed cattle slaughter. For the purposes of this Pilot, AMS believes this is a sufficiently similar market capture to the Swine Contract Library, which covers roughly 95 percent of the market, and would capture all types of applicable contracts.

Required Reporting

AMS worked with packers to voluntarily obtain contractual information used for the purchase of cattle and associated volume

[1] A ''packing plant'' refers to a physical plant. A ''packing company'' refers to an entire company. A packing company may have multiple packing plants.

[2] As estimated in the AMS Packers and Stockyards Division Annual Report 2020; *https://www.ams.usda.gov/sites/default/files/media/PackersandStockyardsAnnualReport2020.pdf.*

information to develop the Pilot. While this voluntarily submitted information was sufficient to design the Pilot, it did not provide AMS with comprehensive information on all the types of contracts used to purchase cattle or the volume of cattle purchased. Based on feedback from industry stakeholders, including those who voluntarily submitted contract information, AMS determined the Pilot needed to be mandatory; otherwise, the Cattle Contract Library would be incomplete, and the information would be potentially misleading if packers self-select the contract terms they provide.

Consistent with the statutory authority for the Pilot, submission of the specified contractual information and volume information for those contracts is mandatory, as it is with the Swine Contract Library.

Public Input

While by statute this Pilot is exempt from notice and comment rulemaking and the Paperwork Reduction Act, AMS has considered public input. AMS announced an in-person listening session on April 11, 2022, in a notice to trade on their website, and AMS provided an opportunity for written comments to be submitted via email. On April 21, 2022, AMS hosted a cattle industry listening session on the Pilot in Kansas City, MO. The session was attended in-person and virtually by over 150 industry stakeholders and provided an open forum for the public to share their feedback. AMS specifically sought feedback on what information the Pilot should include to be most helpful to cattle marketers, what concerns stakeholders have over the public release of the Pilot, and what format should be used to present the information. AMS also provided an opportunity for interested parties to submit written feedback in the week following the listening session and posted all written feedback on its website. All public input related to the Pilot can be found here: *https://www.ams.usda.gov/market-news/livestock-poultry-grain/cattle-contracts-library.*

The most frequent input AMS received was that the Pilot should provide factual, reliable information in a user-friendly format that protects all confidential or sensitive business information. AMS also received input that the packers' submission costs should be minimized and should provide educational outreach to stakeholders.

AMS considered these comments in the preparation of this rule. To maintain confidentiality, the Pilot requires submission of contract clauses, not entire contracts. Further, while this rule does not address the way in which AMS will report the information collected through the Pilot, AMS intends to publish the Cattle Contract Library in a manner that does not disclose the source's identity to further protect the buyers' and the sellers' confidential business information.

This Pilot will allow AMS to make a range of valuable market information on the structure and volume of cattle contracts publicly available, while maintaining the confidentiality of individual contracts and sensitive information included therein. The law establishing the Swine Contract Library adopted sec. 251 of the Agricultural Marketing Act of 1946 to protect personal identifying information and proprietary business information from public disclosure. The Pilot likewise adopts those provisions in this rule to prohibit disclosure beyond contract and volume information.

With respect to input on cost, AMS determined that the selected approach would impose the lower cost burden on the industry, yet still provide a library of contractual information that covers most contracts for fed-cattle. AMS believes this Pilot covers a similarly sized percentage of sales in the market as the Swine Contract Library covers in the market for swine.

In response to input requesting that AMS provide outreach, during development of the Pilot, AMS conducted nearly 40 outreach and educational events with industry stakeholders during which the Pilot was demonstrated and additional feedback for possible refinements was gathered. AMS designed the Pilot in a user-friendly and intuitive manner, accessible to users with minimal guidance. During the outreach sessions, many stakeholders expressed their appreciation for the ease with which they could access and understand the information in the Pilot.

In addition to the feedback received through the listening sessions and outreach, packers voluntarily provided AMS with over 300 inactive contracts and 100 active contracts for review, which informed AMS's determination as to the contract clauses required to be reported. AMS also reviewed other contracts available under its marketing and regulatory programs. Using these contracts, AMS identified common elements in each that affect the final pricing. This included the base price mechanism, base price adjustments, premiums and discounts, and other miscellaneous provisions (*e.g.,* transportation, shrink, selling basis, dressing percent conversion, etc.). AMS also examined important differences in the contracts, including the influence of any short- or long-term buyer/seller relationships on financial terms of the contract that may affect the competitive environment of the packers and producers in the cattle market. AMS used this feedback and contract information to develop a draft library that was shared with interested stakeholders including packers, industry groups, Congressional staff, and academics. AMS further refined the library as described in this Pilot based upon input received from those interested stakeholders on the draft library.

Similarities to the Swine Contract Library

In accordance with the statutory mandate, the Pilot is modeled on the Swine Contract Library. The Swine Contract Library features a report to the public on the contract terms available to sellers of swine. To achieve this, the statute and regulations require swine packers to report contract and production information for publication. Not all swine packers are required to report; swine packers must either slaughter 100,000 head per year or have the capacity to slaughter 100,000 head per year to be subject to reporting under the Swine Contract Library provisions. *See* 9 CFR 206.1. The regulations require swine packers to prepare a monthly report to submit to AMS. *See* 9 CFR 206.3. The public reports released on these contracts are anonymized to protect confidentiality under the standards of sec. 251 of the Agricultural Marketing Act of 1946. *See* 7 CFR 206.2(f); 7 U.S.C. 1636.

The Swine Contract Library publishes information on, among other things: the existing contract types for each geographic region; the contract types currently being made available; packers' reported estimates of the total number of committed swine; the types of conditions or circumstances as reported that could result in expansion in the numbers of swine to be delivered; and the packers' reported estimates of the maximum total number of swine that potentially could be delivered.

The Swine Contract Library has two public reports: A contract summary report, and a monthly report. Contract summary reports provide information on the various terms and provisions from the marketing contracts. This information includes: the determination of base price and how base price is set; the premium and discount adjustments to the base price as determined by both carcass and non-carcass traits;

application of ledger where terms define the use of ledger or accrual accounts; and all other remaining terms and provisions from the contracts. Monthly reports provide packers' estimated swine purchases under marketing contracts for the next 6 and 12 months. To achieve a similar level of reporting in this Pilot, AMS must collect contract terms and volume information from cattle-slaughtering packers.

Accordingly, consistent with the Swine Contract Library (7 U.S.C. 198–198b; 7 U.S.C. 222; 9 CFR 206.1–206.3), AMS will require covered packers to report specific contractual information for the purchase of cattle. After the information is collected and reviewed, AMS will determine the most appropriate format for publication. Throughout, AMS will treat the reported information consistent with the confidentiality requirements of the Swine Contract Library's regulatory scheme and 7 U.S.C. 1636.

AMS Reporting

Through this Pilot, AMS ultimately intends to publish a variety of reports on a national level rather than a regional basis. The published library of information will likely focus on the base price for livestock, before application of any adjustments (*i.e.,* premiums or discounts) in contracts; the contract terms that provide positive or negative adjustment to the base price before any premiums or discounts are applied; the contracts' schedule of discounts from the base price; the contracts' schedule of premiums to the base price; and the actual and expected volumes of trade under these contracts. AMS also intends to publish information on delivery and transportation terms and the contract terms related to financing, risk-sharing, and profit-sharing.

Consistent with the statutory mandate, this Pilot supports AMS's commitment to market transparency. AMS believes the Pilot will support competition by providing producers with the market information they need to make informed production, marketing, and business decisions. The Congressional reference to section 221 of the Packers and Stockyards Act (7 U.S.C. 198), together with the waiver of the notice-and-comment requirements of the Administrative Procedure Act and the requirements of the Paperwork Reduction Act, provide AMS the direction and authority to promulgate this rule.

Regulatory Analyses

Exemption From Notice and Comment Rulemaking

Sec. 779 of the Act provides that the promulgation of the regulations and administration of the Cattle Contracts Library pilot program shall be made without regard to the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 *et seq.*). Accordingly, AMS is publishing this final rule without having previously published a proposed rule on this action. While AMS did not provide for a formal comment period, it did conduct extensive outreach to cattle industry stakeholders, including hosting a listening session where AMS received comments and input. AMS also provided an opportunity for interested parties to submit written comments following the listening session, posted all input received on its website, and conducted additional outreach to stakeholders throughout the development of the Pilots. All public comments are available here: *https://www.ams.usda.gov/market-news/livestock-poultry-grain/cattle-contracts-library.* Written feedback AMS received is available here: *https://www.ams.usda.gov/market-news/livestock-poultry-grain/cattle-contracts-library/feedback.* AMS considered these comments and all feedback provided in the preparation of this rule, also taking into account the urgency of the expedited time frame provided by Congress to establish and operate the Pilot. Should such mandate sunset, AMS will suspend reporting under this rule or otherwise take actions consistent with relevant statutory mandates.

Executive Orders 12866 and 13563

USDA is issuing this rule in conformance with Executive Orders (E.O.) 12866 and 13563, which 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, reducing costs, harmonizing rules, and promoting flexibility.

AMS designed the Pilot to maximize the net benefits of the rule and determined that this action, effectuating the authority and direction from Congress, will create benefits exceeding its costs, based on an assessment of the regulation's market impact as outlined in the Regulatory Flexibility Analysis.

Baseline

Based on figures from the USDA World Agricultural Supply and Demand Estimates,[3] U.S. beef packers slaughtered 33.97 million cattle in 2021. Of that figure, 78.4 percent were steers and heifers, 19.9 percent were cows, and 1.7 percent were bulls and stags. Based on the National Monthly Slaughter Cattle—Committed and Delivered Cattle [4] data between September 2021 and August 2022, 70.8 percent of cattle in the categories ''steers and heifers'' and ''other fed cattle'' were marketed under contract, either under the ''formula'' or ''forward'' categories. Of the cattle reported under contract on that report, 0.6 percent were in the other category. Based on these figures, approximately 22.58 million steers and heifers and an additional 135 thousand other fed cattle are marketed under contract annually.

The AMS National Weekly Cattle and Beef Summary [5] reports an annual liveweight price for steers of $139 per hundredweight for the year running between October 2021 and September 2022. Based on an actual average liveweight for cattle under slaughter of 1,370 pounds, the average price for steers and heifers sold under contract is approximately $1,904 per head. The value of all steers and heifers sold under contract is then $43.0 billion. Assuming that other fed cattle under contract are valued at 75 percent of the steer and heifer price per head, their value is $193 million, and the value of all cattle under contract is $43.2 billion.

The 2020 Annual Report of the AMS Packers and Stockyards Division [6] states that 156 plants slaughtered cattle or calves in 2019. The same report notes that the four largest packers accounted for over 85 percent of the total steer and heifer slaughter in 2019, a figure that reflects the presence of very large firms, which can own several plants with much higher daily capacities than those of smaller operations. Because packers slaughtering less than 5 percent of the number of fed cattle slaughtered nationally annually are excluded from reporting under the rule, AMS estimates that four packers will be required to report under the rule.

[3] *https://www.ers.usda.gov/topics/farm-economy/commodity-outlook/wasde-projections-at-a-glance/.*

[4] *https://www.ams.usda.gov/mnreports/ams_2473.pdf.*

[5] *https://www.ams.usda.gov/mnreports/lswwcbs.pdf.*

[6] *https://www.ams.usda.gov/sites/default/files/media/PackersandStockyardsAnnualReport2020.pdf.*

Need for the Rule

Rulemaking is necessary to establish the Pilot as directed by Congress in the Act. The Pilot will allow AMS to report valuable market information on the structure and volume of cattle contracts. The Pilot will maintain information and publish a public library or catalog of information with contract types and terms offered by packers to cattle producers for the purchase of fed cattle. The information in the library will include information on any schedules of premiums or discounts, delivery and transportation terms and payments, financing, risk-sharing or profit sharing, and other financial arrangements associated with such contracts. Pursuant to the Pilot, AMS will also collect information on the number of head of cattle procured through the use of contracts.

Currently, AMS reports market information on how cattle prices vary based on quality grade of cattle at the lot level. Reports issued pursuant to the Pilot will provide a different cross-section of information, including premiums and discounts for quality grade, yield grade, weight, and other special programs, such as breed certification programs or special feeding programs. Reports based on the Pilot will also provide information on the basis prices used in contracts and adjustments made to the basis based on factors such as dressing percentage, cattle origins, and cattle breed or type.

Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), AMS has considered the economic impact of this action on large and small entities. Accordingly, AMS has prepared this Regulatory Flexibility Analysis. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened.

For the duration of the Pilot, this rule requires regulated packers to submit contractual information for the purchase of cattle to AMS, including any supplemental information on cattle requirements, schedules of premiums or discounts, delivery and transportation terms and payments, schedules or appendices of financing, risk-sharing, profit sharing, or other financial arrangements associated with such contracts, whenever new contracts are offered or existing contracts are updated. This rule also requires packers to report monthly both the number of cattle purchased under active contracts in the prior month and an estimate of the maximum total number of cattle to be purchased under active contracts for delivery to each plant for slaughter within the current calendar month.

Packers subject to this Pilot are classified under code 311611 of the North American Industry Classification System (under the title ''Animal (except Poultry) Slaughtering'').[7] As per 13 CFR 121.601, the Small Business Administration (SBA) has established that packers are small businesses if they employ fewer than 1,000 employees across all their operations. AMS excludes packers slaughtering less than 5 percent of the number of fed cattle slaughtered nationally annually from the rule's requirements to report cattle contracts, a definition that precludes all small packers. Because of this exclusion, AMS determines that establishment of this program will not create economic costs for small entities and does not impose a burden on them.

Benefits and Costs of the Rule

To evaluate the total costs of the rule, AMS first calculates the costs on a per packer basis as follows: AMS assumes that four packers will be required to report contractual information under the Rule. Each packer will be required to electronically enter specific information on contract terms, an activity that AMS assumes will not need to occur more frequently than on a weekly basis. AMS assumes packers subject to this Pilot maintain, on average, 60 active contracts each. Allowing for 15 minutes for each contract, each packer will require about 15 hours of manager worktime to report contract information. AMS assumes that reporting contract information occurs 52 times per year per packer so that reporting requires 780 hours of managerial time per packer annually. Also, AMS estimates that each packer subject to the Pilot requires 2 hours of managerial worktime to report the prior month's total cattle purchased under each active contract and to estimate and report the maximum number of cattle to be purchased under each active contract within the current calendar month. Occurring 12 times a year, AMS estimates monthly purchase volume reporting requires 24 hours of managerial worktime per plant annually. Furthermore, AMS estimates that mangers reporting contract data require 4 hours to learn to the rules reporting requirements and process.

In total, AMS expects each packer subject to the Pilot to require 808 hours of managerial labor time annually to comply with the rule's reporting requirements. AMS also estimates that 4 hours will be required annually, on average, for each packer's legal staff to review the rule and understand the conditions of compliance. Based on Bureau of Labor Statistics wage statistics,[8] each packer will incur $30,470 (808 hours * $37.71 per hour) of managerial labor costs and $218 (4 hours * $54.38 per hour) of legal specialist labor costs annually for a total of $30,688 in costs per packer each year. In total across all packers subject to this Pilot, the rule will create costs to regulated entities of $122,752 annually.

AMS does not quantify the benefits to the Pilot rule but considers the benefits to be large and multi-faceted. First, the rule will improve market efficiency by improving price discovery, price transparency, and price transmission. While current AMS reports provide information on price premiums received for cattle based on grading percentage at the lot level, reports published with information obtained through the Pilot are expected to provide more detailed and specific information on how contract payments vary directly with individual carcass grades, yield grades, and cattle weights. This more precise information will improve price transmission and transparency regarding the demand for and cost of cattle of different qualities. Second, reports published with information obtained through the Pilot will likely facilitate the differentiation of cattle along quality dimensions and the development of new product markets by providing market information on premiums paid for cattle carcass characteristics not already documented in existing AMS reports. These can include grass-fed, organic, quality certification, breed, or hormone free programs. Third, reports published with information obtained through the Pilot are likely to enhance competition by reducing market inefficiencies associated with incomplete or asymmetric information. Currently, incomplete information on the availability of premiums associated with cattle characteristics is likely to create uncertainty regarding the return on investment in cattle quality improvement. By documenting the availability of such premiums for specific quality traits, producers are more likely to be reassured of having a market for final products and be more

[7] *https://www.census.gov/naics/?input=311611&year=2022&details=311611.*

[8] The wage rate for a ''first-line supervisor'' under code 45–1011 is $26.18 and for a worker in ''legal occupations'' under code 23–0000 is $54.38 (*https://www.bls.gov/oes/current/oes451011.htm*).

likely to undertake appropriate investments.

Similarly, incomplete or asymmetric information may also mask the true value of certain cattle. Making such information more transparent may improve efficiencies in the price discovery and trading markets and provide enhanced signals to producers with respect to output, owing to better insights regarding market demand and supply for cattle. Volume information and volume-related context may provide similar benefits.

While AMS does not explicitly quantify the benefits to the rule, AMS believes these benefits significantly exceed the rule's calculated costs. Additionally, the Pilot is currently funded for approximately one calendar year. Accordingly, because the costs to the rule do not exceed minimum threshold levels for a rule to be considered significant, the rule does not meet the definition of a significant regulatory action under Executive Order 12866.

Paperwork Reduction Act

Sec. 779 of the Act provides that the promulgation of the regulations and administration of the Cattle Contracts Library pilot program shall be made without regard to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Accordingly, the Office of Management and Budget has not reviewed or approved the information collection requirements of the Pilot.

E-Government Act

USDA is committed to complying with the E-Government Act (44 U.S.C. 3601, *et seq.*) by promoting the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 13175

This rule has been reviewed under E.O. 13175—Consultation and Coordination with Indian Tribal Governments. E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on (1) policies that have tribal implications, including regulations, legislative comments, or proposed legislation; and (2) other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

AMS has assessed the impact of this rule on Indian tribes and determined that it would not have tribal implications that require consultation under E.O. 13175. AMS hosts a quarterly teleconference with tribal leaders, where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the Cattle Contract Library pilot program will be shared during an upcoming quarterly call, and tribal leaders will be informed about the Pilot. AMS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to the Pilot.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988—Civil Justice Reform. This rule does not have retroactive effect. There are no administrative procedures that must be exhausted prior to judicial challenges to the provisions of this rule. This rule does not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

Civil Rights Review

AMS has considered the potential civil rights implications of this rule on minorities, women, and persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information.

List of Subjects in 7 CFR Part 180

Cattle, Contracts, Library, Pilot, Reporting requirements.

■ For the reasons set forth in the preamble, AMS amends 7 CFR subtitle B, chapter 1, subchapter G by adding part 180 to read as follows:

PART 180—CATTLE CONTRACTS LIBRARY PILOT PROGRAM

Sec.

Authority: 7 U.S.C. 1621–1627

§ 180.1 General administration.

(a) *Confidentiality.* The Secretary shall make information obtained under this part available to the public only in a manner that ensures that confidentiality is preserved regarding —

(1) The identity of persons, including parties to a contract; and

(2) Proprietary business information.

(b) *Disclosure by Federal Government employees*—(1) *In general.* Subject to paragraph (b)(2) of this section, no officer, employee, or agent of the United States shall, without the consent of the packer or other person concerned, divulge or make known in any manner, any facts or information regarding the business of the packer or other person that was acquired through reporting required under this part.

(2) *Exceptions.* Information obtained by the Secretary under this part may be disclosed—

(i) To agents or employees of the Department of Agriculture in the course of their official duties under this part;

(ii) As directed by the Secretary or the Attorney General, for enforcement purposes; or

(iii) By a court of competent jurisdiction.

(3) *Disclosure under Freedom of Information Act.* Notwithstanding any other provision of law, no facts or information obtained under this part shall be disclosed in accordance with section 552 of title 5, United States Code.

(c) *Regional reporting.* The Secretary shall make information obtained under this part available to the public only in a manner that ensures that the information is published on a national or regional basis as the Secretary determines to be appropriate.

(d) *Adjustments.* Prior to the publication of any contract information obtained under this part, the Secretary may make reasonable adjustments to address aberrations or other unusual or unique occurrences that the Secretary determines would distort the published information to the detriment of producers, packers, or other market participants.

(e) *Reporting methods.* Information required to be reported under this part shall be reported by electronic means in the manner prescribed by the Secretary. Information may be reported in an alternative manner in emergencies or in cases when an alternative method is agreed to by both the entity required to report and the Secretary.

(f) *Verification.* The Secretary may take such actions as are necessary to verify the accuracy of the information submitted or reported under this part.

(g) *Noncompliance.* The Secretary may refer instances of non-compliance with this part of the appropriate office of the Department for further investigation.

§ 180.2 Definitions.

The following definitions apply to this part.

Active contract. The term ''active contract'' means a contract that is currently available between a packer and producer under which fed cattle may be purchased.

Base price. The term ''base price'' means the price paid for livestock, before application of any adjustments, premiums or discounts, expressed in dollars per hundred pounds of hot carcass weight or live weight.

Base price adjustment. The term ''base price adjustment'' means the positive or negative adjustment to the base price before any premiums or discounts are applied.

Business day. The term ''business day'' means a day on which the packer conducts normal business regarding livestock committed to the packer, or livestock purchased or sold by the packer, and the Department of Agriculture is open to conduct business, typically Monday through Friday and excluding Federal holidays.

Calendar month. The term ''calendar month'' means a timeframe that begins on the first day of the month at midnight and ends on the last day of the month at 11:59 p.m. in the central time zone.

Contract. The term ''contract'' means a written or oral agreement concerning the specific terms and conditions under which an unknown volume of fed cattle may be purchased by a packer during a specified time frame, or under which a known volume of cattle is purchased by a packer for a given plant during a specified time frame.

Contract method. The term ''contract method'' means the way in which the contract was established, either written or oral.

Current month. The term ''current month'' means the present calendar month.

Discount. The term ''discount'' means the adjustment, expressed either in dollars per one hundred pound or per head, subtracted from the base price.

Fed cattle. The term ''fed cattle'' means a steer or heifer that has been finished on a ration of roughage and feed concentrates, such as grains, protein meal, grass (forage), and other nutrient-rich feeds, prior to slaughter.

Inactive contract. The term ''inactive contract'' means a fed cattle contract that is no longer available between a packer and producer for purchase under, or one that is not currently in use.

Packer. The term ''packer'' means a packer that has slaughtered during the immediately preceding 5 calendar years an average of not less than 5 percent of the number of fed cattle slaughtered nationally during the immediately preceding 5 calendar years.

Person. The term ''person'' means any individual, group of individuals, partnership, corporation, association, or other entity.

Premium. The term ''premium'' means the adjustment, expressed either in dollars per one hundred pound or per head, added to the base price.

Prior month. The term ''prior month'' means the calendar month immediately preceding the current month.

Producer. The term ''producer'' means any person engaged in the business of selling livestock to a packer for slaughter (including the sale of livestock from a packer to another packer).

Secretary. The term ''Secretary'' means the Secretary of Agriculture of the United States or any other officer or employee of the Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Secretary's stead.

Selling basis. The term ''selling basis'' refers to cattle that are sold on a live, dressed, live converted to dressed, or dressed converted to live weight basis under a contract.

Unique identifier. The term ''unique identifier'' means a unique code chosen by the packer for the contract, specific to the contract, and utilized and trackable through the life of the contract.

§ 180.3 Cattle Contracts Library.

(a) *Initial contract information submission.* On January 6, 2023, each packer shall submit to the Secretary information for each active contract with a unique identifier. The information shall be submitted in accordance with § 180.1(e). The contract information required to be reported includes:

(1) The contract method;

(2) The contract start and end dates; and

(3) All terms associated with:

(i) Each base price source and adjustment;

(ii) Selling basis;

(iii) Premiums and discounts;

(iv) Specifications relating to cattle attributes;

(v) Delivery and transportation terms and payments;

(vi) Financing, risk-sharing, profit-sharing or other financial arrangements; and,

(vii) Volume provisions.

(b) *Reporting deadlines.* Within 1 business day of making a new contract available, making a change to an existing contract, or making a contract no longer available, each packer must submit the following:

(1) Packers must submit all contract terms in accordance § 108.4(a) for each new active contract for each producer or producers at each plant that it operates or at which it has cattle slaughtered;

(2) Packers must submit any changes to the terms of a previously submitted active contract and associated schedules or appendices, including the unique identifier for the previously submitted contract it supersedes; and

(3) Packers must submit information to remove inactive contracts from the library, including the unique identifier for the now inactive contract.

§ 180.4 Monthly cattle volume reporting.

(a) *Initial estimated volume submission.* On January 6, 2023, each packer shall submit to the Secretary an initial estimate of the total volume of cattle to be contracted for in the current calendar month in accordance with § 180.1(e).

(b) *Reporting deadlines.* By the close of business on the second Friday of each month, each packer must submit the following information in accordance with § 180.1(e). If the second Friday of a month falls on a non-business day, the deadline is due no later than the close of the next business day following the second Friday of the month:

(1) Number of cattle purchased by each base price source under each active contract in the prior month reported by unique identifier and

(2) Estimate of the total number of cattle to be purchased under active contracts for delivery to each plant for slaughter within the current calendar month.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–26389 Filed 12–6–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0826; Airspace Docket No. 21–AEA–21]

RIN 2120–AA66

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends two low altitude Area Navigation (RNAV) routes

(T-routes), and establishes one T-route, in support of the VHF Omnidirectional Range (VOR) Minimum Operational Network (MON) Program. The purpose is to enhance the efficiency of the National Airspace System (NAS) by transitioning from ground-based navigation aids to a satellite-based navigation system.

DATES: Effective date 0901 UTC, February 23, 2023. 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 7400.11G, 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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2022–0826, in the **Federal Register** (87 FR 42395; July 15, 2022). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

United States RNAV T-routes are published in paragraph 6011, and Canadian T-routes are published in paragraph 6013, respectively, of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document will be subsequently published in FAA Order JO 7400.11.

Differences From the NPRM

The United States RNAV routes T–287 and T–318 are removed from this docket for additional planning and coordination. These routes will be placed in subsequent dockets at a later date.

The NPRM proposed to extend T–358 from the AVALO, NJ, Fix to the Augusta, ME (AUG), VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME). The proposed route extension after the AVALO Fix (from MANTA, NJ to Augusta, ME) was based on replacing various VORs scheduled for decommissioning under the VOR MON plan. Fixes or Waypoints (WPs) were to be added to T–358 in place of the VORs, however, the decommissioning of the associated VORs is not scheduled until later dates. Since the VORs are still available for navigation, it is premature to amend the routing at this time. As amended, T–358 extends from the Martinsburg, WV (MRB), VHF Omnidirectional Range and Tactical Air Navigational System (VORTAC) to the AVALO, NJ, Fix.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending two low altitude RNAV T-routes, designated T–358, and T–608, and establishing one T-route, designated T–320, in the northeast United States. This action supports the VOR MON Program, and the transition of the NAS from ground-based navigation aids to satellite-based navigation.

T–320: T–320 is a new route that extends between the GILFF, VA, WP and the Gardner, MA (GDM), VOR/DME. T–320 overlays portions of airway V–308 from the BILIT, MD, Fix, to the CHOPS, MD, Fix, and from the WNSTN, NJ, WP to the YANCT, CT, WP.

T–358: T–358 extends between the Martinsburg, WV (MRB), VORTAC, and the AVALO, NJ, Fix. The HOGZZ, MD, WP name is changed to the TWIRK, MD, WP per request from air traffic control (ATC). The latitude/longitude coordinates of the WP remain unchanged. The GOLDA, MD, Fix; the BROSS, MD, Fix; and the LEEAH, NJ, Fix are removed from the route description because they don't denote turn points on the route. However, the fixes will remain on aeronautical charts for ATC purposes.

T–608: T–608 is an existing Canadian T route that extends into U.S. airspace between the HOCKE, MI, WP, and the YANTC, CT, WP. This action modifies the eastern end of the route by removing the segments between the Gardner, MA (GDM), VOR/DME, and the YANCT, CT, WP. Instead, the route is realigned to proceed eastward from the Gardner VOR/DME through the BRONC, MA; LOBBY, MA; and SOSYO, MA, Fixes; to terminate at the REVER, MA, Fix (located 5 nautical miles north of the Boston, MA (BOS), VOR/DME). The new route T–320 (described above) incorporates the segments between the YANCT WP and the Gardner VOR/DME that are being removed from T–608.

In addition, the following points are removed from the T–608 legal description because they do not denote a turn point on the route: MONCK, NY, WP; LORTH, NY, Fix; MAGEN, NY, WP; KONDO, NY, WP; WIFFY, NY, WP; STODA, NY, WP; VASTS, NY, Fix; NORSE, NY, WP; MARIA, NY, WP; WARUV, NY, WP; GRISY, MA, WP; WARIC, MA, WP; HURLY, MA, Fix; GRAYM, MA, WP; BLATT, CT, WP; MOGUL, CT, WP; and YANCT, CT, WP.

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

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

Regulatory Notices and Analyses

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

procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–320 GILFF, VA to Gardner, MA (GDM) [New]

GILFF, VA	WP	(Lat. 38°21′44.86″ N, long. 077°26′05.38″ W)
HIGPO, VA	WP	(Lat. 38°22′16.09″ N, long. 077°22′19.97″ W)
CAVDI, MD	WP	(Lat. 38°25′33.43″ N, long. 076°54′43.49″ W)
DAILY, MD	FIX	(Lat. 38°33′37.83″ N, long. 076°43′31.05″ W)
VAALI, MD	WP	(Lat. 38°44′00.85″ N, long. 076°26′38.26″ W)
BILIT, MD	FIX	(Lat. 38°45′15.82″ N, long. 076°03′57.59″ W)
CHOPS, MD	FIX	(Lat. 38°45′41.81″ N, long. 075°57′36.18″ W)
EGGRS, DE	WP	(Lat. 38°53′30.52″ N, long. 075°30′49.95″ W)
JILLI, NJ	WP	(Lat. 39°00′42.22″ N, long. 075°05′46.21″ W)
WNSTN, NJ	WP	(Lat. 39°05′43.81″ N, long. 074°48′01.20″ W)
MANTA, NJ	FIX	(Lat. 39°54′07.01″ N, long. 073°32′31.63″ W)
BEADS, NY	FIX	(Lat. 40°44′04.51″ N, long. 072°32′34.21″ W)
ORCHA, NY	WP	(Lat. 40°54′55.46″ N, long. 072°18′43.64″ W)
BOROS, NY	FIX	(Lat. 41°09′24.45″ N, long. 072°09′50.96″ W)
Groton, CT (GON)	VOR/DME	(Lat. 41°19′49.45″ N, long. 072°03′07.14″ W)
YANTC, CT	WP	(Lat. 41°33′22.81″ N, long. 071°59′56.95″ W)
Gardner, MA (GDM)	VOR/DME	(Lat. 42°32′45.31″ N, long. 072°03′29.48″ W)

* * * * * * *

T–358 Martinsburg, WV (MRB) to AVALO, NJ [Amended]

Martinsburg, WV (MRB)	VORTAC	(Lat. 39°23′08.06″ N, long. 077°50′54.08″ W)
CPTAL, MD	WP	(Lat. 39°32′16.02″ N, long. 077°41′55.65″ W)
TWIRK, MD	WP	(Lat. 39°34′36.70″ N, long. 077°12′44.75″ W)
MOYRR, MD	WP	(Lat. 39°30′03.42″ N, long. 076°56′10.84″ W)
DANII, MD	WP	(Lat. 39°17′46.42″ N, long. 076°42′19.36″ W)
OBWON, MD	WP	(Lat. 39°11′54.69″ N, long. 076°32′04.84″ W)
SWANN, MD	FIX	(Lat. 39°09′05.28″ N, long. 076°13′43.94″ W)
Smyrna, DE (ENO)	VORTAC	(Lat. 39°13′53.93″ N, long. 075°30′57.49″ W)
AVALO, NJ	FIX	(Lat. 39°16′54.52″ N, long. 074°30′50.75″ W)

* * * * *

Paragraph 6013 Canadian Area Navigation Routes.

* * * * *

T–608 HOCKE, MI to REVER, MA [Amended]

HOCKE, MI	WP	(Lat. 43°15′43.38″ N, long. 082°42′38.27″ W)
KATNO, Canada	WP	(Lat. 43°10′34.00″ N, long. 082°19′32.00″ W)
UKNIX, NY	WP	(Lat. 42°56′44.51″ N, long. 078°55′05.60″ W)
WOZEE, NY	WP	(Lat. 42°56′01.65″ N, long. 078°44′19.64″ W)
CLUNG, NY	WP	(Lat. 43°03′17.17″ N, long. 078°00′13.38″ W)
Rochester, NY (ROC)	VOR/DME	(Lat. 43°07′04.65″ N, long. 077°40′22.06″ W)
Syracuse, NY (SYR)	VORTAC	(Lat. 43°09′37.87″ N, long. 076°12′16.41″ W)
LAMMS, NY	WP	(Lat. 43°01′35.30″ N, long. 075°09′51.50″ W)
Albany, NY (ALB)	VORTAC	(Lat. 42°44′50.20″ N, long. 073°48′11.47″ W)
GRAVE, NY	WP	(Lat. 42°46′47.34″ N, long. 073°22′20.91″ W)
Gardner, MA (GDM)	VOR/DME	(Lat. 42°32′45.31″ N, long. 072°03′29.48″ W)

BRONC, MA	FIX	(Lat. 42°30′53.93″ N, long. 071°43′21.61″ W)
LOBBY, MA	FIX	(Lat. 42°30′15.53″ N, long. 071°36′34.04″ W)
SOSYO, MA	FIX	(Lat. 42°29′14.45″ N, long. 071°25′55.75″ W)
REVER, MA	FIX	(Lat. 42°26′27.48″ N, long. 070°57′41.31″ W)

Excluding the airspace within Canada.

* * * * *

Issued in Washington, DC, on December 1, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–26488 Filed 12–6–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0482; Airspace Docket No. 21–AEA–18]

RIN 2120–AA66

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends three low altitude United States Area Navigation (RNAV) routes (T-routes), and establishes one T-route in support of the VHF Omnidirectional Range (VOR) Minimum Operational Network (MON) Program. The purpose is to enhance the efficiency of the National Airspace System (NAS) by transitioning from a ground-based to a satellite-based navigation system.

DATES: Effective date 0901 UTC, February 23, 2023. 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 7400.11G, 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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2022–0482, in the **Federal Register** (87 FR 29239; May 13, 2022), amending five RNAV T-routes, and establishing two T-routes in support of the VOR MON Program. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

United States RNAV T-routes are published in paragraph 6011 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document will be subsequently published in FAA Order JO 7400.11.

Differences From the NPRM

United States RNAV routes T–212, T–221, T–299, and T–443 are removed from this docket because the associated VORs are not being decommissioned until a much later date. Since the VORs remain in service, there is no need to amend the routes at this time.

Route T–291 differs from the NPRM as follows. The COLIN, VA point was misidentified as a waypoint (WP) instead of a Fix. The LEDIE, NY, WP was included in the route description. Since this point marks a turn of less than one degree, it is not required for the T–291 description and is removed. The NPRM proposed replacement of the Milton, PA (MIP), VHF Omnidirectional Range and Tactical Air Navigational System (VORTAC) with the HYATT, PA, WP; and replacement of the Delancey, NY (DNY), VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) with the DANZI, NY, WP. Since the VORTAC and VOR/DME remain in service, the two WPs are removed and the Milton and Delancey navigation aids are restored in the route description. Additionally, the FAA proposed to extend T–291 from Albany, NY to Nantucket, MA, replacing several navigation aids with WPs. However, this would involve prematurely replacing the navigation aids that are still in service. Consequently, the amended T–291 will extend from Harcum, VA, to Albany, NY. The following points after Albany are removed from the route: Barnes, MA (BAF), VORTAC; PUTNM, CT, WP; PROVI, RI, WP; AVONN, RI, Fix; BUZRD, MA, WP; Marthas Vineyard, MA (MVY), VOR/DME; and Nantucket, MA (ACK),VOR/DME.

In route T–295, the following points were misidentified as WPs instead of Fixes: TAPPA, VA; COLIN, VA; LOUIE, MD; GRACO, MD; LAAYK, PA; SAGES, NY; SASHA, MA; and BRNNS, ME. The HEXSN, PA, WP is removed from the route and replaced by the Lancaster, PA (LRP), VOR/DME. The WLKES, PA, WP is removed from the route description and replaced by the Wilkes-Barre, PA (LVZ), VORTAC. In addition, the points where T–295 overlays V–93 is changed to read ''from the LOUIE, MD, Fix to the GRACO, MD, Fix.''

The amendment of route T–356 is added to this rule. A proposed amendment of several RNAV routes, including T–356, was published in a notice of proposed rulemaking for Docket No. FAA–2022–0857 in the **Federal Register** (87 FR 45721; July 29, 2022). No comments were received in response to the NPRM. Implementation of those routes, except for T–356, was delayed to a later date. Therefore, T–356 is added to this rule and is being amended as proposed in the July 29, 2022 NPRM.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO

7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending low altitude RNAV T-routes, designated T–291, T–295, and T–356, and establishing T–445 in the northeast United States to support the VOR MON Program.

T–291: T–291 extends between the LOUIE, MD, Fix, and the Albany, NY (ALB), VORTAC. This action moves the start point south of the LOUIE Fix to the Harcum, VA (HCM), VORTAC. The COLIN, VA, Fix, and the SHLBK, VA, WP, are added between the Harcum VORTAC and the LOUIE Fix. The BAABS, MD, WP is moved 3 nautical miles (NM) northwest of its current position to ensure clearance from restricted area R–4001. The new GRACO, MD, Fix is added between the LOUIE Fix and the BAABS WP per request from air traffic control. The VINNY, PA, Fix is added between the BAABS WP, and the Harrisburg, PA (HAR), VORTAC. The LEDIE, NY, WP is added between the LAAK, PA, Fix, and the Delancey, NY (DNY), VOR/DME As amended, T–291 extends between the Harcum, VA (HCM), VORTAC and the Albany, NY (ALB), VORTAC.

T–291 overlays VOR Federal airway V–33 from the Harcum, VA (HCM), VORTAC, to the COLIN, VA, Fix. It runs adjacent to airway V–213 from the COLIN, VA, Fix to the SHLBK, MD, WP. It then overlays airway V–93 to the GRACO, MD, Fix.

T–295: T–295 extends between the LOUIE, MD, Fix, and the Presque Isle, ME (PQI), VOR/DME. This action amends the route to begin south of the LOUIE, MD, Fix at the POORK, VA, WP. The following WPs are added between POORK, VA, and LOUIE, MD: HOUKY, VA (replaces the Hopewell, VA (HPW), VORTAC); SHLBK, MD. In addition, the COLIN, VA, Fix and the TAPPA, VA, Fix are added. The following modifications are made to T–295 between the LOUIE Fix and the Wilkes-Barre, PA (LVZ), VORTAC. The GRACO, MD, Fix is added between the LOUIE Fix, and the BAABS, MD, WP. The BAABS WP is moved 3 NM northwest of its current position. The Chester, MA (CTR), VOR/DME is added to the route between the SASHA, MA, Fix, and the KEYNN, NH, WP.

As amended, T–295 extends between POORK, VA, and Presque Isle, ME. The amended route overlays a portion of airway V–213 from Hopewell, VA to COLIN, VA. It overlays a portion of V–93 from the LOUIE, MD, Fix to the GRACO, MD, Fix.

T–356: T–356 extends from the WOOLY, MD, Fix to the ELUDE, MD, Fix. The FAA is extending T–356 at both ends. The start point of the route is moved from the WOOLY Fix to the HOGZZ, MD, WP. The HOGZZ WP is being renamed TWIRK, MD, WP. From the TWIRK WP, the route proceeds to the BRILA, MD, WP, then to the WOOLY, MD, Fix where T–356 joins the route as currently published to the SWANN, MD, Fix. The GATBY, MD, Fix and the KERNO, MD, Fix are removed from the route description. From the SWANN Fix, the route goes to the ODESA, MD, Fix. The ELUDE, MD, Fix is removed from the description. After the ODESA Fix, T–356 is extended northward to the WIGGZ, PA, WP (which will replace the Slate Run, PA (SLT), VORTAC). The following points are added after the ODESA Fix: APEER, MD, WP; REESY, PA, WP; FOLEZ, PA, WP; PIKKE, PA, WP; BOYER, PA, Fix; Ravine, PA (RAV), VORTAC; Selinsgrove, PA (SEG), VOR/DME; and the WIGGZ, PA, WP. T–356 overlays airway V–170 from the PIKKE, PA, WP to the WIGGZ, PA, WP. As amended, T–356 extends from the TWIRK, MD, WP, to the WIGGZ, PA, WP.

T–445: T–445 is a new route that extends between the Westminster, MD (EMI), VORTAC, and the AIRCO, NY, Fix. T–445 overlays a portion of airway V–265 between the Westminster VORTAC and the Harrisburg, PA (HAR), VORTAC. It also overlays a portion of airway V–31 from the Harrisburg VORTAC to the AIRCO, NY, Fix. In this route description, the LYKOM, PA, WP replaces the Williamsport, PA (FQM), VOR/DME, and the STUBN, NY, WP replaces the Elmira, NY (ULM), VOR/DME.

The full descriptions of the above routes are listed in the amendments to part 71 set forth below.

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

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of amending three low altitude RNAV T-routes, designated T–291, T–295, and T–356, and establishing T–445 in support of the VOR MON Program qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*) . . .''. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–291 Harcum, VA (HCM) to Albany, NY (ALB) [Amended]

Harcum, VA (HCM)	VORTAC	(Lat. 37°26′55.18″ N, long. 076°42′40.87″ W)
COLIN, VA	FIX	(Lat. 38°05′59.23″ N, long. 076°39′50.85″ W)
SHLBK, MD	WP	(Lat. 38°20′16.21″ N, long. 076°26′10.51″ W)
LOUIE, MD	FIX	(Lat. 38°36′44.33″ N, long. 076°18′04.37″ W)
GRACO, MD	FIX	(Lat. 38°56′29.81″ N, long. 076°11′59.22″ W)
BAABS, MD	WP	(Lat. 39°22′01.36″ N, long. 076°27′31.21″ W)
VINNY, PA	FIX	(Lat. 39°45′16.64″ N, long. 076°36′30.16″ W)
Harrisburg, PA (HAR)	VORTAC	(Lat. 40°18′08.06″ N, long. 077°04′10.41″ W)
Selinsgrove, PA (SEG)	VORTAC	(Lat. 40°47′27.09″ N, long. 076°53′02.55″ W)
Milton, PA (MIP)	VORTAC	(Lat. 41°01′24.21″ N, long. 076°39′55.04″ W)
MEGSS, PA	FIX	(Lat. 41°11′13.26″ N, long. 076°12′41.02″ W)
LAAYK, PA	FIX	(Lat. 41°28′32.64″ N, long. 075°28′57.31″ W)
Delancey, NY (DNY)	VOR/DME	(Lat. 42°10′41.81″ N., long. 074°57′24.99″ W)
Albany, NY (ALB)	VORTAC	(Lat. 42°44′50.21″ N, long. 073°48′11.46″ W)

* * * * * * *

T–295 POORK, VA to Presque Isle, ME (PQI) [Amended]

POORK, VA	WP	(Lat. 36°34′11.34″ N, long. 077°35′21.39″ W)
HOUKY, VA	WP	(Lat. 37°19′55.98″ N, long. 077°07′57.63″ W)
TAPPA, VA	FIX	(Lat. 37°58′12.66″ N, long. 076°50′40.62″ W)
COLIN, VA	FIX	(Lat. 38°05′59.23″ N, long. 076°39′50.85″ W)
SHLBK, MD	WP	(Lat. 38°20′16.21″ N, long. 076°26′10.51″ W)
LOUIE, MD	FIX	(Lat. 38°36′44.33″ N, long. 076°18′04.37″ W)
GRACO, MD	FIX	(Lat. 38°56′29.81″ N, long. 076°11′59.22″ W)
BAABS, MD	WP	(Lat. 39°22′01.36″ N, long. 076°27′31.21″ W)
Lancaster, PA (LRP)	VOR/DME	(Lat. 40°07′11.91″ N, long. 076°17′28.66″ W)
Wilkes Barre, PA(LVZ)	VORTAC	(Lat. 41°16′22.08″ N, long. 075°41′22.08″ W)
LAAYK, PA	FIX	(Lat. 41°28′32.64″ N, long. 075°28′57.31″ W)
SAGES, NY	FIX	(Lat. 42°02′46.33″ N, long. 074°19′10.33″ W)
SASHA, MA	FIX	(Lat. 42°07′58.07″ N, long. 073°08′55.39″ W)
Chester, MA (CTR)	VOR/DME	(Lat. 42°17′28.75″ N, long. 072°56′57.82″ W)
KEYNN, NH	WP	(Lat. 42°47′30.99″ N, long. 072°17′30.35″ W)
Concord, NH (CON)	VOR/DME	(Lat. 43°13′11.23″ N, long. 071°34′31.63″ W)
Kennebunk, ME (ENE)	VOR/DME	(Lat. 43°25′32.42″ N, long. 070°36′48.69″ W)
BRNNS, ME	FIX	(Lat. 43°54′08.64″ N, long. 069°56′42.81″ W)
Bangor, ME (BGR)	VORTAC	(Lat. 44°50′30.46″ N, long. 068°52′26.27″ W)
LAUDS, ME	WP	(Lat. 45°25′10.13″ N, long. 068°12′26.96″ W)
HULTN, ME	WP	(Lat. 46°02′22.29″ N, long. 067°50′02.06″ W)
Presque Isle, ME (PQI)	VOR/DME	(Lat. 46°46′27.07″ N, long. 068°05′40.37″ W)

* * * * * * *

T–356 TWIRK, MD to WIGGZ, PA [Amended]

TWIRK, MD	WP	(Lat. 39°34′36.70″ N, long. 077°12′44.75″ W)
BRILA, MD	WP	(Lat. 39°23′53.04″N, long. 077°08′31.89″ W)
WOOLY, MD	FIX	(Lat. 39°20′19.18″ N, long. 077°02′11.17″ W)
DROSA, MD	WP	(Lat. 39°18′30.32″ N, long. 076°58′06.22″ W)
OBWON, MD	WP	(Lat. 39°11′54.69″ N, long. 076°32′04.84″ W)
SWANN, MD	FIX	(Lat. 39°09′05.28″ N, long. 076°13′43.94″ W)
ODESA, MD	FIX	(Lat. 39°29′29.00″ N, long. 075°49′44.37″ W)
APEER, MD	WP	(Lat. 39°37′32.94″ N, long. 075°50′25.39″ W)
REESY, PA	WP	(Lat. 39°45′27.94″ N, long. 075°52′07.09″ W)
FOLEZ, PA	WP	(Lat. 39°55′32.76″ N, long. 075°49′16.49″ W)
PIKKE, PA	WP	(Lat. 40°05′27.21″ N, long. 075°52′12.11″ W)
BOYER, PA	FIX	(Lat. 40°16′36.84″ N, long. 076°05′09.38″ W)
Ravine, PA (RAV)	VORTAC	(Lat. 40°33′12.21″ N, long. 076°35′57.77″ W)
Selinsgrove, PA (SEG)	VOR/DME	(Lat. 40°47′27.09″ N, long. 076°53′02.55″ W)
WIGGZ, PA	WP	(Lat. 41°30′51.00″ N, long. 077°58′52.00″ W)

* * * * * * *

T–445 Westminster, MD (EMI) to AIRCO, NY [New]

Westminster, MD (EMI)	VORTAC	(Lat. 39°29′42.03″ N, long. 076°58′42.86″ W)
Harrisburg, PA (HAR)	VORTAC	(Lat. 40°18′08.06″ N, long. 077°04′10.41″ W)
Selinsgrove, PA (SEG)	VOR/DME	(Lat. 40°47′27.09″ N, long. 076°53′02.55″ W)
LYKOM, PA	WP	(Lat. 41°20′18.75″ N, long. 076°46′30.30″ W)
STUBN, NY	WP	(Lat. 42°05′38.58″ N, long. 077°01′28.68″ W)
BEEPS, NY	FIX	(Lat. 42°49′13.26″ N, long. 076°59′04.84″ W)
Rochester, NY (ROC)	VOR/DME	(Lat. 43°07′04.65″ N, long. 077°40′22.06″ W)
AIRCO, NY	FIX	(Lat. 43°12′36.66″ N, long. 078°28′57.00″ W)

* * * * *

Issued in Washington, DC, on December 1, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–26487 Filed 12–6–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0932; Airspace Docket No. 21–AEA–22]

RIN 2120–AA66

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends four area navigation (RNAV) routes (T–224, T–315, T–325, and Q–68), and establishes one RNAV route (T–360). These changes support the FAA VHF Omnidirectional Range (VOR) Minimum Operational Network (MON) program, and expands the availability of RNAV routing in the National Airspace System (NAS).

DATES: Effective date 0901 UTC, February 23, 2023. 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 7400.11G, 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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2022–0932, in the **Federal Register** (87 FR 50011; August 15, 2022). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

United States RNAV T-routes are published in paragraph 6011, and RNAV Q-routes are published in paragraph 2006, respectively, of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document will be published subsequently in FAA Order JO 7400.11.

Differences From the NPRM

The NPRM proposed, in part, to establish RNAV route T–303, and amend T–314. The FAA determined that these routes require additional coordination so they are removed from this docket and will be placed in a subsequent docket for publication at a later date.

The description of T–224 in the NPRM included the AXEJA, AL, Fix. The AXEJA Fix is a Computer Navigation Fix (CNF). As described in the Aeronautical Information Manual (AIM), a CNF is a point described by a latitude/longitude coordinate that is required to support area navigation (RNAV) system operations. The GPS receiver uses CNFs in conjunction with waypoints to navigate from point to point. However, CNFs are not used for air traffic control purposes or communications, and are not used by pilots for filing flight plans or navigating along a route. Therefore, CNFs are not to be included in route descriptions published under 14 CFR part 71. This rule removes the AXEJA Fix from the T–224 description.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending three low altitude RNAV T-routes, designated T–224, T–315, and T–325; establishing one T-route designated T–360; and amending one high altitude RNAV route designated Q–68. This action supports the VOR MON Program, and the transition of the NAS from ground-based navigation aids to satellite-based navigation. The route changes are as follows.

T–224: This rule extends T–224 from the COLIN, VA, Fix to the Boston, MA (BOS), VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME). The points from the Palacios VHF Omnidirectional Range and Tactical Air Navigational System (VORTAC) to the COLIN Fix remain unchanged. After the COLIN Fix, the following points are added to the route: SHLBK, MD, waypoint (WP); PRNCZ, MD, WP; Smyrna, DE (ENO), VORTAC; JIIMS, NJ, WP; Coyle, NJ (CYN), VORTAC; DIXIE, NJ, Fix; Kennedy, NY (JFK), VOR/DME; KEEPM, NY, Fix; Calverton, NY (CCC), VOR/DME; YANCT, CT, WP; and Boston, MA (BOS), VOR/DME. In this description, the JIIMS WP is being used in place of the Cedar Lake, NJ (VCN), VOR/DME, and the YANCT, CT, WP is being used in place of the Norwich, CT (ORW), VOR/DME. T–224 overlies portions of VOR Federal airway V–16 from the COLIN Fix to the Boston VOR/DME. The AXEJA, AL Computer Navigation Fix is removed from the route description for the reason discussed above.

T–315: T–315 extends from the Hartford, CT (HFD), VOR/DME to the Burlington, VT (BVT), VOR/DME. This action extends T–315 south and west from Hartford, CT to the vicinity of Charleston, WV. The JARLO, WV, WP is used in place of the Charleston, WV (HVQ), VOR/DME. T–315 overlies airway V–260 from JARLO to Flat Rock, VA; V–16 from Flat Rock to the DIXIE, NJ, Fix; and V–229 from the DIXIE Fix to Hartford, CT. The SHANE, WV, WP is used in place of the Rainelle, WV

(RNL), VOR. The DBRAH, VA, WP replaces the Roanoke, VA (ROA), VOR/DME. The EEGOR, CT, WP replaces the Bridgeport, CT (BDR), VOR/DME. The following WPs are removed from the description because they don't mark a turn point: DARTH, CT; WITNY, MA; SPENO, MA; JAMMA, VT; and MUDDI, VT. However, the points will remain part of the route structure and will continue to be depicted on the IFR En Route chart. As amended, T–315 extends from the JARLO, WV, WP to the Burlington, VT (BTV), VOR/DME.

T–325: T–325 extends from the Bowling Green, KY (BWG), DME to the Oshkosh, WI (OSH), VORTAC. Due to the scheduled decommissioning of the Bowling Green, KY (BWG), DME this action amends the route by replacing the Bowling Green DME with the RAMRD, KY, WP. In addition, the following points are removed from the route description because they don't mark a turn point: LOONE, KY, WP; BUNKA, IN, Fix; and CAPPY, IL, WP. However, the points will remain part of the route structure and will continue to be depicted on the IFR En Route chart. As amended, T–325 extends from the RAMRD, KY, WP to the Oshkosh, WI (OSH), VORTAC.

T–360: T–360 is a new route that extends from the SHANE, WV, WP to the WAVES, VA, WP. T–360 overlies airway V–290 from the Rainelle, WV (RNL), VOR to the ARVON, VA, Fix (located 22 nautical miles southwest of the Gordonsville, VA (GVE), VORTAC). The SHANE WP replaces the Rainelle VOR.

Q–68: Q–68 is a high-altitude RNAV route that extends from the LITTR, AR, WP to the OTTTO, VA, WP. The FAA is amending Q–68 by removing the Bowling Green, KY (BWG), DME from the route and replacing it with the RAMRD, KY, WP. The following points are removed from the description because they don't mark a turn point: SOPIE, TN, Fix; YOCKY, KY, Fix; SPAYD, WV, Fix; and HHOLZ, WV, Fix. However, the points will remain part of the route structure and will continue to be depicted on the IFR En Route chart.

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

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 202, and effective September 15, 2022, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–224 Palacios, TX (PSX) to Boston, MA (BOS) [Amended]

Palacios, TX (PSX)	VORTAC	(Lat. 28°45′51.93″ N, long. 096°18′22.25″ W)
MOLLR, TX	WP	(Lat. 29°39′20.23″ N, long. 095°16′35.83″ W)
SHWNN, TX	WP	(Lat. 29°56′45.94″ N, long. 094°00′57.73″ W)
WASPY, LA	FIX	(Lat. 30°01′33.88″ N, long. 093°38′50.45″ W)
KNZLY, LA	WP	(Lat. 30°08′29.48″ N, long. 093°06′19.37″ W)
DAFLY, LA	WP	(Lat. 30°11′37.70″ N, long. 091°59′33.94″ W)
KJAAY, LA	WP	(Lat. 30°05′15.06″ N, long. 090°35′19.73″ W)
SLIDD, LA	FIX	(Lat. 30°09′46.08″ N, long. 089°44′02.18″ W)
WTERS, MS	WP	(Lat. 30°24′24.36″ N, long. 089°04′37.04″ W)
LYNRD, AL	WP	(Lat. 30°43′33.26″ N, long. 088°21′34.07″ W)
WIILL, AL	WP	(Lat. 31°27′33.96″ N, long. 087°21′08.62″ W)
MGMRY, AL	WP	(Lat. 32°13′20.78″ N, long. 086°19′11.24″ W)
GONDR, AL	WP	(Lat. 32°22′01.98″ N, long. 085°45′57.08″ W)
RSVLT, GA	WP	(Lat. 32°36′55.43″ N, long. 085°01′03.81″ W)
SINCA, GA	FIX	(Lat. 33°04′52.28″ N, long. 083°36′17.52″ W)

UGAAA, GA	WP	(Lat. 33°56′51.32″ N, long. 083°19′28.42″ W)
ECITY, SC	WP	(Lat. 34°25′09.62″ N, long. 082°47′04.58″ W)
STYLZ, NC	WP	(Lat. 35°24′22.83″ N, long. 082°16′07.01″ W)
BONZE, NC	WP	(Lat. 35°52′09.16″ N, long. 081°14′24.10″ W)
MCDON, VA	WP	(Lat. 36°40′29.56″ N, long. 079°00′52.03″ W)
NUTTS, VA	FIX	(Lat. 37°04′34.16″ N, long. 078°12′13.69″ W)
WAVES, VA	WP	(Lat. 37°35′13.54″ N, long. 077°26′52.03″ W)
TAPPA, VA	FIX	(Lat. 37°58′12.66″ N, long. 076°50′40.62″ W)
COLIN, VA	FIX	(Lat. 38°05′59.23″ N, long. 076°39′50.85″ W)
SHLBK, MD	WP	(Lat. 38°20′16.21″ N, long. 076°26′10.51″ W)
PRNCZ, MD	WP	(Lat. 38°37′38.10″ N, long. 076°05′08.20″ W)
Smyrna, DE (ENO)	VORTAC	(Lat. 39°13′53.93″ N, long. 075°30′57.49″ W)
JIIMS, NJ	WP	(Lat. 39°32′15.62″ N, long. 074°58′01.72″ W)
Coyle, NJ (CYN)	VORTAC	(Lat. 39°49′02.42″ N, long. 074°25′53.85″ W)
DIXIE, NJ	FIX	(Lat. 40°05′57.72″ N, long. 074°09′52.17″ W)
Kennedy, NY (JFK)	VOR/DME	(Lat. 40°37′58.40″ N, long. 073°46′17.00″ W)
KEEPM, NY	FIX	(Lat. 40°50′14.77″ N, long. 073°32′42.58″ W)
Calverton, NY (CCC)	VOR/DME	(Lat. 40°55′46.63″ N, long. 072°47′55.89″ W)
YANTC, CT	WP	(Lat. 41°33′22.81″ N, long. 071°59′56.95″ W)
Boston, MA (BOS)	VOR/DME	(Lat. 42°21′26.82″ N, long. 070°59′22.37″ W)

* * * * * * *

T–315 JARLO, WV to Burlington, VT (BTV) [Amended]

JARLO, WV	WP	(Lat. 38°20′58.85″ N, long. 081°46′11.68″ W)
SHANE, WV	WP	(Lat. 37°58′31.15″ N, long. 080°48′24.34″ W)
DBRAH, VA	WP	(Lat. 37°20′34.14″ N, long. 080°04′10.75″ W)
SPNKS, VA	WP	(Lat. 37°17′21.31″ N, long. 079°33′17.14″ W)
KONRD, VA	WP	(Lat. 37°20′39.83″ N, long. 079°01′33.27″ W)
CRUMB, VA	FIX	(Lat. 37°28′09.44″ N, long. 078°08′27.69″ W)
Flat Rock, VA (FAK)	VORTAC	(Lat. 37°31′42.63″ N, long. 077°49′41.59″ W)
WAVES, VA	WP	(Lat. 37°35′13.54″ N, long. 077°26′52.03″ W)
TAPPA, VA	FIX	(Lat. 37°58′12.66″ N, long. 076°50′40.62″ W)
COLIN, VA	FIX	(Lat. 38°05′59.23″ N, long. 076°39′50.85″ W)
SHLBK, MD	WP	(Lat. 38°20′16.21″ N, long. 076°26′10.51″ W)
PRNCZ, MD	WP	(Lat. 38°37′38.10″ N, long. 076°05′08.20″ W)
CHOPS, MD	FIX	(Lat. 38°45′41.81″ N, long. 075°57′36.18″ W)
COSHA, DE	WP	(Lat. 38°57′57.57″ N, long. 075°30′51.59″ W)
Atlantic City, NJ (ACY)	VORTAC	(Lat. 39°27′21.15″ N, long. 074°34′34.73″ W)
PANZE, NJ	FIX	(Lat. 39°40′33.58″ N, long. 074°10′05.45″ W)
DIXIE, NJ	FIX	(Lat. 40°05′57.72″ N, long. 074°09′52.17″ W)
Kennedy, NY (JFK)	VOR/DME	(Lat. 40°37′58.40″ N, long. 073°46′17.00″ W)
KEEPM, NY	FIX	(Lat. 40°50′14.77″ N, long. 073°32′42.58″ W)
TRANZ, NY	FIX	(Lat. 40°51′31.95″ N, long. 073°22′30.80″ W)
PUGGS, NY	FIX	(Lat. 40°56′27.65″ N, long. 073°13′47.73″ W)
EEGOR, CT	WP	(Lat. 41°09′38.94″ N, long. 073°07′27.66″ W)
Hartford, CT (HFD)	VOR/DME	(Lat. 41°38′27.98″ N, long. 072°32′50.70″ W)
DVANY, CT	WP	(Lat. 41°51′44.56″ N, long. 072°18′11.25″ W)
Gardner, MA (GDM)	VOR/DME	(Lat. 42°32′45.31″ N, long. 072°03′29.48″ W)
KEYNN, NH	WP	(Lat. 42°47′39.99″ N, long. 072°17′30.35″ W)
EBERT, VT	FIX	(Lat. 43°32′58.08″ N, long. 072°45′42.45″ W)
Burlington, VT (BTV)	VOR/DME	(Lat. 44°23′49.58″ N, long. 073°10′57.48″ W)

* * * * * * *

T–325 RAMRD, KY to Oshkosh, WI (OSH) [Amended]

RAMRD, KY	WP	(Lat. 36°55′44.04″ N, long. 086°26′36.58″ W)
RENRO, KY	WP	(Lat. 37°28′50.53″ N, long. 086°39′19.25″ W)
APALO, IN	FIX	(Lat. 38°00′20.59″ N, long. 086°51′35.27″ W)
JIBKA, IN	WP	(Lat. 39°30′08.93″ N, long. 087°16′26.74″ W)
SMARS, IL	WP	(Lat. 41°07′38.18″ N, long. 088°51′38.22″ W)
TRENM, IL	WP	(Lat. 41°17′24.93″ N, long. 089°00′27.53″ W)
START, IL	WP	(Lat. 41°45′24.83″ N, long. 089°00′21.81″ W)
GRIFT, IL	WP	(Lat. 42°17′28.14″ N, long. 088°53′41.42″ W)
DEBOW, WI	WP	(Lat. 42°44′08.30″ N, long. 088°50′48.92″ W)
LUNGS, WI	WP	(Lat. 43°02′43.66″ N, long. 088°56′54.86″ W)
HOMNY, WI	WP	(Lat. 43°31′02.22″ N, long. 088°39′40.15″ W)
Oshkosh, WI (OSH)	VORTAC	(Lat. 43°59′25.56″ N, long. 088°33′21.36″ W)

* * * * * * *

T–360 SHANE, WV to WAVES, VA [New]

SHANE, WV	WP	(Lat. 37°58′31.15″ N, long. 080°48′24.34″ W)
OBEPE, VA	FIX	(Lat. 37°54′23.03″ N, long. 079°13′21.04″ W)
ROMAN, VA	FIX	(Lat. 37°48′12.67″ N, long. 078°46′03.24″ W)
ARVON, VA	FIX	(Lat. 37°41′13.95″ N, long. 078°21′58.75″ W)
WAVES, VA	WP	(Lat. 37°35′13.54″ N, long. 077°26′52.03″ W)

* * * * * *Paragraph 2006*

* * * * *

Q–68 LITTR, AR to OTTTO, VA [Amended]

LITTR, AR	WP	(Lat. 34°40′39.90″ N, long. 092°10′49.26″ W)
RAMRD, KY	WP	(Lat. 36°55′44.04″ N, long. 086°26′36.58″ W)
Charleston, WV (HVQ)	VOR/DME	(Lat. 38°20′58.83″ N, long. 081°46′11.69″ W)

TOMCA, WV	WP	(Lat. 38°34′42.49″ N, long. 080°36′41.09″ W)
RONZZ, WV	WP	(Lat. 38°33′16.08″ N, long. 080°07′56.63″ W)
CAPOE, VA	WP	(Lat. 38°51′13.13″ N, long. 078°22′27.45″ W)
OTTTO, VA	WP	(Lat. 38°51′15.81″ N, long. 078°12′20.01″ W)

* * * * *

Issued in Washington, DC, on December 1, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–26489 Filed 12–6–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0858; Airspace Docket No. 22–AEA–5]

RIN 2120–AA66

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Area Navigation (RNAV) route Q–141 and amends RNAV route Q–437 in support of the Northeast Corridor Atlantic Coast Route Project.

DATES: Effective date 0901 UTC, February 23, 2023. 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 7400.11G, 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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2022–0858 in the **Federal Register** (87 FR 45719; July 29, 2022), to establish Area Navigation (RNAV) route Q–141 and amend RNAV route Q–437 in support of the Northeast Corridor Atlantic Coast Route Project. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

United States Area Navigation routes are published in paragraph 2006 of FAA Order JO 7400.11G dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by establishing RNAV route Q–141, and amending RNAV route Q–437 in the eastern United States in support of the Northeast Corridor Atlantic Coast Route project.

Q–141: Q–141 is a new route that extends from the HOUKY, VA, waypoint (WP) (located in the vicinity of the Hopewell, VA (HPW), VHF Omnidirectional Range and Tactical Air Navigational System (VORTAC)) to the NALES, DE, WP. Q–141 expands the availability of RNAV routing in the area.

Q–437: Q–437 extends from the VILLS, NJ, Fix, (located northwest of the Sea Isle, NJ (SIE), VORTAC to the SLANG, VT, WP (located northeast of the Cambridge, NY (CAM), VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME)). The FAA is terminating the route at the LLUND, NY, Fix (located north of the Kennedy, NY (JFK), VOR/DME). All points north of the LLUND Fix (*i.e.,* BINGS, WARUV, and SLANG) are removed from the route. This is based on low demand for those segments and is a better fit traffic flows in the area. Additionally, the LUIGI, NJ, Fix is removed from the route description because it does not mark a turn point.

The full descriptions of Q–141 and Q–437 are listed in the amendments to part 71 set forth below.

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

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of establishing RNAV route Q–141 and amending Q–437 qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which

categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*). . .''. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–141 HOUKY, VA to NALES, DE [New]		
HOUKY, VA	WP	(Lat. 37°19′55.98″ N, long. 077°07′57.63″ W)
TAPPA, VA	FIX	(Lat. 37°58′12.66″ N, long. 076°50′40.62″ W)
HYTRA, MD	WP	(Lat. 38°17′31.91″ N, long. 076°24′49.80″ W)
BLNTN, MD	WP	(Lat. 38°44′10.33″ N, long. 075°59′02.69″ W)
NALES, DE	FIX	(Lat. 38°53′35.20″ N, long. 075°38′11.13″ W)

* * * * * * *

Q–437 VILLS, NJ to LLUND, NY [Amended]		
VILLS, NJ	FIX	(Lat. 39°18′03.87″ N, long. 075°06′37.90″ W)
DITCH, NJ	FIX	(Lat. 39°47′37.86″ N, long. 074°42′59.88″ W)
HNNAH, NJ	WP	(Lat. 40°28′12.73″ N, long. 074°02′36.62″ W)
LLUND, NY	FIX	(Lat. 40°51′45.04″ N, long. 073°46′57.30″ W)

* * * * *

Issued in Washington, DC, on November 30, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–26490 Filed 12–6–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 734, 736, 740, 742, 744, 762, 772, and 774

[Docket No. 220930–0204]

RIN 0694–AI94

Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification

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

ACTION: Interim final rule; request for comments; extension of comment period.

SUMMARY: On October 13, 2022, the Bureau of Industry and Security (BIS) published the interim final rule *Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification.* This document extends the deadline for written comments to January 31, 2023. This extension is being made to allow for commenters to have additional time to review the interim final rule and to benefit from the significant amount of public outreach that BIS is conducting on the rule in preparing their comments.

DATES: The comment period for the interim final rule published October 13, 2022, at 87 FR 62186, is extended until January 31, 2023.

ADDRESSES: Comments on this rule may be submitted to the Federal rulemaking portal (*www.regulations.gov*). The regulations.gov ID for this rule is: BIS–2022–0025. Please refer to RIN 0694–AI94 in all comments.

All filers using the portal should use the name of the person or entity submitting the comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and provide a non-confidential version of the submission.

For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC.'' Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. The corresponding non-confidential version of those comments must be clearly marked ''PUBLIC.'' The file name of the non-confidential version should begin with the character ''P.'' Any submissions with file names that do not begin with either a ''BC'' or a ''P'' will be assumed to be public and will be made publicly available through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

For questions on the license requirements in this interim final rule, contact Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–0092, Fax: (202) 482–482–3355, Email: *rpd2@bis.doc.gov.* For

emails, include ''Advanced computing controls'' or ''Semiconductor manufacturing items control'' as applicable in the subject line.

For questions on the Entity List revisions, 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

On October 13, 2022, the Bureau of Industry and Security (BIS) published the interim final rule *Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modifications* (87 FR 62186), hereinafter the October 7 advanced computing and semiconductor manufacturing equipment rule.

In the rule, BIS amended the Export Administration Regulations (EAR) to implement necessary controls on advanced computing integrated circuits (ICs), computer commodities that contain such ICs, and certain semiconductor manufacturing items. In addition, BIS expanded controls on transactions involving items for supercomputer and semiconductor manufacturing end uses. For example, the rule expanded the scope of foreign-produced items subject to license requirements for twenty-eight existing entities on the Entity List that are located in China. BIS also informed the public that specific activities of ''U.S. persons'' that 'support' the ''development'' or ''production'' of certain ICs in the PRC require a license. Lastly, to minimize the short-term impact on the semiconductor supply chain from the rule, BIS established a Temporary General License to permit specific, limited manufacturing activities in China related to items destined for use outside China and identified a model certificate that may be used in compliance programs to assist, along with other measures, in conducting due diligence. The October 7 advanced computing and semiconductor manufacturing equipment rule also solicits public comments on the changes included in that rule.

Extension of Comment Period Deadline

The October 7 advanced computing and semiconductor manufacturing equipment rule included a comment period deadline of December 12, 2022. The Department of Commerce has determined at this time that it is warranted to extend the comment period through January 31, 2023 to allow for commenters to have additional time to review the interim final rule and to benefit from the significant amount of public outreach that BIS is conducting on the rule in preparing their comments. This document specifies that comments may be submitted at any time but must be received by January 31, 2023, to be considered.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2022–26662 Filed 12–5–22; 4:15 pm]

BILLING CODE 3510–33–P

DEPARTMENT OF STATE

22 CFR Part 120

[Public Notice: 11929]

International Traffic in Arms Regulations (ITAR): Notification of Temporary Suspension of a Regulatory Provision Related to Certain Capacitors Described on the U.S. Munitions List

ACTION: Temporary suspension.

SUMMARY: The Department of State (the Department) is informing the public that on November 21, 2022, the Deputy Assistant Secretary of State for Defense Trade Controls temporarily suspended for a period of six (6) months the applicability of regulations for certain capacitors described in the U.S. Munitions List (USML) Category XI that have a voltage rating of one hundred twenty-five volts (125 V) or less.

DATES: This temporary suspension went into effect on November 21, 2022 and will expire on May 22, 2023 or when terminated by the Department, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Weil, Office of Defense Trade Controls Policy, Department of State, telephone (202) 571–7051; email *DDTCPublicComments@state.gov* ATTN: Temporary Suspension Related to Certain Capacitors

SUPPLEMENTARY INFORMATION: On July 1, 2014, the Department published a final rule revising Category XI of the USML (79 FR 37536). That final rule added USML Category XI(c)(5) to describe high-energy storage capacitors with a repetition rate of 6 discharges or more per minute and full energy life greater than or equal to 10,000 discharges, at greater than 0.2 Amps per Joule peak current, that have any of the following:

- Volumetric energy density greater than or equal to 1.5 J/cc or
- Mass energy density greater than or equal to 1.3 kJ/kg.

The Department, in consultation with the Departments of Defense and Commerce, and other U.S. Government agencies, assessed in the rulemaking that the discharge rate and energy life criteria were sufficient to differentiate those capacitors warranting ITAR control from those that were in normal commercial use at the time of the rulemaking.

It has come to the Department's attention that certain low-voltage capacitors with foreign availability that are described in USML Category XI(c)(5) are now extensively integrated into commercial applications, such as Wi-Fi routers and civil aviation aircraft transponders. Pursuant to ITAR § 120.11(c), defense articles described on the USML are controlled and remain subject to the ITAR following integration into any item not described on the USML, unless specifically provided otherwise. Thus, a license or other approval is required prior to any export, reexport, retransfer, or temporary import of an item containing such capacitors.

Section 126.2 of the ITAR provides that the Deputy Assistant Secretary for Defense Trade Controls may order the temporary suspension or modification of any or all provisions of the ITAR when in the interest of the security and foreign policy of the United States.

The Department assessed that it is in the security and foreign policy interests of the United States to facilitate commercial uses of certain capacitors when integrated into any item not described on the USML (for example, certain items used in energy exploration or in commercial aircraft used for global travel and commerce). Accordingly, on November 21, 2022, pursuant to ITAR § 126.2, and the Department's administration of the Arms Export Control Act (AECA) as a foreign affairs function as stated in ITAR § 120.20, the Deputy Assistant Secretary of State for Defense Trade Controls ordered the temporary suspension of ITAR § 120.11(c) with respect to capacitors described in USML Category XI(c)(5) that have a voltage rating of one hundred twenty-five volts (125 V) or less and have been integrated into, and included as an integral part of, an item not described on the USML. Such articles are licensed by the Department of Commerce when integrated into, and included as an integral part of, items subject to the EAR. This temporary

suspension of ITAR § 120.11(c), as described above, is valid for a period of six months until May 21, 2023, or when terminated by notice, whichever occurs first.

Capacitors described in USML Category XI(c)(5) remain subject to the controls of the ITAR in all other circumstances, including as stand-alone articles. The export, reexport, retransfer, or temporary import of technical data and defense services directly related to all defense articles described in USML Category XI(c)(5) remain subject to the ITAR.

Any violation of the ITAR, including any violation of the terms and conditions of any export license issued by the Department of State prior to the temporary suspension announced herein, remains a violation of the AECA. The public is reminded that the Department of State strongly encourages industry to disclose, pursuant to ITAR § 127.12, unauthorized exports, reexports, retransfers, or temporary imports of defense articles, including the subject capacitors, that occurred prior to the temporary suspension announced herein.

Authority: 22 CFR 126.2; 22 U.S.C. 2778.

Michael F. Miller,

Deputy Assistant Secretary, Defense Trade Controls, Department of State.

[FR Doc. 2022–26134 Filed 12–6–22; 8:45 am]

BILLING CODE 4710–25–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans by substituting a new table for determining expected retirement ages for participants in pension plans undergoing distress or involuntary termination with valuation dates falling in 2023. This table is needed to compute the value of early retirement benefits and, thus, the total value of benefits under a plan.

DATES: This rule is effective January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Hilary Duke (*duke.hilary@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, 202–229–3839. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) sets forth (in subpart B) the methods for valuing plan benefits of terminating single-employer plans covered under title IV. Guaranteed benefits and benefit liabilities under a plan that is undergoing a distress termination must be valued in accordance with subpart B of part 4044. In addition, when PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart B valuation rules to determine the amount of the plan's underfunding.

Under § 4044.51(b) of the asset allocation regulation, early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Sections 4044.55 through 4044.57 set forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendix D of part 4044 contains tables to be used in determining the expected early retirement ages.

Table I in appendix D (Selection of Retirement Rate Category) is used to determine whether a participant has a low, medium, or high probability of retiring early. The determination is based on the year a participant would reach ''unreduced retirement age'' (*i.e.,* the earlier of the normal retirement age or the age at which an unreduced benefit is first payable) and the participant's monthly benefit at the unreduced retirement age. The table applies only to plans with valuation dates in the current year and is updated annually by PBGC to reflect changes in the cost of living, etc.

Tables II–A, II–B, and II–C (Expected Retirement Ages for Individuals in the Low, Medium, and High Categories respectively) are used to determine the expected retirement age after the probability of early retirement has been determined using Table I. These tables establish, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the unreduced retirement age. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

This document amends appendix D to replace Table I–22 with Table I–23 to provide an updated correlation, appropriate for calendar year 2023, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–23 will be used to value benefits in plans with valuation dates during calendar year 2023.

PBGC has determined that notice of, and public comment on, this rule are impracticable, unnecessary, and contrary to the public interest. PBGC's update of appendix D for calendar year 2023 is routine. If a plan has a valuation date in 2023, the plan administrator needs the updated table being promulgated in this rule to value benefits. Accordingly, PBGC finds that the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, and that good cause exists for making the table set forth in this amendment effective less than 30 days after publication to allow the use of the proper table to estimate the value of plan benefits for plans with valuation dates in early 2023.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 4044

Employee benefit plans, Pension insurance.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. Appendix D to part 4044 is amended by removing Table I–22 and adding in its place Table I–23 to read as follows:

Appendix D to Part 4044—Tables Used To Determine Expected Retirement Age

TABLE I–23—SELECTION OF RETIREMENT RATE CATEGORY

[For valuation dates in 2023 [1]]

If participant reaches URA in year—	Participant's Retirement Rate Category is—			
	Low [2] if monthly benefit at URA is less than—	Medium [3] if monthly benefit at URA is—		High [4] if monthly benefit at URA is greater than—
		From—	To—	
2024	745	745	3,146	3,146
2025	762	762	3,218	3,218
2026	779	779	3,292	3,292
2027	797	797	3,368	3,368
2028	816	816	3,445	3,445
2029	834	834	3,524	3,524
2030	854	854	3,605	3,605
2031	873	873	3,688	3,688
2032	893	893	3,773	3,773
2033 or later	914	914	3,860	3,860

[1] Applicable tables for valuation dates before 2023 are available on PBGC's website (*www.pbgc.gov*).
[2] Table II–A.
[3] Table II–B.
[4] Table II–C.

* * * * *

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs Pension Benefit Guaranty Corporation.

[FR Doc. 2022–26597 Filed 12–6–22; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0964]

RIN 1625–AA00

Safety Zone; Corpus Christi Shipping Channel, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by pipelines that will be removed from the floor of the Corpus Christi Shipping Channel. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

DATES: This rule is effective without actual notice from December 7, 2022 through 3 p.m. on December 11, 2022. For the purposes of enforcement, actual notice will be used from 8 p.m. on December 5, 2022 until December 7, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Anthony Garofalo, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email *CCWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

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 it is impracticable. We must establish this safety zone immediately to protect personnel, vessels, and the marine environment from potential hazards created by pipeline removal operations and lack sufficient time to provide a reasonable comment period and then to consider those comments before issuing the rule.

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 contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with pipeline removal operations in the Corpus Christi Shipping Channel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with pipeline removal operations occurring from 8 p.m. on December 5, 2022 through 3 p.m. on December 11, 2022 will be a safety concern for anyone within the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W. The purpose of this rule is to ensure safety of vessels and persons on these navigable waters in the safety zone while pipelines are removed

from the floor of the Corpus Christi Shipping Channel.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 8 p.m. on December 5, 2022 through 3 p.m. on December 11, 2022 and will be subject to enforcement from 8 p.m. to 3 p.m. of the next day, each day. The safety zone will encompass all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W. The pipeline will be removed along the floor of the Corpus Christi Shipping Channel. No vessel or person is permitted to enter the temporary safety zone during the effective period without obtaining permission from the COTP or a designated representative, who may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450. The Coast Guard will issue Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

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, and duration of the safety zone. The temporary safety zone will be enforced for a short period of only 19 hours each day. The rule does not completely restrict the traffic within a waterway and allows mariners to request permission to enter 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 temporary 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 contact 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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, 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 establishment of a temporary safety zone for navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by pipeline that will be removed from the floor of the Corpus Christi Shipping Channel. It is categorically excluded from further review under paragraph L60(d) Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions

on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact 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, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–0964 to read as follows:

§ 165.T08–0964 Safety Zone; Corpus Christi Shipping Channel, Corpus Christi, TX.

(a) *Location.* The following area is a safety zone: all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W.

(b) *Effective period.* This section is effective from 8 p.m. on December 5, 2022, through 3 p.m. on December 11, 2022. This section is subject to enforcement from 8 p.m. to 3 p.m. of the next day, each day.

(c) *Regulations.* (1) According to the general regulations in § 165.23, entry into this temporary safety zone is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. They may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450.

(2) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

Dated: December 1, 2022.

J.B. Gunning,

Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.

[FR Doc. 2022–26512 Filed 12–6–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271 and 272

[EPA–R03–RCRA–2022–0280; FRL–9951–02–R3]

Delaware: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Delaware has applied to the United States Environmental Protection Agency (EPA) for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these revisions satisfy all requirements needed to qualify for final authorization and is hereby authorizing Delaware's revisions through this direct final rule. EPA is additionally removing and reserving codification of Delaware's hazardous waste program.

DATES: This final authorization will become effective on February 6, 2023, unless EPA receives adverse written comments by January 6, 2023. If EPA receives any such comments, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–RCRA–2022–0351, at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

The EPA encourages electronic submittals, but if you are unable to submit electronically or need other assistance, please contact Claudia Scott, the contact listed in the **FOR FURTHER INFORMATION CONTACT** provision below. Please also contact Claudia Scott if you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you.

FOR FURTHER INFORMATION CONTACT: Claudia Scott, RCRA Programs Branch, Land, Chemicals and Redevelopment Division, U.S. Environmental Protection Agency Region 3, Four Penn Center, 1600 John F. Kennedy Blvd. (Mail Code 3LD30), Philadelphia, PA 19103–2852; phone: (215) 814–3240, email: *scott.claudia@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program is revised to become more stringent or broader in scope, States must revise their programs and apply to EPA to authorize the revisions. Authorization of revisions to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other revisions occur. Most commonly, States must revise their programs because of revisions to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What decisions has EPA made in this rule?

On December 16, 2021, Delaware submitted a final program revision application seeking authorization of revisions to its hazardous waste program that correspond to certain Federal rules promulgated through May 30, 2018. EPA concludes that Delaware's application to revise its

authorized program meets all of the statutory and regulatory requirements established by RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA grants Delaware final authorization to operate its hazardous waste program with the revisions described in its authorization application, and as outlined below in Section G of this preamble.

Delaware has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions for which Delaware has not been authorized, including issuing HSWA permits, until the State is granted authorization to do so.

C. What is the effect of this authorization decision?

This action serves to authorize revisions to Delaware's authorized hazardous waste program. This action does not impose additional requirements on the regulated community because the regulations for which Delaware is being authorized by this action are already effective and are not changed by this action. Delaware has enforcement responsibilities under its state hazardous waste program for violations of its program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether Delaware has taken its own actions.

D. Why wasn't there a proposed rule before this rule?

Along with this direct final rule, EPA is publishing a separate document in the ''Proposed Rules'' section of this issue of the **Federal Register** that serves as the proposal to authorize these State program revisions. EPA did not publish a proposal before this issue of the **Federal Register** because EPA views this action as a routine program change and does not expect comments that oppose its approval. EPA is providing an opportunity for public comment now, as described in Section E of this preamble.

E. What happens if EPA receives comments that oppose this action?

If EPA receives adverse comments pertaining to this State revision, EPA will withdraw this direct final rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of Delaware's program revisions on the proposal mentioned in the previous section, after considering all comments received during the comment period. EPA will then address all relevant comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

F. What has Delaware previously been authorized for?

Delaware initially received final authorization of its hazardous waste program effective June 22, 1984 (June 8, 1984; 49 FR 23837). EPA granted authorization for revisions to Delaware's regulatory program on August 8, 1996, effective October 7, 1996 (61 FR 41345); August 18, 1998, effective October 19, 1998 (63 FR 44152); July 12, 2000, effective September 11, 2000 (65 FR 42871); August 8, 2002, effective August 8, 2002 (67 FR 51478); March 4, 2004, effective May 3, 2004 (69 FR 10171); October 7, 2004, effective December 6, 2004 (69 FR 60091); and August 10, 2017, effective October 10, 2017 (82 FR 37319).

G. What revisions is EPA authorizing with this action?

On December 16, 2021, Delaware submitted a final program revision application seeking authorization of additional revisions to its program in accordance with 40 CFR 271.21. Delaware's revision application includes various regulations that are equivalent to, and no less stringent than, selected Federal final hazardous waste rules, as published in the **Federal Register** through May 30, 2018.

EPA now makes a direct final rule, subject to receipt of written comments that oppose this action, that Delaware's hazardous waste program revision application satisfies all of the requirements necessary to qualify for final authorization. Therefore, EPA grants Delaware final authorization for the following program revisions:

1. Program Revision Changes for Federal Rules

Delaware seeks authority to administer the Federal requirements that are listed in Table 1 below. This table lists the Delaware analogs that have been revised; these revisions are being recognized as no less stringent than the analogous Federal requirements.

Delaware's regulatory references are to Delaware's Regulations Governing Hazardous Waste (DRGHW), amended and effective August 21, 2006, December 21, 2007, December 21, 2008, May 21, 2009, April 21, 2016, and January 21, 2021. The statutory references are to 7 Delaware Code annotated (1991).

TABLE 1—DELAWARE'S ANALOGS TO THE FEDERAL REQUIREMENTS

Description of Federal requirement (revision checklists [1])	**Federal Register** or requirement	Delaware authority [2]
RCRA Cluster VII		
Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazardous Waste Programs, Revision Checklist 153.	61 FR 34252, 7/1/1996.	DRGHW 262.14(a)(6), 262.14(a)(6)(i)–(iii), 262.14(a)(6)(iv)*, 262.14(a)(6)(v)*, 262.14(a)(6)(vi), 262.14(a)(6)(vii).

TABLE 1—DELAWARE'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Description of Federal requirement (revision checklists [1])	Federal Register or requirement	Delaware authority [2]
RCRA Cluster X		
NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (MACT Rule), Revision Checklist 182.	64 FR 52827, 9/30/1999.	DRGHW 122.19 introductory paragraph, 122.19(e), 122.22 introductory paragraph, 122.42 Appendix I, 122.62 introductory paragraph, 122.66 introductory paragraph. DRGHW 260.10, 264.340(b), 264.340(b)(1)–(2), 264.340(c)–(e), 264.601 introductory paragraph, 265.340(b), 265.340(b)(1)–(2), 265.340(c), 266.100(b), 266.100(b)(1), 266.100(b)(2), 266.100(b)(2)(i)–(iv), 266.100(c), 266.100(d), 266.100(d)(1), 266.100(d)(1)(i)–(iii), 266.100(d)(2), 266.100(d), 266.100(d)(3), 266.100(d)(3)(i)–(ii), 266.100(e)–(h), 266.101(c), 266.101(c)(1), 266.105(c), 266.105(c)(1)–(3), 266.105(d), 266.112(b)(1), 266.112(b)(2)(i), Appendix VIII.
RCRA Cluster XII		
Hazardous Air Pollutant Standards for Combustors: Corrections, Revision Checklist 198.	67 FR 6968–6996, 2/14/2002.	DRGHW 266.100(a), 266.100(b)(1), 266.110(d)(1)(i)(B), 266.100(d)(2)(i)–(ii), 266.100(d)(3), 266.100(d)(3)(i), 266.100(d)(3)(i)(D).
RCRA Cluster XV		
Methods Innovation Rule and SW–846 Final Update IIIB, Revision Checklist 208.	70 FR 34538–34592, 6/14/2005 As amended 8/1/2005, 70 FR 44150–44151.	DRGHW 122.19(c)(1)(iii)–(iv), 122.22(a)(2)(ii)(B), 122.62(b)(2)(i)(D), 122.66(c)(2)(i)–(ii), 279.10(b)(1)(ii), 279.44(c), 279.53(c), 279.63(c). DRGHW 260.11, 260.119(a)–(g), 260.22(d)(1)(i), 261.3(a)(2)(v) introductory paragraph, 261.21(a)(1), 261.22(a)(1)–(2), 261.35(b)(2)(iii)(A)–(B), Appendix I, Appendix II, Appendix III, 264.190(a), 264.314(b), 264.1034(c)(1)(ii),264.1034(c)(1)(iv)(B), 264,1034(d)(1)(iii), 264.1034(f), 264.1063(d)(2), Appendix IX, 265.1034(c)(1)(ii), 265.1034(c)(1)(iv), 265.1034(c)(1)(iv)(A)–(B), 265.1063(d)(2), 265.1081 "Waste stabilization process", 265.1084(a)(3)(ii)(C), 265.1084(a)(3)(iii) introductory paragraph, 265.1084(a)(3)(iii)(A)–(B), 265.1084(b)(3)(iii), 265.1084(b)(3)(iii)(A)–(B), 265.1084(c)(3)(i), 266.100(d)(1)(ii), 266.100(g)(2), 266.102(b)(1), 266.106(a), 266.112(b)(1), 266.112(b)(2)(i), Appendix IX, 268.40(b), 268.40. Table/Footnote 7, 268.40 UTS table Footnote 4.
RCRA Cluster XVI		
Burden Reduction Initiative, Revision Checklist 213.	71 FR 16862–16915, 4/4/2006.	DRGHW 122.14(a), 122.16(a), 122.26(c)(15). DRGHW 260.31(b)(2)–(7), 261.4(a)(9)(iii)(E), 261.4(f)(9), 264.16(a)(4), 264.52(b), 264.56(i), 264.56(j)*, 264.73(b), introductory language*, 264.73(b)(1),(2),(6)*,(8),(10),&(18), 264.98(d)*, 264.98(g)(2)–(3), 264.99(f)*, 264.99(g), 264.100(g)*, 264.115, 264.120, 264.143(i), 264.145(i), 264.147(e), 264.174, 264.191(a), 264.191(b)(5)(ii), 264.192(a), 264.192(b), 264.193(a)(1), 264.193(a)(2), 264.193(i)(2), 264.195(b), 264.195(c), 264.195(d), 264.196(f), 264.251(c), 264.280(b), 264.314(a), 264.314(b)–(e), 264.314(e)(1)–(2), 264.343(a)(2)*, 264.347(d)*, 264.554(c)(2), 264.571(a)–(c), 264.573(a)(4)(ii), 264.573(g), 264.574(a), 264.1061(b)(2)*, 264.1061(b)(3)*, 264.1062(a), 264.1062(a)(2)*, 264.1100 introductory paragraph, 264.1101(c)(2), 264.1101(c)(4), 265.15(b)(4), 265.52(b), 265.56(i)*, 265.56(j), 265.73(b), introductory language*, 265.73(b)(1),(2),(6)*,(7),&(8), 265.90(e)(1)*, 265.90(e)(3)*, 265.93(d)(2)*, 265.93(d)(5)*, 265.115, 265.120, 265.143(h), 265.145(h), 265.147(h), 265.174, 265.191(a), 265.191(b)(5)(ii), 265.192(a), 265.192(b), 265.193(a)(1), 265.193(a)(2), 265.193(i)(2), 265.193(f)(1), 265.195(a), 265.195(a)(1),(2),&(4), 265.196(f)*, 265.195(c)*, 265.201, 265.221(a), 265.224, 265.224(a)*, 265.259(a)*, 265.280(e), 265.301(a), 265.303(a)*, 265.314(a), 265.314(b)–(f), 265.314(f)(1), 265.314(f)(2), 265.441(a), 265.441(b), 265.441(c), 265.443(a)(4)(ii), 265.443(g), 265.444(a), 265.1061(b), 265.1061(b)(1)* 265.1061(d)*, 265.1062(a), 265.1062(a)(2)* 265.1100 introductory paragraph, 265.1101(c)(2), 265.1101(c)(4), 266.102(e)(10)*, 266.103(d)*, 266.103(k)*, 268.7(a)(1), 268.1(a)(2), 268.7(b)(6), 268.9(a), 268.9(d).
RCRA Cluster XXI		
Removal of Saccharin and Its Salts from the Lists of Hazardous Constituents, Revision Checklist 225.	75 FR 78918–78926, 12/17/2010, Effective 1/18/2011.	DRGHW 261.33(f) Table, 261 Appendix VIII, 268.40 Table of Treatment Standards, 268 Appendix VII.

TABLE 1—DELAWARE'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Description of Federal requirement (revision checklists [1])	**Federal Register** or requirement	Delaware authority [2]
Revision of the Land Disposal Treatment Standards for Carbamate Wastes, Revision Checklist 227.	76 FR 34147–34157, 6/13/2011.	DRGHW 268.40 Table of Treatment Standards, 268.48 Table of UTS-Universal Treatment Standards.
RCRA Cluster XXII		
Hazardous Waste Technical Corrections and Clarifications Rule, Revision Checklist 228.	77 FR 22229–22232, 4/13/2012.	DRGHW 261.32(a) Table, 266.20(b).
RCRA Cluster XXIII		
Hazardous Waste Electronic Manifest Rule, Revision Checklist 231.	79 FR 7518–7563, 2/7/2014.	DRGHW 260.2(a)–(b), 260.10, 262.20(a)(3), 262.20(a)(3)(i)–(ii) 262.24, 262.25, 263.20(a)(1)–(8), 263.25, 264.71(a)(2)(i)–(v), 264.71(a)(2)(vi), 264.71(f)–(k), 265.71(a)(2), 265.71(a)(2)(i)–(vi), 265.71(f)–(k).
Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule, Revision Checklist 232.	79 FR 36220–36231, 6/26/2014.	DRGHW 260.10, 261.39*, 261.39(a)(5)(i)(F)*, 261.39(a)(5)(x)–(xi)*, 261.41*.
RCRA Cluster XXIV		
Changes affecting all non-waste determinations and variances More stringent for all state programs Revisions to the Definition of Solid Waste, Revision Checklist 233A.	80 FR 1694–1814, 1/13/2015.	DRGHW 260.31(c), 260.31(c)(1)–(5), 260.33 section heading*, 260.33(c)–(e)*, 260.42 section heading, 260.42(a)*, 260.42(a)(1)–(9), 260.42(b).
Legitimacy-related provisions, including prohibition of sham recycling, definition of legitimacy, definition of contained More stringent for all state programs. Revisions to the Definition of Solid Waste, Revision Checklist 233B.	80 FR 1694–1814, 1/13/2015.	DRGHW 260.10 "contained", 260.10 "Hazardous secondary material", 260.43(a) section heading, 260.43(a), 260.43(a)(1), 260.43(a)(1)(i)–(v), 260.43(a)(2), 260.43(a)(2)(i)–(ii), 260.43(a)(3), 260.43(a)(4), 260.43(a)(4)(i), 260.43(a)(4)(i)(A)–(B), 260.43(a)(4)(ii), 260.43(a)(4)(ii)(A)–(B), 260.43(a)(4)(iii), 260.43(b)–(c), 261.2(b)(4), 261.2(g).
Speculative Accumulation, Revisions to the Definition of Solid Waste, Revision Checklist 233C.	80 FR 1694–1814, 1/13/2015.	DRGHW 261.1(c)(8).
Consolidated Checklist C9		
Land Disposal Restrictions, as of June 30, 2018.	40 CFR part 268 ...	DRGHW part 268.

[1] A Revision Checklist is a document that addresses the specific revisions made to the Federal regulations by one or more related final rules published in the **Federal Register**. EPA develops these checklists as tools to assist States in developing their authorization applications and in documenting specific State analogs to the Federal regulations. For more information see EPA's RCRA State Authorization web page at *https://www.epa.gov/rcra/state-authorization-under-resource-conservation-and-recovery-act-rcra.*

[2] Unless otherwise indicated, all Delaware citations are from the state's 2021 regulations.

H. Where are the revised Delaware rules different from the Federal rules?

1. Delaware Requirements That Are More Stringent Than the Federal Program

Delaware's hazardous waste program contains several provisions that are more stringent than the RCRA program. The more stringent provisions are part of the Federally authorized program and are, therefore, federally enforceable. The specific more stringent provisions are also noted with an asterisk in Table 1 of this preamble and in Delaware's authorization application. They include, but are not limited to, the following:

(a) The Federal regulations, at 40 CFR 260.21(d), state that any person may petition for a regulatory amendment to add a testing or analytical method. Delaware's regulations do not allow such petitions and, as a result, are more stringent than the federal requirement.

(b) The Federal regulations, at 40 CFR 260.33, detail the procedures the Administrator will use in evaluating applications for variances from classification as a solid waste, for variances to be classified as a boiler, or for non-waste determinations. The Delaware regulations, at DRGHW 260.33, detail the procedures the Secretary of DNREC will use in evaluating applications for variances from classification as solid waste or variances to be classified as a boiler. The Delaware regulations do not allow applications for non-waste determinations and, as such, are more stringent than the Federal requirements.

(c) The Federal regulations, at 40 CFR 260.42(a), state that facilities managing hazardous secondary materials under an approved variance must send a notification to EPA every two years. The Delaware regulations, at DRGHW 260.42(a), require notifications to DNREC every year. Because Delaware requires annual notifications while EPA requires notifications every two years, this Delaware requirements is more stringent than the Federal requirement.

(d) The Federal regulations, at 40 CFR 261.39, include a list of conditions that used, broken CRTs must meet in order to be excluded from consideration as solid wastes. The Delaware regulations, at DRGHW 261.39 and 261.41(a), specify that CRTs are considered solid waste but used, intact or broken CRTs are not hazardous waste if they meet the listed

conditions. Because the Delaware regulations do not exclude CRTs from consideration as solid wastes, the state requirements are more stringent than the Federal requirements. Additionally, the Federal regulations, at 40 CFR 261.39(a)(5)(i)(F), (a)(5)(x), and (a)(5)(xi), require exporters of used, broken CRTs to notify EPA of an intended export before the CRTs are scheduled to leave the United States, to file with EPA an annual report summarizing the quantities, frequency of shipment, and ultimate destination(s) of all used CRTs exported during the previous calendar year. The Delaware regulations, at DRGHW 261.39(a)(5)(i)(F), (a)(5)(x), and (a)(5)(xi), require that exporters of used, intact or broken CRTs notify both EPA and the DNREC Secretary of an intended export before the CRTs are scheduled to leave the United States, and that the annual report be filed with EPA, with a copy sent to the DNREC Secretary. Because Delaware's requirements apply to exporters of intact CRTs in addition to exporters of used, broken CRTs, and because the Delaware regulations require exporters to notify DNREC in addition to EPA, the Delaware regulations are more stringent than the Federal requirements.

(e) In several places, the Federal regulations require that notices and reports be submitted to the Agency. Delaware's regulations also require the submittal of those notices and reports, but additionally require that the notices and reports be submitted to the Secretary of DNREC. These additional requirements are found at DRGHW 261.41(b) and (c), 264.56(j), and 264.343(a)(2). Additionally, Delaware regulations require that notifications and documents be provided to the Secretary in a number of instances where the Federal regulations do not require such notifications or submittals. These additional requirements are found at DRGHW 264.1061(b)(1), 264.1062(a)(2), 265.56(i), 265.90(e)(1) and (e)(3), 265.93(d)(2) and (d)(5), 265.196(f), 265.224(a), 265.259(a), 265.303(a), 265.1061(b)(1), 265.1061(d), and 265.1062(a)(2). As a result, the above Delaware regulations are more stringent than the Federal requirements.

(f) The Federal regulations, at 40 CFR 262.14(a)(5)(iv) and (v), allows very small quantity generators (VSQGs) to either treat or dispose of their hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility as long as the facility is in the United States and is permitted, licensed, or registered by a state to manage municipal solid waste or non-municipal non-hazardous waste. Delaware has reserved the analogous subsections at DRGHW 262.14(a)(6)(iv) and (v), and does not allow VSQG waste to be sent to non-hazardous waste landfills. As a result, the Delaware regulations are more stringent than the Federal requirements.

(g) The Federal regulations, at 40 CFR 264.73(b), introductory language, 264.73(b)(6) and (b)(18), 264.347(d), 265.73(b), introductory language, 265.73(b)(6), and 266.102(e)(10) require that facilities record and maintain certain records for three or five years, as specified. The Delaware regulations, at DRGHW 264.73(b), introductory language, 264.73(b)(6), 264.347(d), 265.73(b), introductory language, 265.73(b)(6), and 266.102(e)(10) require facilities to maintain those records until closure of the facility. Additionally, at 40 CFR 266.103(d) and (k), the Federal regulations require owners or operators to recertify compliance within five years from submitting the previous certification and to maintain required records for five years, while the Delaware regulations, at DRGHW 266.103(d) and (k), require recertification within three years and maintenance of the records until closure of the unit. As a result, the above Delaware regulations are more stringent than the Federal requirements.

(h) The Federal regulations, at 40 CFR 264.98(d) and 264.99(f), state that the Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination. The Delaware regulations, at DRGHW 264.98(d) and 264.99(f), specify that a sequence of at least four samples from each well must be collected at least semi-annually. Because of this additional requirement, the above Delaware regulations are more stringent than the Federal requirements.

(i) The Federal regulations, at 40 CFR 264.100(g), require owners or operators to submit written reports on the effectiveness of the corrective action program on an annual basis. The Delaware regulations, at DRGHW 264.100(g), require that these reports be submitted semi-annually. As a result, the Delaware regulations are more stringent than the Federal requirements.

(j) The Federal regulations, at 40 CFR 264.113(d) and (e), authorize the Regional Administrator to allow closed facilities to accept non-hazardous waste if they meet certain requirements. Delaware did not adopt these two subparagraphs. Therefore, in this respect, the Delaware requirements are more stringent than the Federal program.

(k) The Federal regulations, at 40 CFR 265.113(e), allow owners or operators of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system to operate as long as they meet certain listed requirements. Delaware's regulations do not allow these activities at all. As a result, the Delaware regulations are more stringent than the Federal requirements.

(l) Delaware's regulations, at DRGHW 265.195(a), state that owners or operators of facilities that use tank systems for storing or treating hazardous waste must inspect specified areas at least once each operating day. The Federal regulations, at 40 CFR 265.195(b), include the same requirement. Additionally, at 40 CFR 265.195(c), the Federal regulations allow certain facilities to inspect those areas weekly. The Delaware regulations do not allow for this alternate inspection schedule and, as a result, are more stringent than the Federal requirements in this respect.

(m) The Federal regulations, at 40 CFR 265.195(f) and (g), require an owner or operator of a facility with tank systems to inspect cathodic protection systems and keep records of the inspections. The Delaware regulations, at DRGHW 265.195(b) and (c), include the same requirements. Additionally, DRGHW 265.195(c) provides that generators must submit a written record of inspections and maintain the record onsite for a minimum of three years. This additional requirement for generators is more stringent than the Federal requirements.

I. Who handles permits after the authorization takes effect?

After this authorization revision, Delaware will continue to issue permits covering all the provisions for which it is authorized and will administer all such permits. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that it issued prior to the effective date of this authorization until the timing and process for effective transfer to the State are mutually agreed upon. Until such time as EPA formally transfers responsibility for a permit to Delaware and EPA terminates its permit, EPA and Delaware agree to coordinate the administration of such permit in order to maintain consistency. EPA will not issue any more new permits or new portions of permits for the provisions listed in Section G of this preamble after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements

for which Delaware is not yet authorized.

J. How does this action affect Indian Country (18 U.S.C. 115) in Delaware?

Delaware is not seeking authority to operate the program on Indian lands, since there are no Federally-recognized Indian Lands in Delaware.

K. What is codification and is EPA codifying Delaware's hazardous waste program as authorized in this rule?

Codification is the process of placing a state's statutes and regulations that comprise the state's authorized hazardous waste program into the Code of Federal Regulations. We do this action by referencing the authorized state rules in 40 CFR part 272. On January 31, 1986, EPA codified the initial EPA-approved Delaware State program in 40 CFR part 272 subpart I (51 FR 3954). The current codification is out of date because the authorized Delaware State program has been amended since 1986. EPA is now removing and reserving the language in 40 CFR part 272 subpart I, §§ 272.400 and 272.401. EPA's initial January 1986 authorized program approval and all subsequent updates have been accomplished through notice-and-comment rulemaking, and EPA believes the scope and content of the authorized Delaware State Program is sufficiently clear without codification in 40 CFR part 272.

L. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Therefore, this action is not subject to review by OMB. This action authorizes State requirements pursuant to RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it 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). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). In any case, Executive Order 13175 does not apply to this rule since there are no Federally recognized tribes in Delaware.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999) because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant, and it does not concern environmental health or safety risks that may disproportionately affect children. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that satisfies the requirements of RCRA. Thus, the requirements of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note, section 12(d)(3)) do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Burden is defined at 5 CFR 1320.3(b).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule authorizes pre-existing State rules which are at least equivalent to, and no less stringent than, existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). However, this action will not be effective until February 6, 2023 because it is a direct final rule.

List of Subjects

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 272

Environmental protection, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, Water pollution control, Water supply.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as

amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Adam Ortiz,

Regional Administrator, U.S. EPA Region III.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

■ 1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

§§ 272.400 and 272.401 [Removed and Reserved]

■ 2. Remove and reserve §§ 272.400 and 272.401.

[FR Doc. 2022–22799 Filed 12–6–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 294

[Docket Number MARAD–2022–0247]

RIN 2133–AB95

Tanker Security Program

AGENCY: Maritime Administration (MARAD), Department of Transportation (DOT).

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule provides procedures to implement certain provisions of the National Defense Authorization Act for Fiscal Year 2021 (FY21 NDAA) and the National Defense Authorization for Fiscal Year 2022 (FY22 NDAA). The FY21 NDAA authorized the Secretary of Transportation to establish the Tanker Security Program (TSP) comprised of a fleet of active, commercially viable, militarily useful, privately owned product tank vessels of the United States. The fleet will meet national defense and other security requirements and maintain a United States presence in international commercial shipping. The FY22 NDAA made minor adjustments related to the participation of long-term charters in the TSP. The Maritime Administration solicits written comments on this rulemaking.

DATES:

Effective date: This interim final rule is effective December 7, 2022.

Comments due date: Comments on this interim final rule must be received on or before February 6, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0247 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Search ''MARAD–2022–0247'' and follow the instructions for submitting comments.
- *Email: Rulemakings.MARAD@dot.gov.* Include ''MARAD–2022–0247'' in the subject line of the message.
- *Mail/Hand-Delivery/Courier:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590. If you would like to know that your comments reached the facility, please enclose a stamped, self-addressed postcard or envelope. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. Call 202–493–0402 to determine facility hours prior to hand delivery.

You may view the public comments submitted on this rulemaking at *www.regulations.gov.* When searching for comments, please use the Docket ID: MARAD–2022–0247. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.FederalRegister.gov* and the Government Publishing Office's website at *www.GovInfo.gov.*

Note: If you fax, mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission. If you submit your comments by mail or hand-delivery, they must be submitted in an unbound format, no larger than 8½ by 11 inches, single-sided, suitable for copying and electronic filing.

Instructions: All submissions received must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking, 2133–AB95. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: David Hatcher, Office of Sealift Support, at (202) 366–0688, or via email at *David.Hatcher1@dot.gov.* You may send mail to Mr. Hatcher at Department of Transportation, Maritime Administration, Office of Sealift Support, 1200 New Jersey Avenue SE, Washington, DC 20590. If you have questions on viewing the Docket, call Docket Operations, telephone: (800) 647–5527.

SUPPLEMENTARY INFORMATION: The FY21 NDAA, with minor adjustments in the FY22 NDAA, required that the Secretary of Transportation, in consultation with the Secretary of Defense, establish a fleet of active, commercially viable, militarily useful, privately-owned product tank vessels to meet national defense and other security requirements. The TSP will provide a stipend to tanker operators of U.S.-flagged vessels that meet certain qualifications.

Congress appropriated $60,000,000 for the TSP in the Consolidated Appropriations Act of 2022, Public Law 117–269. Authorized payments to participating operators are limited to $6 million per ship, per fiscal year and are subject to annual appropriations. Participating operators will be required to make their commercial transportation resources available upon request by the Secretary of Defense for military purposes during times of war or national emergency.

Background

A fuel tanker study required by the Fiscal Year 2020 National Defense Authorization Act (FY20 NDAA) examined the sufficiency of the U.S.-flagged tanker fleet to meet National Defense Strategy (NDS) requirements. A summary of the report is provided on the DOT/MARAD docket for this rulemaking. The report's summary found there to be a substantial risk to the nation's defense associated with a heavy reliance on foreign-flagged tankers, particularly within a contested environment. The location, timing, and specific missions associated with some tanker requirements dictate the need for U.S.-flagged assets, for which there currently are insufficient numbers available. The report's gap analysis found a clear and critical need for a tanker security program to increase U.S.-flagged tanker capacity, to reduce the risk of reliance on foreign-flagged tankers for the most important fuel missions, and to ensure the Department of Defense (DoD) has sufficient tanker capabilities to meet NDS objectives.

In response to the FY20 NDAA Fuel Tanker Study, Congress directed in the FY21 NDAA, with minor adjustments in the FY22 NDAA, that the Secretary of Transportation, in consultation with the Secretary of Defense, establish a fleet of active, commercially viable, militarily

useful, privately owned product tanker vessels to meet national defense and other security requirements and maintain a United States presence in international commercial shipping.[1] The Maritime Administration worked with the DoD's United States Transportation Command to identify and shape TSP requirements and timelines.

Pursuant to the statute, the rule establishes requirements that support typical DOT and MARAD commercial economic objectives such as the tanker vessel eligibility requirements of Section 294.9 to be commercially viable, not more than 10 years in age, and to operate in U.S. foreign commerce. (See 46 U.S.C. 53402(b)(2)–(4),(6)–(7)). In addition, Section 294.9 requires tanker vessels to be suitable for use by the United States for national defense or military purposes in time of war or national emergency, as determined by the Secretary of Defense. (See 46 U.S.C. 53402(b)(5).)). The statute also requires vessel owners, charterers, and operators to meet certain requirements under Section 294.11 intended to identify their corporate citizenship as a matter of ensuring security through proper operational control. (See 46 U.S.C. 54302(b)(1) and (c)). And, under Section 294.25 a TSP participant must agree to the installation onboard its vessel of militarily useful features for national defense purposes as approved by U.S. Coast Guard and the vessel's classification society. (See 46 U.S.C. 53402(a), (b)(5); 46 U.S.C. 53407). Finally, in the event of a national defense emergency, all TSP participants are subject to the terms of an agreement [2] that obligates the TSP participant to make commercial transportation resources (including services) available for military use, upon request by the Secretary of Defense during a time of war or national emergency, or whenever the Secretary of Defense determines that it is necessary for national security or contingency operation. (See 46 U.S.C. 53403–53405, 53407). Section 294.31 also provides for annual payments to program participants and specifies payment conditions as specified in the statute. (See 46 U.S.C. 53406.) Taken together, the TSP supports both the nation's economy and its national security by strengthening and ensuring the continued availability of U.S.-flag sealift capacity.

[1] The tanker security program authority is codified at 46 U.S.C. 53402–53412.

[2] *See* 50 U.S.C. 4558, Voluntary agreements and plans of action for preparedness programs and expansion of production capacity and supply.

Immediate Effective Date and Request for Comment

MARAD is issuing this interim final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA). MARAD concludes that this rule involves a military function of the United States under 5 U.S.C. 553(a)(1) and is therefore exempt from the requirements of 5 U.S.C. 553 (*see* 5 U.S.C. 553(a)(1)). Nonetheless, MARAD has also analyzed this rule under 5 U.S.C. 553(b)(B) and determined that it has good cause to waive prior opportunity for notice and comment. For similar reasons, MARAD has determined that it has good cause to waive the 30-day delay in effective date under 5 U.S.C. 553. MARAD seeks comment on this interim final rule and will consider comments received in issuing any final rule.

Pursuant to section 5 U.S.C. 553(a)(1), the requirements of 5 U.S.C. 553, including general notice and the opportunity for public comment on a proposed rule and a 30-day delay in the effective date of a final rule, are not required with respect to a rulemaking ''to the extent that there is involved . . . a military or foreign affairs function of the United States.'' MARAD finds that this interim final rule involves a military function of the United States and therefore can be made effective prior to receiving public comment. 5 U.S.C. 553(a)(1). Under the requirements for establishment of the TSP set forth in the FY21 NDAA, as amended by the FY22 NDAA, and this rulemaking, vessels in the TSP must be militarily useful, participants must be under the supervisory control of the DoD when requested during times of war or national emergency, and participants will perform a direct military function by providing emergency supply capacity. The tanker security program established by the rule therefore directly involves a military function, and the tanker vessels involved in the program perform significantly more than ordinary civilian support services.

Consistent with the statutory authority for the program at 46 U.S.C. 53402, the fleet must be established in consultation with the Secretary of Defense and is intended to meet national defense and other security requirements in addition to maintaining a U.S. presence in international commercial shipping. As required by section 53402, the regulation specifies that a vessel is eligible for inclusion in the fleet only if it ''is determined by the Secretary of Defense to be suitable for use by the United States for national defense or military purposes in time of war or national emergency. . .'' In addition, consistent with 46 U.S.C. 53407, the regulation requires that operating agreements between the owner/operator of a vessel in the TSP must be approved by the Secretary of Transportation and the Secretary of Defense. The regulation also requires that a participant in the TSP agree to the installation on its vessel of militarily useful features for national defense purposes as approved by the U.S. Coast Guard and the vessel's classification society. The statutory provision at 46 U.S.C. 53407, titled ''National security requirements,'' states specifically that operating agreements ''shall provide that upon request by the Secretary of Defense during time of war or national emergency, or whenever determined by the Secretary of Defense to be necessary for national security or contingency operation . . ., the program participant shall make available commercial transportation resources (including services) described in subsection (d) to the Secretary of Defense . . . .'' 46 U.S.C. 53407(b)(1). For these reasons, MARAD concludes that the rule involves a military function of the United States and is thus exempt from the requirements of 5 U.S.C. 553.

While MARAD concludes that the rule is exempt from the requirements of 5 U.S.C. 553 as a rule involving a military function, MARAD also finds good cause under 5 U.S.C. 553(b)(B) to issue this interim final rule to create the Tanker Security Program and establish, in consultation with the Secretary of Defense, a Tanker Security Fleet. Pursuant to 5 U.S.C. 553(b)(B), general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Similarly, pursuant to 5 U.S.C. 553(d), a 30-day delay in effective date is not required if the agency finds good cause to waive the delay and publishes its finding in the rule.

MARAD has determined that it would be impracticable and contrary to the public interest to seek notice and comment on this final rule because of the urgent need to ensure the nation's security in the face of shifting real-time military priorities and requirements. To meet the urgent national security demand explained in the National Defense Authorization Act for Fiscal

Year 2020 Department of Defense Report on United States-Flagged Fuel Tanker Vessel Capacity gap analysis (Tanker Study), MARAD must issue this final rule to ensure its ability to notice, accept, and process applications followed by the review and execution of supporting agreements with qualified vessel operators. This urgency is heightened by an increased DOD priority for tankers since issuance of the Tanker Study. MARAD has consulted with DOD and is issuing this IFR to address the heightened demand for tankers to meet national security objectives. In addition, MARAD emphasizes that national security needs can change quickly, and there is a need to establish the TSP through this IFR to ensure that DOD can meet new or changed circumstances that may arise at any time. There is good cause to make this rule effective immediately to provide for the most efficient means of shoring up sealift capacity not readily available to support DoD's national security mission demands.

As discussed earlier in the **SUPPLEMENTARY INFORMATION** section of this document, the intent of this action is to provide improved tanker sealift capacity for the nation's security demands. The FY20 NDAA Fuel Tanker Study found that while U.S.-Flag commercial tankers provide DoD the greatest reliability for waterborne fuel transportation, the size of the current U.S.-Flag tanker fleet is insufficient to meet specific U.S. national security requirements, leaving significant gaps in DoD's fuel transportation capabilities. DoD mobility studies have demonstrated a growing concern that DoD's access to foreign-flag tanker capacity to meet defense objectives will be negatively impacted by the increasing influence and relative control of the global shipping market by the United States' near-peer competitors. The increased volatility in fuel commodity markets since the publication of the FY20 Fuel Tanker Study has only increased these risks, particularly concerning fuel distribution capabilities. The FY20 Fuel Tanker Study's analysis found, and subsequent mobility studies and market volatility have underscored, a clear and critical need for a Tanker Security Program to reduce DoD's risk of reliance on foreign-flag tankers and stated that TSP should be considered for rapid implementation given the military value it represents.

For these reasons, MARAD also finds good cause to waive prior opportunity for notice and comment on the rule and to waive the 30-day delay in effective date as impracticable and contrary to the public interest. MARAD issues this rule so that it may begin the administrative process necessary to seek applicants and to evaluate and engage qualified tanker vessels and vessel operators, thereby establishing the TSP as early as possible. The Tanker Study's gap analysis demonstrated pressing DoD fuel tanker supply needs. A delay in this rulemaking could result in serious national security concerns if a situation arises where TSP supply resources are necessary.

Though this interim final rule is effective immediately, MARAD seeks comment in response to this interim final rule in determining how to proceed with any final rule. Any final rule may differ from today's rule in response to comments received. Comments are solicited from interested members of the public on all aspects of the interim final rule. MARAD is interested in information concerning whether the rule will be comprehensive and effective in meeting both commercial product fuel needs and DoD fuel transportation requirements and whether any other steps could be taken to ensure that all qualified vessel operators may overcome potential obstacles to admission.

Comments must be submitted on or before the date indicated in the **DATES** section at the beginning of this document. MARAD believes that the 60-day comment period will allow commenters sufficient time to address any issues raised by the interim final rule and still meet the national security demands contemplated. See ''Public Participation'' section below.

Regulatory Analyses and Notices

a. Executive Orders 12866, 13563, and DOT Rulemaking Procedures

Executive Order (E.O.) 12866, E.O. 13563, and the Department of Transportation's administrative rulemaking procedures, provide for determining whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review. This rule has been determined to be significant pursuant to section 3(f) of Executive Order 12866.

Background

Congress authorized the establishment of a Tanker Security Fleet in Sec. 3511 of the FY21 NDAA, which was enacted on January 1, 2021. Section 3511(a) of the Act outlines the establishment of a fleet of product tank vessels, pursuant to agreement, engaged in U.S. foreign commerce and available for military use by the DoD during times of war or national emergency. The statutory language defines, among other elements: the maximum size of the fleet at ten vessels; the general vessel selection criteria; the obligations and rights of program participants; the maximum annual payments per vessel under each agreement and the conditions of such payments; and each participant's national security obligations under the program.

Benefits

The major benefits of TSP are that it will: (1) provide DoD with assured access of up to 10 U.S.-flagged product tank vessels that may be used to supply the armed forces of the United States with fuel during times of war or national emergency, and (2) help to ensure that a core fleet of U.S.-based product tankers can operate competitively in international trade and enhance U.S. supply chain resiliency for liquid fuel products. The report on U.S.-flagged fuel tanker vessels completed by DoD in accordance with section 3519 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92) identified an insufficient U.S.-flagged tanker capacity to meet National Defense Strategy requirements. In addition, TSP will provide necessary support to help maintain a U.S.-flag presence in international commerce. The TSP vessels will be a critical component of the U.S.-flag capability that contributes to the U.S. mariner base for utilization on both the commercial and DoD fleets.

Costs

Congress set strict statutory limits, not subject to the Secretary of Transportation's discretion, on the maximum number of participant vessels and the annual payment per vessel. Section 3511(a) of the Act authorized the participation of 10 vessels in TSP through the end of FY 2035. The operators of each of these 10 vessels may be paid up to $6 million per vessel per year, subject to specific operating requirements, with a maximum programmatic payment authorization of $60 million per year for FYs 2022–2035, subject to appropriations. Application costs for vessels that may apply for the TSP are discussed in paragraph (e) of this section, describing MARAD's compliance with the Paperwork Reduction Act for this rule.

Analysis of Alternatives

Section 3511 of the FY21 NDAA provides for the TSP with new funding authorization and establishes a dedicated product tanker fleet program distinct from the existing MSP. Congress also prescribed the minimum requirements of the TSP, including ship

ownership, vessel eligibility, vessel documentation, program duration, the number of participating vessels, the amount of funding, and national security obligations. The Act provides detailed requirements for starting and operating the TSP, and MARAD does not have discretion to deviate from those requirements in the regulations that establish the TSP's operation.

b. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* rules that are exempt from notice and comment under the APA are also exempt from the RFA analytical requirements, including conducting a regulatory flexibility analysis. See 5 U.S.C. 603(a). Because, as discussed above, this rule is exempt from the APA notice and comment requirements, MARAD is not required to conduct a regulatory flexibility analysis.

c. Executive Order 13132, Federalism

MARAD has examined the interim final rule pursuant to E.O. 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The Agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The interim final rule will not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

d. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This action will not result in additional expenditures by State, local, or tribal governments or by any members of the private sector. Therefore, the Agency has not prepared an assessment pursuant to the Unfunded Mandates Reform Act.

e. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. This interim final rule includes a new emergency OMB approved collection of information under OMB Control Number 2133–0554. The collection is necessary to accept applications, undertake the review of applicant qualifications to ensure applications are complete, and administer and maintain all aspects of the TSP program. MARAD expects an estimated 10 respondents, with a response frequency of once annually. The annual burden estimate is $2,438.50. We seek comment from the public on our burden estimates.

f. Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

Public Participation

How long do I have to submit comments?

MARAD is providing a 60-day comment period.

How do I prepare and submit comments?

To ensure that your comments are correctly filed in the Docket, please include the Docket Number shown at the beginning of this document in your comments.

If you are submitting comments electronically as a PDF (Adobe) File, MARAD asks that the documents be submitted using the Optical Character Recognition (OCR) process, thus allowing MARAD to search and copy certain portions of your submissions. Comments may be submitted to the Docket electronically by logging onto the Docket Management System website at *http://www.regulations.gov.* Search using the MARAD Docket Number and follow the online instructions for submitting comments.

You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://www.bts.gov/programs/statistical_policy_and_research/data_quality_guidelines.*

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

Confidential business information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments to the interim final rule contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this interim final rule, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. MARAD will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this interim final rule. Submissions containing CBI should be sent to the email address provided in the **FOR FURTHER INFORMATION CONTACT** section. In addition, you should submit two copies, from which you have deleted the claimed CBI, to Docket Management at the address given above under **ADDRESSES**. Any comments MARAD receives which are not specifically designated as CBI will be placed in the public docket for this rulemaking.

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket Management office are indicated above in the same location. You may also see the comments on the internet. To read the comments on the internet, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

Please note that, even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 46 CFR Part 294

Maritime carriers, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the Maritime Administration adds Part 294 to Title 46 to read as follows:

PART 294—TANKER SECURITY PROGRAM (TSP)

Sec.

Authority: 46 U.S.C. chapter 534, 49 CFR 1.93.

Subpart A—Introduction

§ 294.1 Purpose.

This part prescribes regulations implementing subtitle B of Title XXXV of the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283), section 3511 and the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81), section 3515, codified at Chapter 534 of Title 46, United States Code, governing the establishment of a Tanker Security Fleet of product tank vessels operating in the foreign trade or mixed foreign and domestic commerce of the United States permitted under a registry endorsement issued by the United States Coast Guard. The Department of Defense (DoD) and the Department of Transportation (DOT) have joint responsibility for the Tanker Security Fleet, with responsibility delegated to the Commander, United States Transportation Command through the Secretary of Defense, and the Maritime Administrator through the Secretary of Transportation.

§ 294.3 Definitions.

For the purposes of this part:

(a) *Administrator* means the Administrator, Maritime Administration, United States Department of Transportation.

(b) *Agreement Holder* means the owner or operator of a Fleet Vessel, excluding a trust, that:

(1) Meets the eligibility requirements of 46 U.S.C. 53402(c)(1), (2), (3), or (4); and

(2) Enters into a Tanker Security Program Operating Agreement for the Fleet Vessel with the Secretary of Transportation pursuant to 46 U.S.C. 53403.

(c) *Applicant* means a person applying for a Tanker Security Program Operating Agreement, excluding trusts.

(d) *Classification society* means the American Bureau of Shipping, or another classification society accepted by the Commandant of the United States Coast Guard.

(e) *CAP* means Conditional Assessment Program, a voluntary program offered by classification societies intended to measure and document the actual technical and functional condition of tankers 15 years of age or more.

(f) *Coastwise trade* means waterborne trade between points in the United States as defined in 46 U.S.C. chapter 551.

(g) *Commandant* means the Commandant of the United States Coast Guard.

(h) *Commander* means Commander, *USTRANSCOM.*

(i) *CR* means continuing resolution.

(j) *Defense Contractor* means a person that operates or manages United States-documented vessels for SecDef, or charters vessels to SecDef, and has entered into a special security agreement with SecDef.

(k) *Documentation Citizen* means a person able to document a vessel under 46 U.S.C. chapter 121. This definition includes a United States Citizen Trust.

(l) *DoD* means the United States Department of Defense.

(m) *Emergency Preparedness Agreement* means a voluntary agreement established by the Maritime Administration (MARAD) under Section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. 4558).

(n) *Fiscal Year* means an annual period beginning on October 1 and ending on September 30.

(o) *Fleet* means all Tanker Security Program (TSP) Fleet Vessels at any given time.

(p) *Fleet vessel* means any product tank vessel operating under a Tanker Security Program Operating Agreement on or after January 1, 2022, that—

(1) meets the requirements of 46 U.S.C. 53402(b); and

(2) is no more than 20 years of age.

(q) *Foreign commerce* means commerce or trade between the United States, its territories or possessions, or the District of Columbia, and a foreign country; and commerce or trade between foreign countries.

(r) *Noncontiguous domestic trade* means the waterborne transportation of cargo between a point in the contiguous 48 states and a point in Alaska, Hawaii, or Puerto Rico, other than a point in Alaska north of the Arctic Circle.

(s) *Person* includes corporations, partnerships, and associations existing under, or authorized by, laws of the United States, or any State, territory, district, or possession thereof, or any foreign country.

(t) *Product tank vessel* means a double-hulled tank vessel capable of carrying simultaneously more than 2 separated grades of refined petroleum products.

(u) *SecDef* means the Secretary of Defense.

(v) *Secretary* means the Secretary of Transportation unless the context indicates otherwise.

(w) *Section 50501 citizen* means a person meeting the statutory qualifications for United States citizenship designation under 46 U.S.C. 50501.

(x) *Tanker Security Program Operating Agreement or TSP Operating Agreement* means the assistance agreement between an Agreement

Holder and MARAD that provides for payments under this part but is not a procurement contract.

(y) *United States Citizen Trust* means:

(1) Subject to paragraph (3) of this definition, a trust that is qualified under this definition.

(2) A trust is qualified only if:

(i) Each of the trustees is a section 50501 citizen; and

(ii) The application for documentation of the vessel under 46 U.S.C. chapter 121, includes the affidavit of each trustee stating that the trustee is not aware of any reason involving a beneficiary of the trust that is not a section 50501 citizen, or involving any other person that is not a section 50501 citizen, as a result of which the beneficiary or other person would hold more than 25 percent of the aggregate power to influence or limit the exercise of the authority of the trustee with respect to matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States.

(3) If any person that is not a section 50501 citizen has authority to direct or participate in directing a trustee for a trust in matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States or in removing a trustee for a trust without cause, either directly or indirectly through the control of another person, the trust instrument provides that persons who are not section 50501 citizens may not hold more than 25 percent of the aggregate authority to so direct or remove a trustee.

(4) This definition will not be considered to prohibit a person who is not a section 50501 citizen from holding more than 25 percent of the beneficial interest in a trust.

(z) *USTRANSCOM* means United States Transportation Command.

(aa) *Vessel of the United States* means a merchant vessel that has been documented under 46 U.S.C. chapter 121.

§ 294.5 Applications.

(a) *Applicants.* Each applicant for a TSP Operating Agreement is required to apply to the Tanker Security Program, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Electronic submissions must be submitted to *sealiftsupport@dot.gov*. Application forms are available upon request or may be downloaded from MARAD's website. Required information includes:

(1) An Affidavit of section 50501 ctizenship that comports with the requirements of 46 CFR part 355, if applying as a section 50501 citizen. Otherwise, an affidavit which demonstrates that the Applicant is qualified to document a vessel under 46 U.S.C. chapter 121 is required. If the Applicant is a vessel operator and proposes to employ a vessel manager, then the Applicant must supply an affidavit for the vessel manager that meets the same citizenship requirements as the Applicant;

(2) Corporate documents, to include the following:

(i) Certificate of Incorporation or other organization papers, including amendments presently in effect;

(ii) Corporate by-laws or other governing instruments, including amendments presently in effect;

(iii) Form or type of organization, *i.e.,* individual, partnership, corporation, etc.;

(iv) Federal, state, or other laws under which the Applicant is organized or incorporated, and the date of organization or incorporation;

(v) Address of principal offices, and of important branch offices, if any;

(vi) Description of domestic and international and corporate affiliations, including (but not limited to) parent companies, subsidiary companies, and other related companies within its corporate structure, along with a description of the nature of the business transacted with each affiliated corporation;

(vii) Concerning each officer and director of the Applicant, provide name, address, nationality, number of shares owned and specify type of shares whether voting or non-voting;

(viii) For each individual or entity that owns 5 percent or more of the outstanding capital shares of any class of stock of the Applicant, include the name, address, nationality, and number of capital shares owned and specify type of shares whether voting or non-voting; and

(ix) A brief statement of the general effect of each voting agreement, voting trust, or other arrangement whereby the voting rights of 5 percent or more of the outstanding shares of the Applicant are owned, controlled, or exercised by any person not the holder of legal title to such shares. Give the name, address, nationality, and business of any such person, and if not an individual, the form of organization;

(3) Financial data, to include the following:

(i) An audited financial statement or a completed MARAD Form MA–172 dated within 120 days after the close of the most recent fiscal period; and

(ii) Estimated annual forecast of maritime operations for the next five years showing revenue and expense, including explanations of any significant increase or decrease of these items.

(4) Maritime related affiliations including carriers or alliances with which the Applicant maintains an ongoing relationship;

(5) Ongoing business relationships with any refineries, terminals, distributors, or other entities engaged in refined petroleum production and distribution, whether in the United States or in a foreign state, both at the time of application and, if applicable, projected to be established within the five years following the date of application;

(6) Diversity of trading patterns. List of countries and trade routes serviced or trades in which the product tank vessel is to be operated, whether the vessel is to be operated on a voyage charter, or time charter, and any specific tanker pools the vessel is associated with;

(7) Applicant's record of owning and/or operating product tank vessels, include the following:

(i) Provide the number, type, and size of product tank vessels owned and/or operated in the last ten years, specifying whether owned or operated, flag(s) of the individual vessels, trades involved, number of employees in your ship operations department, including the number of employees directly employed in U.S.-flag operations;

(ii) Operating experience with product tank vessels in international trade;

(iii) Demonstration of reliability and breadth of services and experience;

(iv) Experience in delivering services in accordance with government contracts or in relation to the carriage of DoD or other government sponsored cargoes;

(v) Vessels owned by the applicant and chartered by other persons;

(vi) Vessels chartered by the applicant from other persons—provide vessel name, flag of registry, period of charter, name of charterer or owner (as applicable) and area of operation;

(vii) Vessel or ship managers utilized in the operation of your vessels; and

(viii) Any other information you believe to be relevant to your record of owning or operating vessels.

(8) Product tank vessel details and operational standards:

(i) Vessel must be a party to the Oil Companies International Marine Forum's Ship Inspection Report (SIRE) System and applicant must provide date of last SIRE report.

(ii) Applicant must confirm acceptances received and/or retained by the vessel since the last SIRE report.

(iii) Applicant must confirm that the vessel has not been rejected or refused by any Charterer since the inspections leading to the said SIRE report.

(iv) Applicant must provide a current Intertanko Standard Tanker Chartering Questionnaire 88 (Q–88) (no more than 60 days old).

(v) Applicant must confirm vessel has vetting approval from at least two oil majors providing date of vetting and name of oil major, at least one vetting approval must be less than 6 months old at time of application.

(vi) Applicant must provide a copy of vessel's current Class Society issued Safety Management Certificate.

(vii) Applicant must provide a copy of vessel's current Flag State issued International Ship Security Certificate.

(viii) Applicant must confirm vessel's ability to carry one complete un-decanted tank washing in dedicated slop tanks.

(ix) Applicant must submit a General Arrangement Plan, trim and stability booklet, and a set of the ship's capacity and stowage plans. This is to include cargo piping. Applicants are to provide narrative descriptions to accompany the drawings indicating proposed locations of all required spaces and compartments listed in the military requirements.

(x) Applicant must provide evidence of the vessel's most recent U.S. Coast Guard (USCG) and American Bureau of Shipping (ABS) (or other classification society accepted by the Commandant of the Coast Guard), inspections conducted within 12 months of the application.

(xi) Applicant must warrant vessel meets, or will meet, before the start of a TSP Operating Agreement, the requirements of a Quality Management System (QMS). If an applicant does not currently have the required systems in place it will provide a narrative describing how it will have these required systems in place.

(9) Provide an assessment of the utility of the product tank vessel(s) to DoD fuel transportation requirements including any specific national defense sealift features. Provide characteristics that indicate the utility of the product tank vessel(s) to DoD including items of specific value.

(i) Applicant must provide an assessment of the vessel's ability to install CONSOL and the proposed locations for installation. CONSOL details may be found on the Maritime Administration's Tanker Security Program website at: *https://www.maritime.dot.gov/national-security/tanker-security-program.*

(ii) Owner must confirm vessel's ability to sustain warranted speed of 14 knots, fully laden, in moderate weather (Force 4 on the Beaufort Scale).

(iii) Provide the number and location of available berths for additional personnel beyond the ship crew.

(10) Provide an assessment of the commercial viability of your proposed product tank vessel(s).

(11) Provide any charters or management agreements that would govern the operation of the vessel if selected (pro forma copies are acceptable), including but not limited to the following:

(i) Demise or bareboat charter;

(ii) Vessel management agreement; and

(iii) Crewing agreement.

(12) Special security agreements. If applicable, provide a copy of any special security agreement.

(13) Documentation Citizen. If applicable, the Documentation Citizen must submit a signed certification as the demise charterer of the proposed Fleet Vessel. The certification must provide a statement that there are no treaties, statutes, regulations, or other laws of the foreign country of the parent that would prohibit the proposed Agreement Holder from performing its obligations under a TSP Operating Agreement.

(14) if operating under a foreign parent, the ultimate foreign parent of the Documentation Citizen demise charterer must submit a signed certification. The certification must provide a statement that the foreign parent will not influence the operation of the Fleet Vessel in a manner that will adversely affect the interests of the United States.

(15) For a United States Citizen Trust agreement, ff the Applicant intends to place the vessel in a United States Citizen Trust during its operation in the fleet, provide a copy of any such trust agreement (pro forma copies are acceptable).

(16) If applicable, provide a replacement product tank vessel plan if your product tank vessel is a fleet vessel over 10 years of age. The replacement product tank vessel plan must include:

(i) The vessel's characteristics as applicable in items (8–9) above;

(ii) A letter of intent or other document indicating agreement for purchase of product tank vessel; and

(iii) A forecast of operations for five years for the replacement product tank vessel.

(17) Special rule regarding age of participating fleet vessel. Age restrictions will not apply during the first 30-month period beginning on the date the vessel begins operating under the TSP Operating Agreement if the Secretary determines that the participant has entered an arrangement to obtain a replacement vessel that will be eligible to be included in a TSP Operating Agreement.

(18) Provide an anti-lobbying certificate as required by 49 CFR part 20 stating that no funds provided under the TSP have been used for lobbying to obtain a TSP Operating Agreement.

(b) *Procedures for applications.* (1) *Address.* Owners or operators of an eligible vessel may apply to MARAD for inclusion of that vessel in the fleet. Applications may be submitted electronically to *sealiftsupport@dot.gov* or in hard copy to the Tanker Security Program, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

(2) *Time deadlines.* Within 90 days after the close of the application period, the Secretary will approve an application, in conjunction with the SecDef, or provide in writing the reason for denial of that application.

(3) *Existing maritime security fleet vessels.* The Secretary may approve a completed application from an Applicant that, on the date of its application, is operating a product tank vessel in the Maritime Security Fleet in accordance with 46 U.S.C. chapter 531 and 46 CFR part 296.

§ 294.7 Procedural waivers.

In consultation with DoD, MARAD may, at MARAD's own initiation or in response to a request by an interested party, after a finding of good cause to suspend, revoke, amend, or waive any requirement of the regulations in this part, subject to the provisions of the Administrative Procedure Act and any statutory limitations.

Subpart B—Establishment of a Tanker Security Fleet

§ 294.9 Product tanker vessel eligibility requirements.

(a) *Eligibility.* To be eligible to be included in the fleet, the vessel must:

(1) Meet the requirements of § 294.11;

(2) Operate (or in the case of a vessel to be constructed, will be operated) in providing transportation in United States foreign commerce;

(3) Be self-propelled;

(4) Be not more than 10 years of age on the date the vessel is first included in the Fleet;

(5) Be suitable for use by the United States for national defense or military purposes in time of war or national emergency, as determined by the Secretary of Defense;

(6) Be commercially viable, as determined by the Secretary of Transportation; and

(7) Be—

(i) A vessel of the United States; or

(ii) Not a vessel of the United States, but the owner of the vessel has demonstrated that—

(A) The vessel is eligible for a USCG certificate of inspection; and

(B) The vessel owner intends to have the vessel documented under 46 U.S.C. chapter 121 at the time the vessel is to be included in the fleet.

(b) *Telecommunications and other electronic equipment.* The telecommunications and other electronic equipment on an existing vessel that is redocumented under the laws of the United States for operation under a TSP Operating Agreement will satisfy all Federal Communications Commission equipment certification requirements if:

(1) The equipment complies with all applicable international agreements and associated guidelines as determined by the country in which the vessel was documented immediately before becoming documented under the laws of the United States;

(2) The country has not been identified by the Secretary as inadequately enforcing international regulations as to that vessel; and

(3) The equipment, at the end of its useful life, will be replaced with equipment that meets Federal Communications Commission equipment certification standards.

§ 294.11 Owner, charterer, and operator citizenship eligibility requirements.

Eligibility determination. For a vessel to be eligible to be included in the Fleet, vessel owners, charterers, and operators must evidence that, during the period of a TSP Operating Agreement, one of the following must be true:

(a) The vessel is owned and operated by one or more persons that are citizens of the United States in accordance with 46 U.S.C. 50501.

(b) The vessel is owned by a citizen of the United States in accordance with 46 U.S.C. 50501, or United States Citizen Trust, and the following conditions are met:

(1) The vessel is demise chartered to a person or entity that:

(i) Is eligible to document the vessel under 46 U.S.C. chapter 121;

(ii) Is organized such that the chairman of the board of directors, chief executive officer, and most of the members of the board of directors are citizens of the United States, and are appointed and subjected to removal only upon approval by the Secretary;

(iii) Certifies to the Secretary that there are no treaties, statutes, regulations, or other laws that would prohibit the program participant for the vessel from performing its obligations under a TSP Operating Agreement; and

(iv) In the case of a vessel that is demise chartered to an entity that is owned or controlled by another person or entity that is not a citizen of the United States under 46 U.S.C. 50501, that other person or entity certifies to the Secretary that there are no treaties, statutes, regulations, or other laws that would prohibit the person or entity from performing its obligations under a TSP Operating Agreement and enters into an agreement with the Secretary not to influence the vessel's operation in any way that would be detrimental to the United States.

(2) The Secretary and SecDef notify the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services and the Committee on Transportation and Infrastructure of the House of Representatives that the Secretaries concur with the certifications by the documentation citizen required under § 294.5(a)(13), and any ultimate foreign parent corporation under § 294.5(a)(14), and after a review, agree that there are no legal, operational, or other impediments that would prohibit the owner or operator of the vessel from performing its obligations under a TSP Operating Agreement.

(c) The vessel is owned and operated by a defense contractor, including affiliated or related companies within the same corporate group, that meets the following requirements:

(1) Eligible to document the vessel under 46 U.S.C. chapter 121;

(2) Operates or manages other United States-documented vessels for the SecDef, or charters other vessels to the SecDef;

(3) Enters into a special security agreement with the SecDef;

(4) Certifies to the Secretary, at the time of application and consistent with § 294.5(a)(13), that there are no treaties, statutes, regulations, or other laws that would prohibit the Agreement Holder from performing its obligations under a TSP Operating Agreement; and

(5) Any foreign corporate parent company of the Defense Contractor proffers, at the time of application for a TSP Operating Agreement, an agreement consistent with § 294.5(a)(14), not to influence the vessel's operation in a way that is detrimental to the United States.

(d) The vessel is owned by a Documentation Citizen in accordance with 46 U.S.C. Chapter 121 and demise chartered to a Citizen of the United States in accordance with 46 U.S.C. 50501.

§ 294.13 Special rule for fleet vessel entry age.

An Applicant may apply for a TSP Operating Agreement with a vessel that exceeds the maximum entry age requirement of § 294.9(a)(4), if it satisfies the following conditions:

(a) The Applicant demonstrates their intent to replace the non-compliant vessel within 30 months after the commencement of operations under a TSP Operating Agreement;

(b) Nominated vessels 15 years or older must be enrolled in a classification society's CAP and be rated equivalent to ABS CAP 2 or better; and

(c) The Secretary determines that the Applicant has entered into an agreement to obtain and operate a replacement product tank vessel which, upon commencing operation under the same TSP Operating Agreement for the non-compliant vessel, will be eligible to be included in the fleet under § 294.9.

Subpart C—Award of TSP Operating Agreements

§ 294.15 Initial award of TSP Operating Agreements.

(a) *Number of agreements.* The Secretary, in concurrence with SecDef, may award up to ten TSP Operating Agreements for the operation of product tank vessels from among those applications submitted by qualified Applicants. If the Secretary and SecDef are unable to select ten vessels for inclusion in the Fleet from their initial review of applications, they may accept additional applications for review to ensure that the Secretary can award ten TSP Operating Agreements.

(b) *Vessel selection priority.* In consideration of the applications, the Secretary and SecDef will consider each Applicant's vessel(s)'s qualifications as they relate to subpart B and will give priority to applications based on the criteria in paragraphs (b)(1) through (3) of this section:

(1) Vessel capabilities, as established by SecDef;

(2) Applicant's record of vessel ownership and operation of tanker vessels; and

(3) Applicant's citizenship, with preference for section 50501 citizens.

(c) *Consideration of applications requesting an age waiver.* If an Applicant applies for a TSP Operating Agreement under the provisions of § 294.15, the Secretary and SecDef will consider:

(1) Whether the vessel is enrolled in its class society's CAP and has

maintained a rating equivalent to ABS CAP 2 or better;

(2) The vessel priority factors in § 294.15(b) for both the proposed non-compliant vessel and the vessel proposed to replace the non-compliant vessel within the initial 30 months of the TSP Operating Agreement; and

(3) The feasibility of the Applicant's plan to obtain and operate the compliant replacement vessel within the initial 30 months of the TSP Operating Agreement.

(d) *Notification to Applicants.* After the Secretary, in concurrence with SecDef, has selected those vessels to be included in the Fleet, the Secretary will notify all Applicants as to whether their applications were successful or unsuccessful.

(1) For each successful application, the Secretary will extend an offer to the Applicant to enter into one or more TSP Operating Agreements, based on the number of vessels selected from the Applicant's application for inclusion into the Fleet. Successful Applicants will have up to 90 days in which to accept or decline the Secretary's offer.

(2) For each unsuccessful application, the Secretary will inform the Applicant of the reason(s) why the application was unsuccessful.

§ 294.17 Subsequent award of TSP Operating Agreements.

(a) *Availability.* When a TSP Operating Agreement becomes available through termination by the Secretary or early termination by an Agreement Holder, and no transfer under 46 U.S.C. 53405(e) is involved, MARAD will accept applications for a new TSP Operating Agreement pursuant to paragraphs (a)(1) through (3) of this section:

(1) The proposed vessel must meet the requirements of § 294.9;

(2) The Applicant must meet the requirements of § 294.11; and

(3) The Applicant must apply in accordance with the requirements of § 294.5.

(b) *Consideration of applications.* The Secretary and SecDef will consider all applications within the priority structure of § 294.15(b).

(c) *Notification and award of a new TSP Operating Agreement.* Upon selection of the best-qualified vessel(s) from among the applications received, MARAD will enter into a new TSP Operating Agreement with the successful Applicant as soon as is practicable. Successful Applicants must notify the Secretary of their acceptance of an offer to enter into a TSP Operating Agreement within 90 days.

§ 294.19 Nature of award procedure.

TSP furthers a public purpose and MARAD does not acquire goods or services through TSP. Therefore, the selection process for awarding TSP Operating Agreements does not constitute an acquisition subject to procurement law or the Federal Acquisition Regulation.

Subpart D—TSP Operating Agreements

§ 294.21 General conditions.

(a) *Number of agreements.* The Secretary may enter into up to ten TSP Operating Agreements for vessels that were either selected in accordance with § 294.15 or which, on the effective date of a TSP Operating Agreement, were operating under an MSP Operating Agreement in accordance with 46 U.S.C. chapter 531 and 46 CFR part 296, for fiscal year 2022 and any prior fiscal year.

(b) *Term of agreements.* All TSP Operating Agreements will be effective for one fiscal year and subject to the availability of appropriations, may be renewed for each subsequent fiscal year through the end of fiscal year 2035.

(c) *Replacement vessels.* An Agreement Holder may replace a vessel under a TSP Operating Agreement with another vessel that is eligible to be included in the fleet under § 294.9, if the Secretary, in conjunction with SecDef, approves the replacement vessel.

(d) *Termination by the Secretary.* If an Agreement Holder fails to comply with the terms of a TSP Operating Agreement:

(1) The Secretary will notify the Agreement Holder and provide a reasonable opportunity for the Agreement Holder to comply with the terms and conditions of the TSP Operating Agreement; and

(2) The Secretary will terminate the TSP Operating Agreement if the Agreement Holder fails to achieve such compliance.

(e) *Termination by the Secretary for long-term charter.* If an Agreement Holder time charters a vessel enrolled in the TSP to the United States Government for a period that together with options, occurs for more than 180 continuous days, then the Secretary will terminate the TSP Operating Agreement.

(f) *Early termination by an Agreement Holder.* The Agreement Holder must notify the Secretary no later than 60 days before the proposed effective termination date that the Agreement Holder intends to terminate the TSP Operating Agreement. Even after early termination of the Operating Agreement, the Agreement Holder will remain bound by the provisions related to vessel documentation and national security requirements, including any commitments under an Emergency Preparedness Agreement, for the full term of the TSP Operating Agreement.

(g) *Nonrenewal for lack of funds.* If only partial funding is appropriated by the 60th day of the fiscal year, then the Secretary, in consultation with SecDef, will select the vessels to retain under TSP Operating Agreements, based on the Secretaries' determinations of the most militarily useful and commercially viable vessels. If no funds are appropriated by the 60th day of such fiscal year, and notwithstanding any other provision, then all TSP Operating Agreements will be terminated, and each Agreement Holder will be released from its obligations under the TSP Operating Agreement. Final payments under the terminated TSP Operating Agreements will be made in accordance with § 294.31. To the extent that funds are appropriated in a subsequent fiscal year, former TSP Operating Agreements may be reinstated if mutually acceptable to the Administrator and the Agreement Holder, provided the TSP vessel remains eligible.

(h) *Release of vessels from obligations.* For Agreement Holders who have been released from their obligations under a TSP Operating Agreement due to lack of funds in any fiscal year by the 60th day of that fiscal year,

(1) The Agreement Holder may transfer and register each vessel covered by a terminated TSP Operating Agreement to a foreign registry that is acceptable to the Secretary and SecDef, notwithstanding 46 U.S.C. chapter 561 and 46 CFR part 221;

(2) If 46 U.S.C. chapter 563 is applicable to a vessel that has been transferred to foreign registry due to the termination of a TSP Operating Agreement, then that vessel remains available to be requisitioned by the Secretary pursuant to 46 U.S.C. chapter 563; and

(3) The provisions of this section do not apply to vessels under TSP Operating Agreements that have been terminated for any other reason.

(i) *Transfers of TSP Operating Agreements.* An Agreement Holder may transfer a TSP Operating Agreement, including all rights and obligations under the TSP Operating Agreement, to any person that is eligible under § 294.11 to enter into a TSP Operating Agreement, if the Secretary and SecDef jointly determine that the transfer is in the best interests of the United States. A transaction is not considered a transfer

of a TSP Operating Agreement if the same legal entity with the same vessels remains the Agreement Holder under the TSP Operating Agreement.

§ 294.23 Special terms.

(a) *TSP Operating Agreement.* Each TSP Operating Agreement will require that, during the period a fleet vessel is operating under that TSP Operating Agreement, the fleet vessel must:

(1) Be documented as a vessel of the United States under 46 U.S.C. chapter 121;

(2) Operate exclusively in:

(i) Foreign commerce;

(ii) Mixed foreign commerce and domestic trade permitted under a registry endorsement issued under 46 U.S.C. 12111, and to those points identified in 46 U.S.C. 55101(b);

(iii) Foreign-to-foreign commerce; or

(iv) Under charter to the United States, except as provided in 46 U.S.C. 53404(b); and

(3) Not otherwise operate in the coastwise trade of the United States;

(4) Not receive payments during a period in which the Agreement Holder owns, operates, or charters a vessel engaged in noncontiguous domestic trade, unless the Agreement Holder is a section 50501 citizen, applying the 75 percent ownership requirements of 46 U.S.C. 50501; and

(5) Enroll, for vessels 15 years or older, in their classification society's CAP and maintain a CAP rating of 2 or better.

(b) *Operating agreement as an obligation of the United States government.* The amounts payable to an Agreement Holder under a TSP Operating Agreement constitute a contractual obligation of the United States Government to the extent of actual appropriations.

(c) *Operating under a Continuing Resolution.* In the event funds are available under a Continuing Resolution (CR), the terms and conditions of the TSP Operating Agreements will be in force provided sufficient funds are available to fully meet obligations under TSP Operating Agreements, and only for the period stipulated in the applicable CR. If funds are not appropriated under a CR at sufficient levels for any portion of a fiscal year, the Secretary will select the vessels to retain within the funding level of the previous fiscal year, in consultation with the SecDef, based on the Secretaries' determination of the most militarily useful and commercially viable vessels. For any Agreement Holder with a TSP Operating Agreement that does not receive funds, the terms and conditions of any applicable TSP Operating Agreement may be voided, and the Agreement Holder may request termination of the TSP Operating Agreement.

(d) *National security.* Each TSP Operating Agreement will require the Agreement Holder to enter into a Voluntary Tanker Agreement (VTA), as approved by the Secretary and the SecDef, or other agreement approved by the Secretaries.

(e) *United States Merchant Marine Academy cadet training.* The Agreement Holder must agree:

(1) To carry on the fleet vessel two United States Merchant Marine Academy cadets, if available, on each voyage; and

(2) To implement prior to accepting an Operating Agreement appropriate policies, programs, and criteria necessary to comply with all MARAD cadet safety guidelines that address sexual harassment, sexual assault, and other inappropriate conduct.

(3) Upon a finding of non-compliance, the Administrator may require the Agreement Holder to take corrective actions or find such failure to constitute a violation of the TSP Operating Agreement.

§ 294.25 National security modifications.

A participant agrees to the installation onboard its Fleet Vessel of militarily useful features for national defense purposes as approved by U.S. Coast Guard and the vessel's classification society.

§ 294.27 Financial reporting.

The Agreement Holder must submit the following reports to MARAD, including management footnotes where necessary to make a fair financial presentation:

(a) *Vessel operating cost information.* Not later than 120 days after the close of the Agreement Holder's semiannual accounting period, a Form MA–172 on a semiannual basis, in accordance with 46 CFR 232.6; and

(b) *Financial statement.* Not later than 120 days after the close of the Agreement Holder's annual accounting period, an audited financial statement in accordance with 46 CFR 232.6 and the most recent vessel operating cost data submitted as part of its Emergency Preparedness Agreement, or if not current year data, a Schedule 310 of the MA–172.

Subpart E—Billing and Payment

§ 294.29 Billing procedures.

All Agreement Holders must submit a voucher to the Maritime Administration for payment. For Agreement Holders operating under more than one TSP Operating Agreement, the Agreement Holder may submit a single monthly voucher applicable to all its TSP Operating Agreements. Each voucher submission must include a certification that the vessel(s) for which payment is requested were operated in accordance with § 294.23(a) and applicable TSP Operating Agreements. All submissions must be forwarded to the Tanker Security Program, Maritime Administration, via email to *sealiftsupport@dot.gov.* Payments will be paid and processed under the terms and conditions of the Prompt Payment Act, 31 U.S.C. 3901, *et seq.*

§ 294.31 Payments.

(a) *Amount payable.* A TSP Operating Agreement will provide for each Fleet Vessel, an annual payment, subject to the availability of appropriations, equal to $6,000,000 for each of fiscal years 2022 to 2035. This amount will be paid in equal monthly installments at the end of each month. The annual amount payable will not be reduced except as provided in paragraphs (b) and (c) of this section.

(b) *Reductions in amount payable.* The annual amount otherwise payable under a TSP Operating Agreement will be reduced on a pro rata basis for each day less than 320 days in a fiscal year that a Fleet Vessel is not operated in accordance with § 294.23(a)(1) through (3).

(c) *No payment.* (1) Regardless of whether the Agreement Holder has or will operate the Fleet vessel for 320 days a year, the Agreement Holder will not be paid:

(i) For any day in which the TSP Vessel is engaged in transporting more than 7,500 tons of civilian bulk preference cargoes pursuant to 46 U.S.C. 55302(a), 55305, or 55314 (using the United States standard of short tons, which is equivalent to 6,803.85 metric tons or 6,696.75 long tons);

(ii) During a period in which the Agreement Holder participates in noncontiguous domestic trade, unless that Agreement Holder is a Section 50501 Citizen, applying the 75 percent ownership requirement of that Section;

(iii) For any days in which the Agreement Holder operates a TSP Vessel that is 15 years or older which is not enrolled in their classification society's CAP or is not maintaining a CAP rating of 2 or better;

(iv) For any day in which the Agreement Holder operates a TSP Vessel that is in excess of 20 years of age;

(v) For days in excess of 30 days in a fiscal year in which a vessel is drydocked or undergoing survey,

inspection, or repair, unless, prior to the expiration of the vessel's 30-day drydock and repair period, the Agreement Holder obtains approval from MARAD for an extension beyond 30 days;

(vi) For any day in which the Agreement Holder does not, at the request of the Administrator, carry up to two United States Merchant Marine Academy cadets onboard; and

(vii) If the Agreement Holder does not operate or maintain the Fleet Vessel in accordance with the terms of the TSP Operating Agreement.

(2) To the extent that non-payment days under paragraph (c) of this section are known, Agreement Holder payments will be reduced at the time of the current billing. The daily reduction amounts will be based on the annual amounts in paragraph (a) of this section divided by 365 days (366 days in leap years) and rounded to the nearest cent.

(3) MARAD may require, for good cause, that a portion of the funds payable under this section be withheld if the provisions of § 294.23(a) have not been met.

(4) Amounts owed to MARAD for reductions applicable to a prior billing period must be electronically transferred using MARAD's prescribed format, or the amount owed can be credited to MARAD by offsetting amounts payable in future billing periods.

Subpart F—Appeals Procedures

§ 294.33 Administrative determinations.

(a) *Policy.* An Agreement Holder who disagrees with the findings, interpretations, or decisions of MARAD with respect to the administration of this part or any other dispute or complaint concerning the Agreement Holder's TSP Operating Agreement(s) may submit an appeal to the Administrator. The appeals must be made in writing to the Maritime Administrator, within 60 days following the date of the document notifying the Agreement Holder of the administrative determination of MARAD. Such an appeal should be addressed to the Maritime Administrator, Attn.: TSP Operating Agreement Appeals, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 or via email to *sealiftsupport@dot.gov.* An appeal is a prerequisite to exhausting administrative remedies.

(b) *DoD determinations.* 46 U.S.C. chapter 534 assigns joint and separate roles and responsibilities to the Secretary and the SecDef. The Administrator and the Commander will make joint and separate findings, interpretations, and decisions necessary to implement 46 U.S.C. chapter 534. An Agreement Holder who disagrees with the initial findings, interpretations, or decisions regarding the implementation of 46 U.S.C. chapter 534—whether joint or separate in nature—must communicate such disagreement to MARAD. Any disagreement or dispute of an Agreement Holder may, where determined appropriate by MARAD, be transferred to the Director of Policy and Plans, USTRANSCOM for resolution. An Agreement Holder who disagrees with the findings, interpretations, or decisions of the Director of Policy and Plans, USTRANSCOM, with respect to the administration of this part, may submit an appeal to the Commander. Such an appeal must be made in writing to the Commander within 60 days following the date of the document notifying the Agreement Holder of the administrative determination of the Director of Policy and Plans. Such an appeal should be addressed to the Commander, United States Transportation Command, 508 Scott Drive, Scott Air Force Base, IL 62225–5357. or via email to *transcom.scott.tccc.mbx.commander@mail.mil.*

(c) *Process.* The Administrator, or the Commander in the case of a DoD determination, may require the person making the request to furnish additional information, or proof of factual allegations, and may order any proceeding appropriate in the circumstances. The decision of the Administrator, or the Commander in the case of a DoD determination, will be administratively final.

(Authority: 46 U.S.C. chapter 534, 49 CFR 1.93)

By order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26358 Filed 12–6–22; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MB Docket No. 22–239; FCC 22–89; FR ID 116204]

Update to Publication for Television Broadcast Station DMA Determinations for Cable and Satellite Carriage

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends its rules to reference a new publication for use in determining a television station's designated market area (DMA) for satellite and cable carriage under the Commission's regulations. Under the Commission's current rules, television broadcasters, cable operators, and satellite carriers determine DMA for carriage election and other purposes by reference to the Nielsen Station Index Directory (Annual Station Index) in combination with the United States Television Household Estimates (Household Estimates), or a successor publication. Nielsen Media Research division will no longer publish the Annual Station Index and has replaced it with a monthly Local TV Station Information Report (Local TV Report), which is now the only publication necessary to determine a station's DMA. The Household Estimates publication is no longer in use. The *Report and Order* therefore revises the rules to identify the Local TV Report as that successor publication. The *Report and Order* also specifies the Local TV Report published in the October two years prior to each triennial carriage election as the successor publication to be used to determine a station's DMA, as well as for determining the local market of broadcast television stations more generally.

DATES: This rule is effective January 6, 2023.

FOR FURTHER INFORMATION CONTACT: Contact Kenneth Lewis, *Kenneth.lewis@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2622.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MB Docket No. 22–239, FCC 22–89, adopted on November 17, 2022, and released on November 18, 2022. The full text of this document is available for download at *https://docs.fcc.gov/public/attachments/FCC-22-89A1.pdf.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer and Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

Synopsis

On July 14, 2022, the Commission adopted a notice of proposed rulemaking (NPRM), seeking comment on referencing Nielsen's Local TV Station Information Report (Local TV Report) for use in determining a television station's designated market area (DMA) for satellite and cable

carriage under the Commission's regulations. Pursuant to the Act, and the implementing rules adopted by the Commission, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within their market. Similarly, section 338 of the Act requires satellite carriers to carry on request all local television broadcast stations' signals in local markets in which the satellite carrier carries at least one local television broadcast signal pursuant to the statutory copyright license. A station's market for cable and satellite carriage is its DMA, as defined by The Nielsen Company's Annual Station Index and Household Estimates ''or any successor publications.'' The implementing regulations also specify which edition of the Annual Station Index is to be used for each election cycle (specifically, the one published the year prior to the election).

The Nielsen Company has notified the Commission that its Nielsen Media Research division will no longer publish the annual Nielsen Station Index Directory (Annual Station Index), which has been used in combination with the Nielsen Station Index and United States Television Household Estimates (Household Estimates), to determine a station's DMA for local television stations seeking carriage. Nielsen has stated that the information contained in the Annual Station Index is now in the Local TV Report, which is published monthly. Thus, the Local TV Report is now the only publication necessary to determine a station's DMA. The Household Estimates publication is no longer in use.

Commenters unanimously supported amending our rules to eliminate the references to the Annual Station Index and Household Estimates and specify the Local TV Report as the successor publication to be used to determine a station's DMA. Thus, the references to the Annual Station Index and Household Estimates will be deleted and replaced with the Local TV Report in pertinent parts.

Commenters also unanimously requested that the Commission amend the rule to specifically reference the October Local TV Report published two years prior to each triennial carriage election, which is consistent with the Annual Station Index, which relied upon information gathered in the October two years prior to each triennial carriage election. Based upon the record support for this change, we amend the rule to specify that DMA determinations will be based on the October Local TV Report published two years prior to the triennial election.

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will also send a copy of the *Report and Order* to Congress and the Government Accountability office, pursuant to 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 76

Carriage of Television Broadcast Signals.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Section 76.55 is amended by revising paragraphs (e)(2) introductory text and (e)(2)(i) to read as follows:

§ 76.55 Definitions applicable to the must-carry rules.

* * * * *

(e) * * *

(2) A commercial broadcast station's market, unless amended pursuant to § 76.59, shall be defined as its Designated Market Area (DMA) as determined by Nielsen Media Research and published in its Nielsen Local TV Station Information Report or any successor publications.

(i) The applicable DMA list for the 2023 election pursuant to § 76.64(f) will be the DMA assignments specified in the Nielsen October 2021 Local TV Station Information Report, and so forth using the publications for the October two years prior to each triennial election pursuant to § 76.64(f).

* * * * *

■ 3. Section 76.66 is amended by revising paragraphs (e)(2) and (3) to read as follows:

§ 76.66 Satellite broadcast signal carriage.

* * * * *

(e) * * *

(2) A designated market area is the market area, as determined by Nielsen Media Research and published in the 1999–2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates, the October 2021 Nielsen Local TV Station Information Report, or any successor publication. In the case of areas outside of any designated market area, any census area, borough, or other area in the State of Alaska that is outside of a designated market area, as determined by Nielsen Media Research, shall be deemed to be part of one of the local markets in the State of Alaska.

(3) A satellite carrier shall use the October 2021 Nielsen Local TV Station Information for the retransmission consent-mandatory carriage election cycle commencing on January 1, 2024 and ending on December 31, 2027. The October 2024 Nielsen Local TV Station Information Report shall be used for the retransmission consent-mandatory carriage election cycle commencing January 1, 2028, and ending December 31, 2030, and so forth using the publications for the October two years prior to each triennial election pursuant to this section. Provided, however, that a county deleted from a market by Nielsen need not be subtracted from a market in which a satellite carrier provides local-into-local service, if that county is assigned to that market in the 1999–2000 Nielsen Station Index Directory or any subsequent issue of that publication, or the Local TV Station Information Report commencing with October 2021, and every three years thereafter (*i.e.,* October 2024, October 2027, etc.). A satellite carrier may determine which local market in the State of Alaska will be deemed to be the relevant local market in connection with each subscriber in an area in the State of Alaska that is outside of a designated market, as described in paragraph (e)(2) of this section.

* * * * *

[FR Doc. 2022–26482 Filed 12–6–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 221201–0259]

RIN 0648–BL62

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagics Resources in the Gulf of Mexico and Atlantic Region; Framework Amendment 11

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in Framework Amendment 11 to the Fishery Management Plan (FMP) for the Coastal Migratory Pelagic (CMP) Resources of the Gulf of Mexico and Atlantic Region (CMP FMP), as prepared and submitted by the Gulf of Mexico Fishery Management Council (Gulf Council). This final rule and Framework Amendment 11 revise the Gulf of Mexico (Gulf) migratory group of king mackerel (Gulf king mackerel) catch limits. The purpose of this final rule and Framework Amendment 11 is to update catch limits to be consistent with the best scientific information available.

DATES: This final rule is effective January 6, 2023.

ADDRESSES: Electronic copies of Framework Amendment 11, which includes a regulatory impact review, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/framework-11-management-gulf-king-mackerel.*

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

SUPPLEMENTARY INFORMATION: Gulf king mackerel is managed under the CMP FMP prepared by the Gulf and South Atlantic Fishery Management Councils (Councils) and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On October 7, 2022, NMFS published a proposed rule for Framework Amendment 11 and requested public comment (87 FR 60975, October 7, 2022). The proposed rule and Framework Amendment 11 outline the rationale for the actions contained in this final rule. A summary of the management measures described in Framework 11 and implemented by this final rule is provided below.

All weights in this proposed rule are in round and eviscerated weight combined, unless otherwise specified.

Background

Under the CMP FMP, the Gulf Council manages fishing for Gulf king mackerel in Federal waters from Texas to the boundary between Monroe and Miami-Dade Counties in Florida. The Gulf king mackerel stock annual catch limit (ACL) is allocated between the commercial and recreational sectors.

The current overfishing limit (OFL) and acceptable biological catch (ABC) are 8,950,000 lb (4,059,652 kg) and 8,550,000 lb (3,878,215 kg), respectively. The current stock ACL is equal to the ABC. The OFL, ABC, and stock ACL were established in 2017 in Amendment 26 to the CMP FMP (82 FR 17387; April 11, 2017). These catch limits are based on projections from the Southeast Data Assessment and Review (SEDAR) 38 stock assessment and recommendations by the Gulf Council's Scientific and Statistical Committee (SSC). The recreational landings estimates used in SEDAR 38 included data from the Marine Recreational Information Program's (MRIP) Coastal Household Telephone Survey (CHTS). MRIP now generates recreational landings estimates using the Fishing Effort Survey (FES), and the historical time series of king mackerel recreational landings has been calibrated to be consistent with the MRIP–FES estimates. The estimates generated using MRIP–FES are generally higher than those produced using CHTS because the new survey is designed to more accurately measure fishing activity.

In 2020, NMFS completed an update to SEDAR 38 (SEDAR 38 Update) that included calibrated MRIP–FES recreational landings. The update indicated that Gulf group king mackerel was not overfished or undergoing overfishing, but recruitment had been low in recent years. In September 2020, the Gulf Council's SSC reviewed the SEDAR 38 Update and recommended new OFLs and ABCs for Gulf group king mackerel that would address reduced recruitment and allow harvest to increase over time. The SSC's recommendation for the revised OFL is 11,050,000 lb (5,012,196 kg) for 2022, and 11,180,000 lb (5,071,163 kg) for 2023 and subsequent years. The SSC's recommendation for ABC is 9,720,000 lb (4,408,918 kg) for 2022, and 9,990,000 lb (4,531,388 kg) for 2023 and subsequent years. These OFL and ABC recommendations represent a reduction in the allowable harvest when compared to the current OFL and ABC. Had MRIP–FES data been available when SEDAR 38 was completed in 2014, the current OFL would have been 11,960,000 lb (5,424,965 kg) and the current ABC would have been 11,540,000 (5,234,456 kg). The Gulf Council and NMFS developed Framework Amendment 11 to update catch levels based on the results of the SEDAR 38 Update and Gulf Council's SSC recommendations.

The Gulf Council manages Gulf king mackerel with sector allocations and zone allocations for the commercial sector. In Amendment 1 to the FMP, the Councils allocated the total Gulf king mackerel ACL to 32 percent to the commercial sector and 68 percent to the recreational sector based on the average of available commercial and recreational landings data from 1975–1979 (50 FR 34840; August 25, 1985). In Amendment 26 to the FMP, the Councils revised the allocation of the Gulf king mackerel total commercial ACL between the commercial Gulf zones: western zone (40 percent), northern (18 percent), southern zone hook-and-line (21 percent) and southern zone gillnet (21 percent) (82 FR 17387; April 11, 2017).

The fishing year for commercial harvest varies by zone: July through June for the southern and western zones, and October through September for the northern zone. For the purpose of comparing landings to the total ACL, recreational landings are monitored based on the commercial fishing year of July through June. Therefore, the sector ACLs and commercial quotas reflect that these fishing years occur in two calendar years, as noted below.

Management Measures Contained in This Final Rule

For Gulf king mackerel, this final rule revises sector ACLs and the commercial zone quotas.

ACLs and Quotas

The current total ACL for Gulf king mackerel is equal to the ABC of 8,550,000 lb (3,878,215 kg). This rule modifies the total ACL for Gulf king mackerel to 9,720,000 lb (4,408,918 kg) for 2022 and 9,990,000 lb (4,531,388 kg) for 2023 and subsequent years, which is also equal to the ABCs recommended by the Gulf Council's SSC. The 2022 total ACL is used to set the sector and zone catch limits for the 2022–2023 fishing year and the 2023 total ACL will be used to set the sector and zone catch limits for 2023–2024 and subsequent fishing years. As noted previously, the

revised ACLs actually represent a decrease in the allowable harvest of Gulf king mackerel because had the current total ACL been derived from an assessment using MRIP–FES data, the current total ACL would have been 11,540,000 lb (5,234,456 kg).

The current commercial ACL for the 2022–2023 fishing year is 2,740,000 lb (1,242,843 kg). Applying the current commercial allocation of 32 percent to the new total ACLs results in revised commercial ACLs of 3,110,400 lb (1,410,854 kg) for the 2022–2023 fishing year, and 3,196,800 lb (1,450,044 kg) for the 2023–2024 and subsequent years. The current recreational ACL for the 2022–2023 fishing year is 5,810,000 lb (2,635,372 kg). Applying the current recreational allocation of 68 percent to the new stock ACLs results in revised recreational ACLs of 6,609,600 lb (2,998,064 kg) for the 2022–2023 fishing year, and 6,793,200 lb (3,081,344 kg) for the 2023–2024 and subsequent years. Because the revised recreational ACL will now be monitored using landings estimates generated by MRIP–FES, this represents a decrease in the allowable recreational harvest. However, recreational landings, as estimated using MRIP–FES, have been well below the revised ACLs since the 2016–2017 fishing year, and NMFS does not expect the reduction in the recreational ACL to reduce recreational opportunities.

The current commercial zone quotas for the 2022–2023 fishing year are 1,096,000 lb (497,137 kg) for the western zone, 493,200 lb (223,712 kg) for the northern zone, 575,400 lb (260,997 kg) for the southern zone hook-and-line component, and 575,400 lb (260,997 kg) for the southern zone gillnet component. The current total commercial hook-and-line ACL for the entire Gulf for the 2022–2023 fishing year is 2,164,600 lb (981,846 kg). Using the current commercial zone allocations, this final rule revises the western zone quota to 1,244,160 lb (564,341 kg) for the 2022–2023 fishing year, and 1,278,720 lb (580,017 kg) for 2023–2024 fishing year and subsequent fishing years. The northern zone quota will be 559,872 lb (253,954 kg) for the 2022–2023 fishing year and 575,424 lb (261,008 kg) for the 2023–2024 fishing year and subsequent fishing years. The southern zone hook-and-line component quota will be 653,184 lb (296,279 kg) for the 2022–2023 fishing year, and 671,328 lb (304,509 kg) for the 2023–2024 fishing year and subsequent years. The southern zone gillnet component quota will be 653,184 lb (296,279 kg) for the 2022–2023 fishing year, and 671,328 lb (304,509 kg) for the 2023–2024 fishing year and subsequent fishing years. The total commercial hook-and-line ACL (entire Gulf) will be 2,457,216 lb (1,114,574 kg) for the 2022–2023 fishing year, and 2,525,472 lb (1,145,535 kg) for the 2023–2024 fishing year and subsequent fishing years.

Management Measures in Framework Amendment 11 Not Codified Through This Final Rule

OFL and ABC

As previously discussed, the current OFL and ABC for Gulf king mackerel of 8,950,000 lb (4,059,652 kg) and 8,550,000 lb (3,878,214 kg), respectively, are based on the Gulf Council's SSC's recommendations from SEDAR 38, which used recreational landings estimates from MRIP–CHTS. In Framework Amendment 11, the Gulf Council will adopt new OFLs and ABCs based on the SSC's recommendations from the results of the SEDAR 38 Update, which used MRIP–FES recreational landings estimates. The new OFLs will be 11,050,000 lb (5,012,196 kg) for 2022, and 11,180,000 lb (5,071,163 kg) for 2023 and subsequent years. The new ABCs will be 9,720,000 lb (4,408,918 kg) for 2022, and 9,990,000 lb (4,531,388 kg) for 2023 and subsequent years.

Comments and Responses

NMFS received one comment on the proposed rule for Framework Amendment 11. That comment was in support of the actions in Framework Amendment 11 and the proposed rule. There have been no changes to the proposed rule based on public comment.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Framework Amendment 11, the CMP FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws.

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

The Magnuson-Stevens Act provides the legal basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule. This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995. A description of this final rule, why it is being considered, and the purposes of this final rule are contained in the preamble and in the **SUMMARY** section of this final rule.

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

List of Subjects in 50 CFR Part 622

Annual catch limits, Fisheries, Fishing, Gulf of Mexico, King mackerel, Quotas.

Dated: December 1, 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 622 is amended as follows:

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

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

■ 2. In § 622.384, revise paragraphs (b)(1)(i) through (iii) to read as follows:

§ 622.384 Quotas.

* * * * *

(b) * * *

(1) * * *

(i) *Western zone.* The quota is 1,199,360 lb (544,021 kg) for the 2021–2022 fishing year, 1,244,160 lb (564,341 kg) for the 2022–2023 fishing year, and 1,278,720 lb (580,018 kg) for the 2023–2024 fishing year and subsequent fishing years.

(ii) *Northern zone.* The quota is 539,712 lb (244,809 kg) for the 2021–2022 fishing year, 559,872 lb (253,954 kg) for the 2022–2023 fishing year, and 575,424 lb (261,008 kg) for the 2023–2024 fishing year and subsequent fishing years.

(iii) *Southern zone.* (A) The hook-and-line quota is 629,664 lb (285,611 kg) for the 2021–2022 fishing year, 653,184 lb (296,279 kg) for the 2022–2023 fishing year, and 671,328 lb (304,509 kg) for the 2023–2024 and subsequent fishing years.

(B) The run-around gillnet quota is 629,664 lb (285,611 kg) for the 2021–2022 fishing year, 653,184 lb (296,279 kg) for the 2022–2023 fishing year, and 671,328 lb (304,509 kg) for the 2023–2024 and subsequent fishing years.

* * * * *

■ 3. In § 622.388, revise paragraphs (a)(1)(ii) and (a)(2) to read as follows:

§ 622.388 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(a) * * *

(1) * * *

(ii) The commercial ACL for the Gulf migratory group of king mackerel is 2,998,400 lb (1,360,051 kg) for the 2021–2022 fishing year, 3,110,400 lb (1,410,854 kg) for the 2022–2023 fishing year, and 3,196,800 lb (1,450,044 kg) for the 2023–2024 and subsequent fishing years. The ACL is further divided into a commercial ACL for vessels fishing with hook-and-line and a commercial ACL for vessels fishing with run-around gillnets. The hook-and-line ACL (which applies to the entire Gulf) is 2,368,736 lb (1,074,441 kg) for the 2021–2022 fishing year, 2,457,216 lb (1,114,574 kg) for the 2022–2023 fishing year, and 2,525,472 lb (1,145,535 kg) for the 2023–2024 and subsequent fishing years. The run-around gillnet ACL (which applies to the southern zone) is 629,664 lb (285,611 kg) for the 2021–2022 fishing year, 653,184 lb (296,279 kg) for the 2022–2023 fishing year, and 671,328 lb (304,509 kg) for the 2023–2024 and subsequent fishing years.

* * * * *

(2) *Recreational sector.* If recreational landings, as estimated by the SRD, reach or are projected to reach the recreational ACL of 6,371,600 lb (2,890,109 kg) for the 2021–2022 fishing year, 6,609,600 lb (2,998,064 kg) for the 2022–2023 fishing year, and 6,793,200 lb (3,081,344 kg) for the 2023–2024 and subsequent fishing years, the AA will file a notification with the Office of the Federal Register to implement bag and possession limits for Gulf migratory group king mackerel of zero, unless the best scientific information available determines that a bag limit reduction is unnecessary.

* * * * *

[FR Doc. 2022–26553 Filed 12–6–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 220126–0034]

RTID 0648–XC581

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfers From NJ to NY and RI

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

ACTION: Notification; quota transfers.

SUMMARY: NMFS announces that the State of New Jersey is transferring a portion of its 2022 commercial bluefish quota to the states of New York and Rhode Island. These quota adjustments are necessary to comply with the Atlantic Bluefish Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised commercial bluefish quotas for New Jersey, New York, and Rhode Island.

DATES: Effective December 2, 2022, through December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Laura Deighan, Fishery Management Specialist, (978) 281–9184.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found in 50 CFR 648.160 through 648.167. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through Florida. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.162, and the final 2022 allocations were published on February 2, 2022 (87 FR 5739).

The final rule implementing Amendment 1 to the Bluefish Fishery Management Plan (FMP) published in the **Federal Register** on July 26, 2000 (65 FR 45844), and provided a mechanism for transferring bluefish quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can request approval to transfer or combine bluefish commercial quota under § 648.162(e)(1)(i) through (iii). The Regional Administrator must approve any such transfer based on the criteria in § 648.162(e). In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether: the transfer or combinations would preclude the overall annual quota from being fully harvested; the transfer addresses an unforeseen variation or contingency in the fishery; and the transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Act.

New Jersey is transferring 42,500 lb (19,278 kg) to New York and 42,500 lb (19,278 kg) to Rhode Island through mutual agreement of the states. These transfers were requested to ensure that New York and Rhode Island would not exceed their 2022 state quotas. The revised bluefish quotas for 2022 are: New Jersey, 434,158 lb (196,931 kg); New York, 497,193 lb (225,523 kg); and Rhode Island, 382,456 lb (173,479 kg).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 648.162(e)(1)(i) through (iii), which was issued pursuant to section 304(b), and is exempted from review under Executive Order 12866.

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

Dated: December 2, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–26590 Filed 12–2–22; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[RTID 0648–XC197]

Pacific Island Fisheries; 2022 U.S. Territorial Longline Bigeye Tuna Catch Limits for the Commonwealth of the Northern Mariana Islands

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

ACTION: Announcement of a valid specified fishing agreement.

SUMMARY: NMFS announces a valid specified fishing agreement that allocates up to 1,500 metric tons (t) of the 2022 bigeye tuna limit for the Commonwealth of the Northern Mariana Islands (CNMI) to U.S. longline fishing vessels. The agreement supports the long-term sustainability of fishery resources of the U.S. Pacific Islands and fisheries development in the CNMI.

DATES: The specified fishing agreement was valid as of July 21, 2022. The start date for attributing 2022 bigeye tuna catch to the CNMI is November 21, 2022.

ADDRESSES: The Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP) describes specified fishing agreements and is available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, telephone: 808–522–8220, fax: 808–522–8226, or *http://www.wpcouncil.org.*

NMFS prepared environmental analyses that describe the potential impacts on the human environment that would result from the action. The

analyses, identified by NOAA–NMFS–2021–0076, are available from *https://www.regulations.gov/search/docket?filter=NOAA-NMFS-2021-0076,* or from Sarah Malloy, Acting Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

FOR FURTHER INFORMATION CONTACT: Keith Kamikawa, NMFS PIR Office of Sustainable Fisheries, 808–725–5177.

SUPPLEMENTARY INFORMATION: In a final rule published on December 29, 2021, NMFS specified a 2022 limit of 2,000 t of longline-caught bigeye tuna for each of the U.S. Pacific Island territories of American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (86 FR 73990). NMFS allows each territory to allocate up to 1,500 t of the 2,000 t limit to U.S. longline fishing vessels identified in a valid specified fishing agreement, but the overall allocation limit among all territories may not exceed 3,000 t.

On March 29, 2022, NMFS determined that the U.S. longline fishery exceeded by 196 t the 3,554 t 2021 U.S. bigeye tuna catch limit in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPO) as established in regulations at 50 CFR 300.224. Western and Central Pacific Fisheries Commission (WCPFC) Conservation and Management Measure (CMM) 2021–01, Paragraph 37, states that where the limit has been exceeded, any overage of the limit shall be deducted from the catch limit for the following year. In accordance with U.S. obligations as a WCPFC member, NMFS must reduce the 2022 U.S. bigeye tuna limit by the amount of the overage of 196 t. NMFS has prepared a separate regulatory package that would revise the 2022 U.S. bigeye tuna limit to 3,358 t (87 FR 55768, September 12, 2022). Although the revised limit is not yet effective, NMFS is basing its decisions for attributing bigeye catch under valid specified fishing agreements with U.S. participating territories pursuant to 50 CFR 665.819(c)(9)(i) on this 3,358 t limit to ensure compliance with CMM 2021–01.

On June 24, 2022, the Western Pacific Fishery Management Council (Council), through its Executive Director, sent NMFS a specified fishing agreement between American Samoa and Hawaii Longline Association (HLA), dated May 12, 2021. Later that same day, the Council sent NMFS a specified fishing agreement between the CNMI and HLA, dated May 7, 2021. These agreements each include an allocation of 1,500 t of bigeye tuna catch to U.S. vessels identified in the agreements for both 2021 and 2022. The 2022 agreement between American Samoa and HLA includes an amendment that provides an initial allocation of 1,300 t followed by a subsequent allocation, upon notification by HLA to American Samoa at a later date, of any unallocated portion of American Samoa's 1,500 t allocation limit. On July 20, 2022 and July 21, 2022, respectively, NMFS reviewed the American Samoa-HLA agreement and the CNMI–HLA agreement and determined that they are consistent with 50 CFR 665.819(c), the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific, the Magnuson-Stevens Fishery Conservation and Management Act, implementing regulations, and other applicable laws.

Pursuant to regulations at 50 CFR 665.819(c)(9)(i), NMFS began attributing bigeye tuna catches to American Samoa and the American Samoa-HLA agreement on August 25, 2022, 7 days before we projected the annual U.S. WCPO limit would be reached (87 FR 52704, August 29, 2022). We attributed catch first to the American Samoa limit and agreement because that agreement was received first from the Council for the year 2022.

Based on logbook data, we now forecast that the fishery will reach the American Samoa 1,300 t initial limit by November 28, 2022. In accordance with regulations at 50 CFR 665.819(c)(9)(ii), NMFS will begin attributing 2022 bigeye tuna catch to the CNMI and the CNMI–HLA agreement on November 21, 2022, 7 days prior to November 28, 2022.

If NMFS determines the fishery will reach the 1,500 t allocation limit for the CNMI–HLA agreement, we would restrict retention of bigeye tuna caught by vessels identified in the CNMI agreement. If at that time, HLA and American Samoa seek to resume attribution to American Samoa for up to the total of 1,500 t under their agreement, NMFS will determine if American Samoa's overall 2022 2,000 t limit can still accommodate any or all of that amount.

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

Dated: December 2, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–26613 Filed 12–6–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220216–0049; RTID 0648–XC594]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from catcher vessels using trawl gear to catcher/processors using trawl gear and from vessels using jig gear to catcher vessels greater than or equal to 50 feet (15.2 meters (m)) length overall using hook-and-line gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to allow the 2022 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective December 6, 2022, through 2400 hours, Alaska local time (A.l.t.), December 31, 2022.

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

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

The 2022 Pacific cod TAC specified for catcher vessels using trawl gear in the Central Regulatory Area of the GOA is 6,099 metric tons (mt), as established by the final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022).

The 2022 Pacific cod TAC specified for catcher/processors using trawl gear in the Central Regulatory Area of the GOA is 616 mt, as established by the final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022).

The 2022 Pacific cod TAC specified for vessels using jig gear in the Central Regulatory Area of the GOA is 148 mt, as established by the final 2022 and

2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022).

The 2022 Pacific cod TAC specified for catcher vessels greater than or equal to 50 feet (15.2 m) length overall using hook-and-line gear in the Central Regulatory Area of the GOA is 984 mt, as established by the final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that catcher vessels using trawl gear will not be able to harvest 400 mt of the 2022 Pacific cod TAC allocated to those vessels under § 679.20(a)(12)(i)(B)(*4*), and vessels using jig gear will not be able to harvest 35 mt of the 2022 Pacific cod TAC allocated to those vessels under § 679.20(a)(12)(i)(B).

Therefore, in accordance with § 679.20(a)(12)(ii)(B), NMFS apportions 400 mt of Pacific cod from catcher vessels using trawl gear to the annual amount specified for catcher/processors using trawl gear and 35 mt of Pacific cod from vessels using jig gear to the annual amounts specified for catcher vessels greater than or equal to 50 feet (15.2 m) length overall using hook-and-line gear.

The harvest specifications for 2022 Pacific cod included in the final 2022 and 2023 harvest specifications for groundfish in the Central Regulatory Area of the GOA (87 FR 11599, March 2, 2022) is revised as follows: 5,699 mt to catcher vessels using trawl gear, 1,016 mt to catcher/processors using trawl gear, 113 mt to vessels using jig gear, and 1,019 mt to catcher vessels greater than or equal to 50 feet (15.2 m) length overall using hook-and-line gear.

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. This requirement is 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 allow for harvests that exceed the originally specified apportionment of the Pacific cod TAC. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 1, 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: December 2, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–26576 Filed 12–6–22; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 234
Wednesday, December 7, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–2021–0638]

Airworthiness Criteria: Special Class Airworthiness Criteria for the Joby Aero, Inc. Model JAS4–1 Powered-Lift

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed airworthiness criteria; extension of comment period.

SUMMARY: On November 8, 2022, the FAA published in the **Federal Register** a notice of proposed airworthiness criteria (87 FR 67399) that announced the availability of, and requested comments on, the proposed airworthiness criteria for the Joby Aero, Inc. (Joby) Model JAS4–1 powered-lift. The comment period for this document expires on December 8, 2022. By email dated November 14, 2022, the European Union Aviation Safety Agency (EASA) requested that the FAA extend the public-comment deadline December 22, 2022 to facilitate harmonizing FAA and EASA criteria for powered-lift. The FAA agrees to the request and announces an extension of the comment period to December 22, 2022.

DATES: The comment period is extended from December 8, 2022 to December 22, 2022.

ADDRESSES: Send comments identified by docket number FAA–2021–0638 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 8 a.m., and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

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

FOR FURTHER INFORMATION CONTACT: William Penzes, Jr., Center for Emerging Concepts and Innovation (CECI) Branch, AIR–650, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 950 L'Enfant Plaza SW, Washington, DC 20591; telephone and fax 202–267–1588; email *william.b.penzes@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in the development of proposed airworthiness criteria for the Joby Model JAS4–1 powered-lift by sending written comments, data, or views. Please identify the Joby Model JAS4–1 and Docket No. FAA–2021–0638 on all submitted correspondence. The most helpful comments reference a specific portion of the airworthiness criteria, explain the reason for a recommended change, and include supporting data. Except for Confidential Business Information as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed airworthiness criteria. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed late if it is possible to do so without incurring delay. The FAA may change these airworthiness criteria based on received comments.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to the individual listed under ''For Further Information Contact.'' Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this notice.

Extension of the Comment Period

The FAA recognizes that the public will benefit from adequate time to review the notice of proposed airworthiness criteria. Therefore, in accordance with § 11.47(c) of Title 14, Code of Federal Regulations, the FAA is extending the comment period for an additional two weeks to December 22, 2022.

Issued in Washington, DC, on December 1, 2022.

Daniel J. Elgas,

Acting Deputy Director, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2022–26545 Filed 12–6–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 110, 119, 121, 125, 136

[Docket No. FAA–2022–1563; Notice No. 23–03]

RIN 2120–AL80

Update to Air Carrier Definitions

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend the regulatory definitions of certain air carrier and commercial operations. This proposed rule would add powered-lift to these definitions to ensure the appropriate sets of rules apply to air carriers' and certain commercial operators' operations of aircraft that FAA regulations define as powered-lift. The FAA also proposes to update certain basic requirements that apply to air carrier oversight, such as the contents of operations specifications and the qualifications applicable to certain management personnel. In addition, this proposed rule would apply the rules for commercial air tours to powered-lift. This proposed rule is an important step in the FAA's integration of new entrant aircraft in the National Airspace System (NAS).

DATES: Send comments on or before February 6, 2023.

ADDRESSES: Send comments identified by docket number FAA–2022–1563 using any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

Mail: Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

Hand Delivery or Courier: Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), Department of Transportation solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

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

FOR FURTHER INFORMATION CONTACT: Jackie Clow, Aviation Safety Inspector, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: 202–267–8166; email: *jackie.a.clow@faa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

FAA regulations that apply to air carrier operations define five kinds of air carrier operations. The terms the FAA uses for air carrier operations are found in the applicability provisions for the appropriate set of operating rules. With this proposed rule, the FAA incorporates powered-lift into the definitions of five kinds of air carrier operations—commuter, domestic, flag, on-demand, and supplemental. The current air carrier definitions, as well as certain regulations that apply to other commercial operations of aircraft, only refer to ''airplanes'' and ''rotorcraft.'' To enable air carrier operations with powered-lift, the FAA proposes adding powered-lift to the definitions in § 110.2 of Title 14 of the Code of Federal Regulations (14 CFR). This proposed rule would also extend the applicability of certain operating rules to powered-lift, such as the rules that apply to large aircraft operations that are not common carrier operations and rules that apply to commercial air tours.

The FAA also proposes to update various provisions within 14 CFR part 119 (Certification: Air Carriers and Commercial Operators) to address air carriers' operations of powered-lift. This proposed rule would amend certain aircraft-specific provisions in § 119.1, which outline the applicability of and exceptions from part 119. This proposed rule would add sight-seeing flights in gliders to the exclusions from part 119. Furthermore, this proposed rule would amend the qualification requirements for personnel in certain management positions for air carriers, to ensure they have appropriate experience in powered-lift operations. This proposed rule would make various technical amendments to part 119 for clarity and revise reflect current FAA practice pertaining to the information included in operations specifications. In addition, the proposed rule will revise certain recordkeeping requirements.

II. Legal Authority

The FAA's authority to issue rules on aviation safety is codified throughout Title 49 of the United States Code. The FAA issues this proposed rule under the authority in section 106. Section 106(f) establishes that the Administrator may promulgate regulations and rules. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. Furthermore, section 44701(a)(5) requires the Administrator to promote safe flight of civil aircraft in air commerce by prescribing regulations and setting minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security. Section 44702 provides express authority to the Administrator to issue certificates under and oversee aviation safety. In addition, section 44701(d)(1)(A) specifically states the Administrator, when prescribing safety regulations, must consider ''the duty of an air carrier to provide service with the highest possible degree of safety in the public interest.'' Similarly, section 44705 requires the Administrator to prescribe regulations for the issuance of air carrier operating certificates when the Administrator finds, after investigation, that the holder of the

certificate is properly and adequately equipped and able to operate safely.

The FAA also proposes this rule in accordance with sections 44711 and 44713. Section 44711(a)(4) prohibits a person from operating as an air carrier without an air carrier operating certificate or in violation of a term of the certificate. Similarly, section 44711(a)(5) prohibits a person from operating aircraft in air commerce in violation of a regulation prescribed or a certificate that the FAA issues under section 44701(a) or (b) or under sections 44702–44716. In addition, section 44713 requires air carriers to hold and comply with air carrier operating certificates and make, or cause to be made, inspections, repairs, or maintenance used in air transportation. Such regulations apply to operators by the provisions of 14 CFR parts 110 and 119, which this proposed rule would amend.

III. Discussion of the Proposed Rule

This proposed rule would apply part 121 (Operating Requirements: Domestic, Flag, and Supplemental Operations), part 125 (Certification and Operations: Airplanes Having a Seating Capacity of 20 or More Passengers or a Maximum Payload Capacity of 6,000 Pounds or More; and Rules Governing Persons Onboard Such Aircraft), part 135 (Operating Requirements: Commuter and On Demand Operations and Rules Governing Persons Onboard Such Aircraft) and part 136 (Commercial Air Tours and National Parks Air Tour Management) to certain types of operations in powered-lift. This proposed rule would also amend § 91.146 (Passenger-carrying flights for the benefit of a charitable, nonprofit, or community event) and § 91.147 (Passenger carrying flights for compensation or hire) to enable powered-lift into these types of operations. To use consistent aircraft terms throughout parts 110 and 119, the FAA is also proposing to change the term helicopter to rotorcraft within §§ 91.146, 91.147 and part 136. Therefore, all applicability regulations used in commercial service will use the same aircraft terms.

The FAA is engaging in a multi-step process of updating the regulations that apply to aircraft that traditionally have not operated under these parts. Overall, the FAA maintains a risk-based approach to the integration of new entrant aircraft into the national airspace system. When operations present a higher level of risk, based on volume of passengers carried and frequency of operation, the FAA will subject such operations to a regulatory framework designed to mitigate those risks. In addition to this rulemaking, the FAA is proposing a Special Federal Aviation Regulation (SFAR), ''Integration of Powered-Lift: Pilot Certification and Operations'' (RIN 2120–AL72), to establish temporary operating and airman certification regulations for powered-lift. The SFAR will enable industry to begin operating powered-lift while FAA gathers data to develop permanent regulations through a future rulemaking. The FAA plans to use the information gathered in this interim process to update its regulations to address powered-lift operations broadly.

A. Powered-Lift in Air Carrier Operations

Title 14 CFR 1.1 defines powered-lift as ''a heavier-than-air aircraft capable of vertical takeoff, vertical landing, and low speed flight that depends principally on engine-driven lift devices or engine thrust for lift during these flight regimes and on nonrotating airfoil(s) for lift during horizontal flight.'' This low airspeed capability could result from aircraft configuration changes such as tilt-wing, tiltrotor, or tilt-propeller; thrust vectoring; direct-lift engines; or other means. In addition, the FAA has previously described powered-lift as being useful for civil applications, as these types of aircraft have ''vertical take-off and landing and hovering capability like helicopters,'' and are able to ''fly at higher airspeeds like airplanes.'' [1]

At present, various manufacturers are developing powered-lift for civilian use. These aircraft vary in size and passenger-seating configurations and employ both new and traditional kinds of propulsion systems. The operations conceptualized include vertical takeoff and landing capability, transition from low airspeed to high-speed horizontal flight, and sustained level forward flight.

Operations with powered-lift could offer many benefits over traditional rotorcraft. For example, some powered-lift may be capable of transporting heavier loads at higher altitudes and faster cruise speeds than a rotorcraft, while maintaining vertical takeoff and landing capability. Such capability may increase efficiency in transporting crew and material to remote locations such as offshore oil rigs. Operators may also seek to use powered-lift for transporting passenger's point-to-point; for example, such transportation could occur from a heliport and proceed at turboprop airspeeds and ranges. Other opportunities may also exist in concentrated urban environments, where short point-to-point distances coupled with vertical capability may allow for more efficient transportation of passengers or cargo than existing ground transportation methods. Application of the appropriate set of rules for powered-lift in a range of certificate holders' operations would serve as both a risk mitigation measure and a framework for FAA oversight, as necessary to achieve the requisite level of safety.

The requirements of part 119 apply both to air carriers and other commercial operators. Part 119 provides the process for obtaining and maintaining an operating certificate. This proposed rule would apply the appropriate requirements of part 119 to powered-lift operations.

1. Applicability of Operating Rules

This proposed rule would amend the following definitions in § 110.2 to include powered-lift: commuter operation, domestic operation, flag operation, on-demand operation, and supplemental operation. Therefore, the rules and applicability sections in 14 CFR chapter 1, subchapter G would include use of powered-lift in the kinds of operations. Amending these definitions along with other provisions of part 119 would enable powered-lift to engage in operations consistent with the applicable statutory framework that applies to air carrier and commercial operations.

i. Operations Under Parts 121 and 135

Part 121 applies to three distinct kinds of operations of air carriers: domestic, flag, and supplemental. Both domestic and flag operations under part 121 currently consist of any scheduled flight operation [2] using turbojet powered airplanes, or airplanes that have a passenger-seat configuration of more than 9 passenger seats,[3] or that have a payload capacity of more than 7,500

[1] *Pilot, Flight Instructor, Ground Instructor, and Pilot School Certificate Rules,* 60 FR 41160, 41165 (Aug. 11, 1995).

[2] For purposes of determining which types of operations are ''scheduled,'' the FAA uses its definition at § 110.2, which provides, ''*[s]cheduled operation* means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator for which the certificate holder or its representative offers in advance the departure location, departure time, and arrival location. It does not include any passenger-carrying operation that is conducted as a public charter operation under part 380 of this chapter.''

[3] Throughout this description of the kinds of operations, each use of the term ''passenger-seat configuration'' for numerical thresholds and limitations excludes the number of crewmember seats. This is consistent with the existing text of each definition.

pounds. Domestic operations occur between any points within the 48 contiguous states of the United States or the District of Columbia or solely within any state, territory, or possession of the United States. Unlike domestic operations, flag operations are those that occur between any point within the State of Alaska, the State of Hawaii, or any territory or possession of the United States, and any point outside the State of Alaska or the State of Hawaii or any territory or possession of the United States, respectively. Flag operations also include scheduled operations in airplanes that occur between any point within the 48 contiguous States of the United States or the District of Columbia and any point outside the 48 contiguous States of the United States and the District of Columbia, as well as those that occur between any point outside the United States and another point outside the United States.

Supplemental operations under part 121 include any common carriage operation for compensation or hire using airplanes that have a passenger-seat configuration of more than 30 seats or that have a payload capacity of more than 7,500 pounds. Supplemental operations also include those in which the airplane is also used in domestic or flag operations and is listed in the operations specifications for such operations when the airplane is either propeller-powered and has more than 9 and less than 31 passenger seats, or turbojet-powered and has 1 or more and less than 31 passenger seats. The definition of ''supplemental operation'' also specifies that the operations are either all-cargo operations, passenger-carrying public charter operations under part 380, or operations for which the departure time and location, as well as the arrival location, are specifically negotiated.

Part 135 applies to two kinds of operations: on-demand and commuter.

On-demand operations are those either conducted as a public charter under part 380 or any operations in which the departure time and location and arrival location are specifically negotiated with the customer and are: in rotorcraft; common carriage operations with airplanes (including turbojet-powered airplanes) that have a passenger-seat configuration of 30 seats or fewer and a payload capacity of 7,500 pounds or less; or noncommon or private carriage operations conducted with airplanes having a passenger-seat configuration of less than 20 seats and a payload capacity of less than 6,000 pounds. On-demand operations also include scheduled passenger-carrying operations that consist of less than five round-trips per week on at least one route between two or more points according to its published flight schedules in airplanes (other than turbojet-powered airplanes) that have a maximum passenger-seat configuration of 9 seats or less and a maximum payload capacity of 7,500 pounds or less, or in any rotorcraft. Finally, on-demand operations also include all-cargo operations conducted with airplanes having a payload capacity of 7,500 pounds or less, or with rotorcraft.[4]

Commuter operations are scheduled operations[5] conducted by any person operating airplanes (other than turbojet-powered airplanes) that have a maximum passenger-seat configuration[6] of 9 seats or less and a maximum payload capacity of 7,500 pounds or less, as well as all rotorcraft, when such operations conduct at least five round trips per week on at least one route between two or more points according to its published flight schedules.

Part 121 currently applies to any turbojet-powered airplane with one or more passenger seats used for scheduled operations. Scheduled operations under part 135 that are generally ''commuter'' operations are limited to 9 seats or fewer and cannot occur in turbojet airplanes. The FAA previously determined that the operations of small turbojets, which are used for operations such as transoceanic, long range and international, are like the operations of large air carriers.[7] To ensure safety of passengers carried in those kinds of operations, the provisions of part 121 apply to scheduled operations of turbojet airplanes. This proposed rule would include turbojet-powered powered-lift alongside the term ''turbojet powered airplane'' to ensure consistency in applying the appropriate risk mitigation measures for operations of turbojet-powered aircraft.

Under this proposed rule, part 121 would apply to operations that air carriers conduct with powered-lift when they fulfill the criteria of the definitions of domestic, flag, and supplemental operations, while part 135 would apply to operations that certificate holders conduct with powered-lift that meet the criteria of commuter and on-demand operations. Many of the requirements in part 121 are distinct from the requirements that apply to operations under part 135. In this regard, the aircraft passenger-seat configuration and payload capacity maximums that differentiate applicability of parts 121 and 135, are longstanding, regulatory distinctions with which certificate holders are familiar and are appropriate for applying to powered-lift.[8] The FAA has crafted operating rules designed to mitigate the risks of operations of aircraft operating under parts 121 and 135. As a result, the scaled approach of risk mitigations in both parts remains appropriate because powered-lift that are large and carry passengers in scheduled operations generally present a higher level of risk.

a. 121 Applicability

Section 121.1 establishes the applicability of part 121, which prescribes the rules governing air carrier operations conducted under domestic, flag, or supplemental operations. Section 121.1(g) currently states, ''This part also establishes requirements for operators to take actions to support the continued airworthiness of each airplane.'' Section 121.1(g) is the only paragraph in section 121.1 that currently uses the term ''airplane.'' The FAA proposes to revise paragraph (g) to apply to ''aircraft'' instead of ''airplane.'' This change in section 121.1 is necessary to correspond to the changes in parts 110 and 119 to extend the applicability of these parts to powered-lift.

The FAA also proposes to make a technical correction to section 121.1(c) by removing ''SFAR No. 58'' and replacing it with ''subpart Y'' which was codified on September 16, 2005.

b. Certain Flight Time Limitations and Rest Requirements Under Part 121

With regard to flight time limitations and rest requirements, this proposed rule would amend §§ 121.470, 121.480, and 121.500 to replace the word ''airplanes'' with the term ''aircraft.'' Section 121.470 applies the provisions of part 121, subpart Q to domestic all-cargo operations; § 121.480 applies the provisions of part 121, subpart R to flag all-cargo operations; and § 121.500 applies the provisions of part 121,

[4] As noted above, ''all-cargo air transportation'' means ''the transportation by aircraft in interstate air transportation of only property or only mail, or both.'' 49 U.S.C. 40102(a)(10).

[5] The definition of ''scheduled operation'' is codified at 14 CFR 110.2.

[6] Throughout this description of the kinds of operations, each use of the term ''passenger-seat configuration'' for numerical thresholds and limitations excludes crewmember seats. This is consistent with the existing text of each definition.

[7] *Commuter Operations and General Certification and Operations Requirements,* 60 FR 65832, 65838 (Dec. 20, 1995).

[8] In *Commuter Operations and General Certification and Operations Requirements,* the FAA cited its 1953 rulemaking in which the FAA set forth the requirement that airplanes with a maximum certificated takeoff weight of 12,500 pounds or less would be permitted to carry fewer than 10 passengers in on-demand air taxi service. 60 FR 65832, 65835 (Dec. 20, 1995).

subpart S to supplemental all-cargo operations. These sections all contain an exception that is available for certificate holders conducting operations with airplanes having a passenger-seat configuration of 30 seats or fewer (excluding each crewmember seat) and a payload capacity of 7,500 pounds or less: in such airplanes, certificate holders may opt to comply with the requirements of §§ 135.261 through 135.273, rather than the provisions in subparts Q, R, or S of part 121. Permitting this option for powered-lift that conduct operations in aircraft with a seat configuration of 30 seats or fewer (excluding each crewmember seat and a payload capacity of 7,500 pounds or less is appropriate because the FAA has previously determined that specific flight time limitations and rest requirements of §§ 135.261 through 135.273 adequately address the risk associated with lack of rest in such operations.[9]

In addition, § 121.470 contains an exception for operations conducted entirely within Alaska or Hawaii with airplanes having a passenger-seat configuration of more than 30 seats (excluding each crewmember seat) or a payload capacity of more than 7,500 pounds: these airplanes may comply with subpart R of part 121 instead (pertaining to flag all-cargo operations).[10] Permitting this option for powered-lift that conduct such operations entirely within the States of Alaska or Hawaii is appropriate for the same reasons the FAA permits this exception for similarly sized airplanes. Thus, for such operations, the specific flight time limitations and rest requirements of subpart R adequately address the risk associated with lack of rest.[11]

ii. Operations Under Part 125

As with the applicability of parts 121 and 135 to distinct types of air carrier operations, part 119 states that operators conducting noncommon carriage are subject to the rules of either part 125 or part 135.

When noncommon carriage occurs in an airplane having a passenger seat configuration of less than 20 seats, excluding crewmember seats, and a payload capacity of less than 6,000 pounds, § 119.23(b) requires those operations to be conducted under part 135 as on-demand operations. When noncommon carriage occurs in an airplane having a seating configuration of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more, part 125 applies. This proposed rule would amend the applicability provisions relevant to noncommon or private carriage operations such that those provisions would include powered-lift. This proposed rule would amend paragraphs (a), (b), (c), and (e) of § 125.1, to add the term ''powered-lift'' or, where appropriate, ''aircraft.'' These amendments incorporate powered-lift into the statements regarding applicability of part 125 requirements.

Large powered-lift, due to their size, weight, and passenger capacity, present a level of risk that part 125 mitigates. Requiring large powered-lift conducting noncommon carriage operations to comply with part 125 would ensure an appropriate level of safety. These requirements and standards mitigate safety risks of large aircraft operating under part 125; extending them to noncommon carriage operations of large powered-lift is consistent with the FAA's strategy for mitigating risks. The FAA's proposed amendments to §§ 119.23 and 125.1 would clarify that operators that conduct noncommon carriage operations in powered-lift would do so under the rules of part 125, provided they fall within the scope outlined in § 119.23(a). This proposed rule would also change the term from ''airplane'' to ''aircraft'' in the title of part 125 and amend § 125.23 to change the word ''airplane'' to ''aircraft,'' as § 125.23 generally addresses applicability of certain rules and standards concerning operations.

2. Requirements and Applicability of Part 119

Part 119 contains basic requirements that apply to each person that operates or intends to operate a civil aircraft as an air carrier or commercial operator, or both, in air commerce. These requirements, which include the obligation to maintain current operations specifications and employ management personnel who are sufficiently qualified to oversee certain aspects of the certificate holder's operation, are a critical means by which the FAA oversees air carrier and commercial operations. This proposed rule would amend provisions concerning the applicability of other rules, management personnel qualifications, and exceptions from the applicability of part 119. The incorporation of powered-lift into such provisions would provide consistency in FAA oversight of air carrier and commercial operations.

The FAA also proposes to revise § 119.1(a) to apply part 119 to airplanes and powered lift conducting noncommon carriage or private carriage operations for compensation or hire with a passenger-seat configuration of less than 20 seats and a payload capacity of less than 6,000 pounds. This proposed amendment is consistent with the existing § 119.23, which requires airplanes meeting those specifications to comply with certain certification, operations, and operations specifications requirements.

Similarly, the FAA also proposes to amend § 119.5(c) to include powered-lift operations in the description of which persons will be issued an Operating Certificate for operations when common carriage is not involved. The FAA also proposes to amend §§ 119.21 and 119.23 to apply appropriate requirements to powered-lift operations of commercial operators engaged in intrastate common carriage or operations when common carriage is not involved, respectively.

The existing types of operations excluded from part 119 are: student instruction; aerial work operations; nonstop commercial air tours that fulfill certain criteria; ferry or training flights; sightseeing flights in hot air balloons; nonstop flights conducted within 25 statute miles of the airport of takeoff that are for the purpose of intentional parachute operations; helicopter flights conducted within a 25 statute-mile-radius of the airport of takeoff that fulfill certain limiting criteria; operations that occur under part 133 (Rotorcraft External-Load Operations) or part 375 (Navigation of Foreign Civil Aircraft Within the United States); emergency mail service operations; operations conducted under § 91.321 (Carriage of candidates in elections); and small unmanned aircraft systems operations conducted under part 107 (Small unmanned aircraft systems).

Many operations subject to exclusion do not specify the type of aircraft eligible for the exclusion; however, some exclusions apply only to helicopters or only to airplanes and helicopters. Specifically, a subset of the exclusion for operations used in construction or repair work currently

[9] The FAA states in the preamble to the 2012 final rule, *Flightcrew Member Duty and Rest Requirements,* that it attempted to impose the least possible burden on air carriers, consistent with the need to improve safety. Consequently, the rule imposes stringent limits in safety-critical areas and less stringent limits in other areas. For example, the FAA recognizes that the costs for all-cargo operations to comply with more stringent duty and rest requirements would ''significantly exceed the quantified societal benefits.'' *See Flightcrew Member Duty and Rest Requirements,* 77 FR 330, 332 (Jan. 4, 2012).

[10] The FAA allows all-cargo operations conducted entirely within the States of Alaska or Hawaii to comply with the flight time limitations under subpart R—pertaining to flag operations—because those operations are included under the definition of ''flag operation'' in 14 CFR 110.2.

[11] *Flightcrew Member Duty and Rest Requirements,* 77 FR 330, 331 (Jan. 4, 2012); 78 FR 69287 (Nov. 19, 2013).

applies only to helicopter flights. In addition, the exclusion that covers nonstop commercial air tours is specific to operations in either airplanes or helicopters. An exclusion also exists for helicopter flights conducted within a 25-statute-mile radius of the airport of takeoff that meet certain, specific criteria. This proposed rule would broaden each of these exclusions to cover operations conducted in both powered-lift and rotorcraft.

The proposed use of the term ''rotorcraft'' [12] throughout § 119.1 will ensure consistency with other applicability provisions of part 119. For example, § 119.25 states that each person that conducts rotorcraft operations for compensation or hire must do so in accordance with the applicable rules of part 135. In addition, the definitions of ''commuter'' and ''on-demand'' codified in § 110.2 use only the term ''rotorcraft.'' Accordingly, using the term ''rotorcraft,'' as defined in § 1.1, consistently throughout part 119, rather than the term ''helicopter,'' is appropriate.

The proposed rule would replace ''helicopter'' with ''rotorcraft'' and add ''powered-lift'' to the exclusion described at § 119.1(e)(4)(v). Section 119.1(e)(4) lists six specific types of aerial work operations to which part 119 does not apply. These operations include crop dusting, banner towing, aerial photography or surveying, firefighting, construction and repair work, and powerline and pipeline patrol. The existing regulatory text that excludes operations for construction and repair work under § 119.1(e)(4)(v) specifically applies only when the operator uses helicopters. Examples of aerial work operations that fulfill the exception criteria of § 119.1(e)(4)(v) include replacing air conditioners in large buildings; work on photovoltaic cells, cellular towers, and other types of towers; and performing construction in buildings in which the movement of heavy construction loads up several levels via rotorcraft saves energy and time. The FAA anticipates powered-lift would perform functions in aerial work in much the same manner as rotorcraft currently do. Moreover, the vertical takeoff and landing options powered-lift offer, their ability to hover, and the capability of some powered-lift to carry heavier loads than many rotorcraft may prompt operators to use them for construction or repair work. Allowing powered-lift to operate under this exception poses low risk to the general public. Typically, operators conduct aerial work operations in limited areas with low exposure to the public, or, if conducted in metropolitan areas, in areas that are appropriately cordoned off. Moreover, the risk to the general public remains low due to the limitation of the work; its infrequent nature; and the containment practices operators use to limit such risk.

The FAA also proposes to broaden the exclusion in § 119.1(e)(7) to permit those flights to occur using powered-lift or rotorcraft, rather than only helicopters. Section 119.1(e)(7) excludes from the applicability of part 119 helicopter flights conducted within a 25-statute-mile radius of the airport of takeoff if no more than two passengers are carried; each flight occurs under day visual flight rules (VFR) conditions; the helicopter used is certificated with a standard airworthiness certificate and complies with certain inspection requirements; the operator notifies a certain FAA office prior to the operation; the total number of flights does not exceed six per year; the Administrator has approved each flight; and the flight does not carry any cargo. The FAA historically excluded the helicopter flights described in § 119.1(e)(7) based on the conclusion that such operations do not warrant the level of oversight that part 119 requires.

In addition, this proposed rule would add operations conducted in gliders to the exception that applies to sightseeing flights. Currently, the text of § 119.1(e)(5) only excludes from the applicability of part 119 sightseeing flights conducted in hot air balloons. The proposed addition of gliders to this exception will ensure the regulatory text of § 119.1(e)(5) reflects the FAA's current practices of permitting glider operations under this exception from part 119 and is consistent with the level of risk mitigation necessary for such operations.

Lastly, this proposed rule will add powered-lift to § 119.1(e)(2), which currently excludes certain nonstop commercial air tour flights conducted in either an airplane or helicopter from the applicability of part 119.

i. Records Regarding Operations

Each certificate holder subject to part 119 must maintain operations specifications. The FAA approves all operations specifications, which must include a variety of information, such as the types of aircraft, routes, and airports the certificate holder uses, among other items.

This proposed rule would narrow the current requirement in § 119.49. The existing text of § 119.49(a)(12), (b)(12), and (c)(11) requires operations specifications to contain ''[a]ny authorized deviation and exemption'' issued under 14 CFR chapter 1. By its plain language, the aforementioned paragraphs broadly require operations specifications to contain copies of all deviations and exemptions granted from any requirement under chapter 1.

The FAA has determined this requirement is too broad, as it obligates certificate holders to ensure their operations specifications contain exemptions and deviations that also apply to the aircraft the certificate holder uses. Such a requirement is unnecessary because information concerning design standards and other airworthiness aspects that apply to an aircraft are available in other records. Operators of the aircraft are aware of deviations and exemptions from design standards because the paperwork that accompanies the aircraft contains adequate information. For example, the aircraft's type certificate data sheet refers to applicable exemptions.[13] In such cases, it is unnecessary for the certificate holder's operations specifications to contain deviations or exemptions if those deviations or exemptions apply to the aircraft and do not have a corresponding operating rule.

The FAA is mindful of the fact that many rules that address aircraft equipage and functionality, however, include both an aircraft and operating component. To obtain relief from such a rule, the operator would need to receive exemption or permission to deviate from aircraft-specific requirements, and operations specifications would need to contain records of such exemptions or deviations from such rules. For example, § 91.203(d) prohibits any person from operating a civil airplane (domestic or foreign) into or out of an airport in the United States unless it complies with the fuel venting and exhaust emissions requirements of 14 CFR part 34. As a result, while under this proposed rule operations specifications would not need to contain any exemption from a requirement of part 34 as this exemption would be identified in the aircraft records; however, they would need to

[12] With respect to aircraft certification, rotorcraft are a ''class'' of aircraft as defined in § 1.1, while helicopters are a kind of rotorcraft. Section 1.1 defines ''class'' as ''a broad grouping of aircraft having similar characteristics of propulsion, flight, or landing. Examples include: airplane, rotorcraft, glider . . . .'' Section 1.1 defines ''helicopter'' as ''a rotorcraft that, for its horizontal motion, depends principally on its engine-driven rotors.''

[13] See 14 CFR 21.41 (''Type certificate''), which states each type certificate includes the type design, operating limitations, certificate data sheet, the applicable regulations with which the FAA records compliance, and any other conditions or limitations prescribed for the product in part 21, subpart B.

note the existence of an exemption from § 91.203(d) because this relief would not otherwise be noted in any record associated with the operation itself. Similar rules exist throughout subpart C of part 91, as well as subparts J and K of part 121 and subpart C of part 135. This proposed rule would require that operations specifications contain only exemptions and deviations the FAA has granted that apply to the certificate holder.

Similar to this proposed rule's amendments to § 119.49(a)(12), (b)(12), and (c)(11), this proposed rule would also revise § 91.1015(a)(9) in a similar manner. Section 91.1015(a)(9) applies to management specifications that persons who participate in a fractional ownership program under part 91, subpart K, maintain. Currently, § 91.1015(a)(9) requires each set of management specifications to contain each deviation or exemption that the participant receives for any requirement of 14 CFR chapter 1. Requiring a listing or copies of exemptions that apply to the aircraft rather than the operator is unnecessary for the FAA's oversight of participants' operations under part 91, subpart K.

ii. Management of Operation

This proposed rule would amend the qualification and experience requirements by changing the term airplane to aircraft as appropriate. For certificate holders that conduct operations under part 121, this rule would also require at least one Chief Pilot for each category of aircraft that each certificate holder uses, when the certificate holder uses both airplanes and powered-lift.

Sections 119.65 through 119.71 set forth management personnel requirements that certificate holders must fulfill to ensure the highest degree of safety in their operations. In requiring qualified personnel hold certain management positions, the FAA emphasized that certificate holders' employment of management personnel who are experienced and committed to ensuring safety is an important means of ensuring compliance with the rules that apply to the operations.[14]

Section 119.69 contains requirements for certificate holders who conduct operations under part 135. Section 119.69(a) states certificate holders must have a Director of Operations, Chief Pilot, and Director of Maintenance. Section 119.71 sets forth the specific qualification standards that each person who holds any of these positions must meet. This proposed rule would not amend the qualification standards listed at § 119.71 because they are not specific to any particular type of aircraft. As a result, they need not change to ensure management personnel have adequate experience when managing regulatory compliance with certificate holders' operations about airplanes, rotorcraft, or powered-lift.

Under § 119.65(a), which lists management positions that certificate holders conducting operations under part 121 must maintain, each certificate holder must have a Director of Safety, Director of Operations, Chief Pilot, Director of Maintenance, and Chief Inspector. With the exception of the Director of Safety position, each person who holds any of the positions identified in § 119.65 must meet specific qualification standards set forth in § 119.67.

In some cases, candidates who seek to hold a management personnel position listed at § 119.65 might not fulfill the experience requirements but could be qualified in another manner. In such cases, § 119.67(e) provides the FAA's Flight Standards Service the discretion to issue a deviation. Such deviations are based on Flight Standards finding that the candidate can fulfill the duties of the position that he or she seeks to hold.

This proposed rule would also remove the routing codes from the regulatory text of § 119.67(e), as the FAA no longer uses such codes in its regulations.

Furthermore, § 119.65(b) provides the FAA with discretion to approve positions or numbers of positions other than those listed in § 119.65(a) if the certificate holder shows it can perform the operation with the highest degree of safety under the direction of fewer or different categories of management personnel. In making such a determination, the FAA considers the kind of operation involved, the number and types of airplanes used, and the area of operations.

This proposed rule would amend the qualification and experience requirements applicable to Directors of Operations, Chief Pilots, Directors of Maintenance, and Chief Inspectors for certificate holders that conduct operations under part 121 because these qualification standards are currently specific to airplanes. Incorporating certain powered-lift operations into the requirements of part 121 requires amending these qualification requirements applicable to management personnel who supervise a certificate holder's operations.

a. Director of Operations

Currently, § 119.67(a)(2) (Management personnel: Qualifications for operations conducted under part 121 of this chapter) specifically requires Directors of Operations to have experience in ''airplanes.'' To broaden this section to cover Directors of Operations for certificate holders that use powered-lift, this proposed rule would use the general term ''aircraft'' in that paragraph. Therefore, for certificate holders that conduct operations under part 121, this proposed rule would require the Director of Operations to have at least 3 years of supervisory or managerial experience within the last 6 years in a position that exercised operational control over any operations conducted with large aircraft under part 121 or part 135. In the alternative, if the certificate holder uses only small aircraft in its operations, then the Director of Operations may obtain this experience in large or small aircraft. The proposed references to ''large aircraft'' and ''small aircraft'' would have the same meanings as defined in § 1.1: ''Large aircraft means aircraft of more than 12,500 pounds, maximum certificated takeoff weight,'' and ''Small aircraft means aircraft of 12,500 pounds or less, maximum certificated takeoff weight.''

Section 119.67(a)(3) also currently requires anyone who serves in a Director of Operations role for a certificate holder that conducts operations under part 121 to have at least three years of experience as pilot-in-command of a large airplane, if the certificate holder uses large airplanes. If the certificate holder uses small airplanes, then experience in either large or small airplanes will satisfy this requirement. If the person is serving as a Director of Operations for the first time ever, then this experience must have occurred within the prior six years. Under this proposed rule, a person who would serve as Director of Operations would need to have experience as pilot-in-command in at least one of the categories of ''aircraft'' the certificate holder uses in its operations. In using the term ''category'' in this context, this proposed rule would mean the broad classification of aircraft regarding the certification, ratings, privileges, and limitations of airmen. Such categories include airplane, rotorcraft, and powered-lift, among others, as listed at § 61.5(b)(1). In addition, the term ''uses'' refers to the types of aircraft that are listed on the certificate holder's operations specifications, pursuant to § 119.49(a)(4), (b)(4), and (c)(5).

[14] *Commuter Operations and General Certification and Operations Requirements,* 60 FR 65832, 65885–86 (Dec. 20, 1995).

b. Chief Pilot

This proposed rule would amend the existing regulatory text that contains Chief Pilot qualification requirements such that the text would include the term ''aircraft,'' where appropriate. In addition, the FAA proposes amendments to the Chief Pilot requirements that will ensure the Chief Pilot's qualifications are commensurate to the aircraft category the certificate holder is operating. In proposing these amendments, the FAA intends to ensure the management personnel team remains adequately prepared and qualified to address risks that operations of each category of aircraft may present.

To be qualified to serve as a Chief Pilot, a person must meet the qualifications of § 119.67(b). These qualifications include holding an airline transport pilot (ATP) certificate with appropriate ratings for at least one of the airplanes the certificate holder uses. The term ''appropriate ratings'' means the ratings a pilot must hold to serve as a pilot-in-command of an airplane in the certificate holder's operations.

This proposed rule would require the Chief Pilot for powered-lift to hold an ATP certificate and be appropriately rated in at least one of the powered-lift the certificate holder uses. This requirement is important because the Chief Pilot must maintain a detailed level of understanding of the particular aircraft the certificate holder operates to communicate effectively with the pilots who serve in a certificate holder's operations while performing his or her oversight duties.

The FAA is aware that such ''appropriate ratings'' may vary considerably. For example, pilot type ratings or class ratings for certain powered-lift might not yet exist. In such cases, the requirement for the Chief Pilot to have an ATP certificate with appropriate ratings means the Chief Pilot would need to hold an ATP certificate in the appropriate category of aircraft, as well as the appropriate class or type rating for the aircraft the certificate holder uses in conducting operations under part 121. If both a class and type rating exist for the aircraft, then the Chief Pilot must have both ratings.

This proposed rule would also clarify that the ATP certificate with appropriate ratings must be for an aircraft the certificate holder uses in operations ''under part 121.'' This clarification would ensure certificate holders who may hold authority to conduct operations under both part 121 and part 135 know that they must have a Chief Pilot who holds an ATP certificate with appropriate ratings for an aircraft used in part 121 operations. In the interest of ensuring clarity, this proposed rule would add the phrase ''under part 121'' to § 119.67(b).

Currently, a candidate who seeks to become a Chief Pilot must have a minimum of three years' experience as pilot-in-command of a large airplane operated under either part 121 or part 135, if the certificate holder operates large airplanes. If the certificate holder uses only small airplanes, then the Chief Pilot's experience as pilot-in-command may be in either small or large airplanes. As with the Director of Operations qualifications discussed previously, this proposed rule would amend ''large airplane[s]'' and ''small airplane[s]'' to ''large aircraft'' and ''small aircraft.'' These terms are defined at 14 CFR 1.1.

This proposed rule would require the Chief Pilot to have pilot-in-command experience in the category of aircraft for which he or she will exercise responsibility. In addition, the three years of experience as pilot-in-command must have occurred under either part 121 or part 135 and must have occurred within the past six years if the Chief Pilot candidate has not previously served as a Chief Pilot.

The FAA proposes to amend § 119.65(a)(3) to require one Chief Pilot for each category of aircraft because the Chief Pilot must have a detailed understanding of the particular aircraft the certificate holder operates. This level of expertise is a key component of the FAA's rationale for proposing one Chief Pilot for each category of aircraft the certificate holder uses; in this regard, the Chief Pilot's duties and responsibilities generally arise from the specific kind of aircraft with which the certificate holder provides air transportation services. The agency has long emphasized that it adopted the Chief Pilot experience requirements to ensure familiarity with operations of a certificate holder, and that such familiarity is critical to attain prior to assuming the responsibilities of Chief Pilot.[15]

Chief Pilots often oversee the development of policy in addition to holding individual pilots accountable for adherence to the certificate holder's manual and procedures. Operations of airplanes and powered-lift will likely be subject to provisions in the manuals that are distinct. For example, provisions in manuals concerning dispatch and flight release, flight operations, ground services and loading of the aircraft, fueling, deicing, ramp procedures, and various other critical aspects of operation within the manuals will require the Chief Pilot to have specialized knowledge relevant to the category of aircraft. Chief Pilots must also be able to communicate effectively with the pilots they supervise, especially concerning the certificate holder's training program for pilots. In this regard, training for powered-lift proficiency will be distinct from training for airplanes. Furthermore, Chief Pilots are involved in planning future routes and contracts for new aircraft, as well as overseeing compliance with flight and duty limitations that apply to the certificate holder. In addition, risk mitigation measures that certificate holders implement are distinct between categories of aircraft: A Chief Pilot who only has experience in airplanes may not have the skills to evaluate risk mitigation strategies necessary for powered-lift to operate safely.

In summary, having a Chief Pilot who is specifically qualified in the category of aircraft the certificate holder uses would ensure the certificate holder fulfills the standard of providing air transportation with the highest possible degree of safety. In proposing to amend part 119 to apply to operations of powered-lift, the FAA has also remained mindful of the discretion that § 119.65(b) provides, which allows the FAA to approve positions or numbers of positions other than those listed in § 119.65(a).

c. Director of Maintenance

Section 119.65 requires each certificate holder that conducts operations under part 121 to have a Director of Maintenance and § 119.67(c) provides the qualifications to serve as Director of Maintenance. This proposed rule would replace the term ''airplane'' in § 119.67(c) with ''aircraft.''

Under § 119.67(c) each Director of Maintenance must hold a mechanic certificate with airframe and powerplant ratings, have one year of experience in a position responsible for returning airplanes to service, have at least one year of supervisory experience of a certain type in a role of maintaining the same category and class of airplane as the certificate holder uses, and have three years' experience within the preceding six years in maintaining or repairing airplanes. These requirements further specify that the experience with ''maintaining large airplanes'' must occur for large airplanes with 10 or more passenger seats in the same category and class of airplane the

[15] See *Provision for Deviations from Qualifications Requirements for Chief Pilots,* 34 FR 7175 (Apr. 30, 1969).

certificate holder uses. As an alternative to maintaining large airplanes, the Director of Maintenance may have experience repairing airplanes in a certificated airframe repair station that is rated to maintain airplanes in the same category and class of airplane that the certificate holder uses.

This proposed change, therefore, would require the minimum one year of supervisory experience with either maintaining or repairing at least one of the aircraft in the same category and class of aircraft the certificate holder uses. Under this proposed rule, the Director of Maintenance would need to have accumulated three years of experience within the past six years in maintaining or repairing aircraft in the same category and class of aircraft the certificate holder uses. The term ''category'' in this context (*i.e.,* qualifications for Directors of Maintenance), would mean the grouping of aircraft based upon intended use or operating limitations.[16] The definition in 14 CFR 1.1 cites as examples: f transport, normal, utility, acrobatic, limited, restricted, and provisional. Similarly, the use of the term ''class'' in the context of § 119.67(c), means a broad grouping of aircraft having similar characteristics of propulsion, flight, or landing.[17] The definition cites the following as examples of class: balloon, glider, landplane, rotorcraft, and seaplane.

These experience and qualification requirements within 119.67(c) are key components of ensuring the Director of Maintenance is adequately qualified to serve in the role of overseeing other mechanics and personnel performing maintenance. Aircraft that are configured with 10 or more passenger seats generally must comply with additional maintenance requirements.[18] Familiarity with these specific maintenance requirements, in addition to the generally applicable maintenance regulations and the certificate holder's operations, as required by § 119.65(d), is important in ensuring safety. In addition, experience maintaining or repairing aircraft in the same category and class will ensure the Director of Maintenance is knowledgeable about aspects of the specific aircraft that the certificate holder uses such as airworthiness standards, provisions in manuals, and general manufacturing practices. Directors of Maintenance generally oversee activities that involve such aircraft-specific aspects. The FAA believes experience with aircraft of the same category and class of aircraft the certificate holder uses would achieve the FAA's objective of ensuring the Director of Maintenance has appropriate experience with adhering to procedures and ensuring compliance with rules and programs relevant to maintenance.

d. Chief Inspector

Currently, a person who serves as a Chief Inspector must hold a mechanic certificate with both airframe and powerplant ratings, which he or she has held for at least 3 years. Chief Inspectors must also have at least three years of experience with maintenance on different types of large airplanes with 10 or more passenger seats with a certificate holder or certificated repair station, one year of which must have been as a maintenance inspector and have at least one year of experience in a supervisory capacity maintaining the same category and class of aircraft as the certificate holder uses. Chief Inspectors have direct authority and responsibility over people performing the requisite inspections for the certificate holder.

This proposed rule would amend the section that sets forth qualifications for Chief Inspectors for certificate holders that conduct operations under part 121. The proposed amendment would permit the three years of maintenance experience to occur on different types of large aircraft with 10 or more passenger seats, rather than only large airplanes. This proposed amendment would be consistent with the other proposed changes of this rule that assist in incorporating powered-lift into the framework of part 121. As with the Director of Maintenance qualifications, this retention of the 10-seat threshold ensures the Chief Inspector will have experience with a maintenance program the certificate holder has developed and with which the certificate holder complies.[19] In addition, the use of the term ''large aircraft'' in this requirement refers to those aircraft that are more than 12,500 pounds at their maximum certificated takeoff weight.[20]

B. Commercial Air Tours and Flights for the Benefit of Charitable, Nonprofit, or Community Events

Commercial air tours are flights conducted for compensation or hire in an airplane or helicopter in which the purpose of the flight is sightseeing.[21] Passenger-carrying flights may also be conducted without compensation or hire for certain charitable, nonprofit, and community events. The FAA intends to incorporate powered-lift for commercial air tours and flights for the benefit of charitable, nonprofit or community events, and to revise the necessary provisions to address ''rotorcraft'' instead of ''helicopter''. This will ensure consistency with the changes made to the definition of commercial air tour in part 110, as well as the change made to nonstop commercial air tours within § 119.1.

1. Regulatory Framework for Commercial Air Tours

The FAA regulates commercial air tours under part 136 and § 91.147. Part 136, subpart A, ''National Air Tour Safety Standards,'' currently applies to ''each person operating or intending to operate a commercial air tour in an airplane or helicopter'' as well as all occupants of the airplane or helicopter engaged in the air tour.[22] Part 136, subpart A, applies to part 121 or 135 operators conducting commercial air tours and holding a part 119 certificate. Section 91.147 applies to commercial air tour operators that do not hold a certificate under part 119.

Only operators certificated under part 119 may conduct commercial air tours that: occur beyond 25 miles of the departure airport; start and end at different airports; occur in airplanes or helicopters configured to have more than 30 seats or payload capacity in excess of 7,500 pounds; or, subject to a limited exception, commercial air tours that occur over a unit of the national park system.[23] As a result, such commercial air tours must operate in accordance with either part 121, Operating Requirements: Domestic, Flag, and Supplemental Operations, or part 135, Operating Requirements: Commuter and On Demand Operations and Rules Governing Persons on Board Such Aircraft. As summarized above in section III.A.1 of this preamble, parts 121 and 135 contain various provisions applicable to certificate holders'

[16] 14 CFR 1.1.

[17] 14 CFR 1.1.

[18] 14 CFR 135.411(a)(2); see also § 121.367.

[19] 14 CFR 135.411(a)(2); see also § 121.367.

[20] See 14 CFR 1.1 (definition of ''large aircraft'').

[21] 14 CFR 110.2 and 136.1(d). Some flights that are commercial air tours under part 136 or § 91.147 may also be subject to other requirements. For example, the requirements of 49 U.S.C. 40128 (''Overflights of national parks'') or 14 CFR part 93, subpart U (''Special Flight Rules in the Vicinity of Grand Canyon National Park, AZ'') refer to certain types of commercial air tours in ''powered aircraft.'' This proposed rule would not affect the applicability of any such requirements.

[22] Id. Section 136.1(a).

[23] Section 136.37(g) permits commercial air tour operations over a national park to occur under the general operating rules of part 91 if (1) the air tour activity is permitted under part 119; (2) the operator secures a letter of agreement from the Administrator and the Superintendent for that park describing the conditions under which the operations will be conducted; and (3) the number of flights that occur under this exception does not exceed a total of 5 by all operators in a 30-day period over a particular park.

operations, such as requirements and restrictions relevant to operations, safety, and training.

Section 91.147, Passenger Carrying Flights for Compensation or Hire, applies to air tour operators that take off and land at the same airport and stay within 25 miles of that airport.[24] Section 91.147(a) defines ''operator'' for purposes of § 91.147 and for purposes of drug and alcohol testing [25] as any person who conducts non-stop passenger-carrying flights in an airplane or helicopter for compensation or hire in accordance with §§ 119.1(e)(2), 135.1(a)(5), or 121.1(d) when flights begin and end at the same airport and are conducted within a 25-statute mile radius of that airport. Under § 119.1(e)(2), nonstop commercial air tours are exempt from the applicability of part 119 as long as they are conducted in an airplane or helicopter having a standard airworthiness certificate and passenger-seat configuration of 30 seats or fewer and a maximum payload capacity of 7,500 pounds and meet the operational criteria described previously.

2. Incorporation of New Types of Aircraft

Section 91.147 and the requirements of part 136, subpart A, are currently limited in applicability to airplanes and helicopters. The FAA has determined this scope is too narrow, as manufacturers may design and produce other rotorcraft and powered-lift that operators could use for commercial air tours. Consequently, the FAA is proposing to expand the applicability of part 136 by changing the term ''helicopter'' to ''rotorcraft'' and adding ''powered-lift'' to the applicability in § 136.1. Additionally, this proposed rule would replace ''helicopter'' with the term ''rotorcraft'' and add ''powered-lift'' to the relevant applicability provisions of § 91.147 to ensure the appropriate safety risk mitigations apply to all commercial air tours.

The FAA is proposing to change the term ''helicopter'' to ''rotorcraft'' throughout part 136 in order to ensure these safety standards of part 136 apply to other rotorcraft and not only helicopters.[26] Part 136 was promulgated to help prevent accidents and incidents that occur during commercial air tour operations and should therefore apply to more than just airplanes and helicopters.[27] In fact, these safety risk mitigations found within part 136 have proven to reduce incidents and accidents.[28] If the FAA does not expand part 136 to include ''rotorcraft'', then the more stringent safety risk mitigations afforded in that part would not apply to the rotorcraft that currently conduct air tours under part 135. Applying the requirements of part 136 to airplanes, powered-lift, and rotorcraft that conduct commercial air tours is an appropriate step in ensuring safe integration of new types of aircraft.

The proposed use of the term ''rotorcraft'' will also ensure consistency with other applicability provisions found within some sections of parts 110, 119 and 135. Consistent with the approach described previously, the FAA will address operational requirements for powered-lift in the SFAR: Integration of Powered-Lift.

i. Suitable Landing Area for Emergencies

This proposed rule would amend the definition of the term ''suitable landing area for helicopters,'' codified at § 136.1. The current definition states such an area is one that provides the operator reasonable capability to land without damage to equipment or injury to persons. It further provides that such areas must be site-specific, designated by the operator, and accepted by the FAA. The definition states that the purpose of the area is to provide an emergency landing area for a single-engine helicopter or a multiengine helicopter that does not have the capability to reach a safe landing area after an engine power loss. While no regulation within part 136 uses the term, operators may include the practice of designating suitable landing areas in their manuals.

As previously stated, the FAA believes manufacturers may design and produce other rotorcraft that could be used in commercial air tour operations. Therefore, this proposed rule would broaden the applicability to incorporate rotorcraft to ensure they are subject to the safety standards of part 136.

The FAA's purpose in providing the definition is to ensure operators designate potential landing areas in advance of an operation, as such designation reduces the risk of a major accident because the pilot-in-command is aware of potential sites for emergency landings. Given this focus on emergencies, the FAA has determined reference to ''damage to equipment'' in the current text of the definition is neither practical nor appropriate. The use of the term in the definition is not consistent with the purpose of the definition, which is to apply to the occurrence of emergency situations. The FAA expects operators to be able to designate a site-specific landing area that, when used, would not cause serious injury to persons, irrespective of aircraft damage. Accordingly, the FAA proposes to remove the phrase ''damage to equipment'' from the definition of ''suitable landing area,'' and add ''serious'' before ''injury.'' It is impracticable to expect that an emergency landing will never result in some degree of injury, even minor, should the aircraft have to land in a suitable landing area. Therefore, the FAA intends that suitable landing areas are appropriate for rotorcraft to land without causing *serious* injury to persons.

The FAA further proposes to remove the last sentence of the definition that states the purpose of the definition is to provide an emergency landing area for helicopters that would not have the capability to reach a safe landing area after an engine power loss. The FAA has determined this sentence is too narrow. Removing this sentence allows operators to identify landing areas that could be used in *any* emergency not only in the case of an engine power loss. The new definition would include the phrase ''in an emergency'' to describe the context for which the FAA would

[24] Section 119.1(e)(2) also states part 119 applies to commercial air tours that an operator conducts in accordance with part 136, subpart B, *National Parks Air Tour Management,* unless § 136.37(g)(2) excludes the operation from applicability. Section 119.1(e)(2) further provides separate applicability provisions for commercial air tours conducted in the vicinity of the Grand Canyon National Park, Arizona. None of these additional applicability provisions specify that they are limited to airplanes, helicopters, or any other specific type of aircraft. The FAA does not propose amendments to § 136.37(g)(2).

[25] 14 CFR 120.1(a) states, in part, that the requirements of part 120, *Drug and Alcohol Testing Program,* apply to all operators as defined in § 91.147.

[26] Rotorcraft means ''a heavier-than-air aircraft that depends principally for its support in flight on the lift generated by one or more rotors.'' With respect to aircraft certification, rotorcraft are a ''class'' of aircraft as defined in § 1.1, while helicopters are a kind of rotorcraft. Section 1.1 defines ''class'' as ''a broad grouping of aircraft having similar characteristics of propulsion, flight, or landing. Examples include: airplane, rotorcraft, glider, balloons, land plane, and seaplane.'' Section 1.1 defines ''helicopter'' as ''a rotorcraft that, for its horizontal motion, depends principally on its engine-driven rotors.'' Helicopters and rotorcraft both depend principally on the rotors to provide lift to stay airborne.

[27] The FAA acknowledges that gyroplanes are a kind of rotorcraft. This proposed rule would retain the language of § 136.1(c) that excludes gyroplanes from the applicability of part 136. Historically, gyroplanes have not been issued a standard airworthiness certificate, so the FAA still believes excluding those types of rotorcraft would be appropriate.

[28] In the preamble to part 136, the FAA explained that the commercial air tour regulations had a positive impact on safety for these operations. ''We believe there is a relationship between the imposition of a minimum, mandatory safety standard and the decrease in accidents.'' 72 FR 6884, 6889 (Feb. 13, 2007).

accept site-specific, designated landing areas for rotorcraft.

ii. Rotorcraft Floats for Over Water

Section 136.11 currently permits single-engine helicopters in commercial air tours to operate over water beyond the shoreline only when they are equipped with fixed floats or an inflatable flotation system adequate to accomplish a safe emergency ditching. Similarly, multiengine helicopters that cannot be operated with the critical engine inoperative at a weight that will allow it to climb at least 50 feet a minute at an altitude of 1,000 feet above the surface with the critical engine inoperative as provided in the Rotorcraft Flight Manual (RFM) also must be equipped with fixed floats or an inflatable flotation system. Those helicopters that are equipped with flotation systems must have an activation switch for the flotation system on one of the primary flight controls and the system must be armed when the helicopter is over water and flying at a speed that does not exceed the maximum speed prescribed in the RFM. These requirements, however, do not apply to operations over water only during the takeoff and landing portions of flight or to operations within the power-off gliding distance to the shoreline for the duration of the flight and when each occupant is wearing a life preserver from before takeoff until the aircraft is no longer over water.

Extending the aforementioned requirements to rotorcraft operations that occur under part 136 would mitigate the risks associated with emergency water landings as the risks that are present in commercial air tours that occur in helicopters are the same as other rotorcraft in such scenarios. The FAA identified this mitigation when promulgating § 135.168. The overwater safety equipment requirements of § 135.168 apply to rotorcraft when they are operated beyond the autorotational distance from the shoreline. Therefore, the FAA proposes to broaden the applicability of § 136.11 to include rotorcraft.

Additionally, § 136.11(b)(2), does not include a reference to ''beyond the shoreline''. The FAA proposes to add this reference to clarify the requirement to have the flotation system armed when the aircraft is over water beyond the shoreline. Part 136 already contains a definition of ''shoreline,'' codified at § 136.1; the use of this term in § 136.11 is appropriate because it broadly includes any area of land adjacent to water of an ocean, sea, lake, pond, river, or tidal basin that is above the high-water mark. The definition excludes land areas unsuitable for landing, such as vertical cliffs or land intermittently under water during flight. When a commercial air tour proceeds over water beyond the shoreline, flotation systems must be armed because flotation systems increase the chance of survival if a rotorcraft must ditch in the water and keeping a flotation system armed ensures an appropriate level of preparedness. Requiring that the flotation system is armed and that the activation switch is located on one of the primary flight controls is in response to a National Transportation Safety Board report that investigated the air tour industry.[29] The NTSB stated that the opportunity for a successful ditching is reduced if the pilot must interrupt maneuvering of the helicopter during the critical final phase of an emergency water landing.[30] ''The problem can be resolved by requiring that helicopters operated over water with flotation equipment installed be equipped with activation systems located on primary flight controls.'' [31] For the foregoing reasons, the FAA's proposed updates to this section would apply these requirements to rotorcraft to require flotation systems remain armed at the appropriate time.

iii. Performance Plans

This proposed rule would amend § 136.13(a) by changing the term helicopter to rotorcraft for the reasons already cited. This proposed rule would amend the text in § 136.13(a) to require operators to base performance plans on information derived from the ''approved aircraft flight manual for that aircraft''. Using this term is consistent with the reference to aircraft flight manual in § 135.81.

Section 136.13(a) currently requires commercial air tour operators to complete helicopter performance plans before each operation that will occur under part 136.[32] The pilot-in-command of the operation must review the plan for accuracy and comply with it for each flight. Such performance plans are a key component of mitigating the risk of commercial air tour operations, as they require the pilot-in-command to be prepared to respond to unforeseen events.

iv. Commercial Air Tours in Hawaii

Appendix A to part 136 applies to airplane and helicopter tours in Hawaii. The safety standards in part 136 are specific to commercial air tours and provide additional risk mitigations for those operations. As stated in the *National Air Tour Safety Standards* final rule, FAA believes that minimum, mandatory safety standards directly relate to a decrease in the occurrence of accidents.[33] Therefore, subjecting powered-lift and rotorcraft to these safety standards is appropriate, to ensure air tour operations would not pose additional safety risks.

Appendix A previously existed as Special Federal Aviation Regulation (SFAR) No. 71.[34] As explained in the part 136 discussion above, in 2007, when the FAA last amended part 136, the FAA explained that many air tour operations occur in Hawaii and the Grand Canyon, and that the rules of SFAR No. 71 had improved safety.[35] The FAA explained more restrictive altitude standards apply to air tours in Hawaii because a large number of commercial air tour flights occur ''in a relatively small amount of airspace'' and other demonstrated hazards exist.[36] As one commenter noted, many Hawaiian operations occur over large bodies of water and water conditions in Hawaii are ''rough, unlike the conditions in other parts of the country'' in which operators conduct air tours.[37] The appendix A requirements are equally important for air tour operations in aircraft other than helicopters. The FAA's rationale for extending the requirements and provisions of appendix A to aircraft other than helicopters remains consistent with the rationale the FAA expressed in its 2007 rule.

Section 1 of appendix A (''Applicability'') currently states, ''[t]his appendix prescribes operating rules for airplane and helicopter visual flight rules air tour flights conducted in the State of Hawaii under 14 CFR parts 91, 121, and 135.'' [38] The appendix also defines ''air tour'' as ''any sightseeing flight conducted under visual flight

[29] *See* NTSB, *Safety of the Air Tour Industry in the United States,* NTSB/SIR/–95/01 (Jun. 1, 1995).

[30] *Id.* at 3.

[31] *Id.*

[32] This requirement also applies to operations that occur under § 91.146 (''Passenger-carrying flights for the benefit of a charitable, non-profit, or community event'') and § 91.147 (''Passenger carrying flights for compensation or hire'').

[33] 72 FR 6883, at 6889.

[34] *Air Tour Operators in the State of Hawaii,* 59 FR 49138 (1994).

[35] 72 FR at 6889 (acknowledging that while multiple reasons existed for the accident rate improvement in Hawaii and other parts of the country, the provisions of SFAR No. 71 had a positive impact on safety).

[36] Id. at 6891.

[37] Id. at 6903.

[38] The section includes a paragraph that specifically excludes from its applicability ''[f]lights conducted in gliders or hot air balloons.'' 14 CFR part 136, App. A. at § 1(b).

rules in an airplane or helicopter for compensation or hire.'' [39] Based on the uses of the specific terms ''airplane'' and ''helicopter,'' the appendix does not apply to other types of aircraft, such as powered-lift and rotorcraft that are not helicopters.

Amending the applicability of appendix A to incorporate powered-lift and rotorcraft would apply the minimum flight altitude limitations to other categories of aircraft seeking to conduct air tours in Hawaii. As with the applicability of part 136, subpart A, and § 91.147, the FAA has determined the existing criteria and requirements for helicopters of appendix A, section 1(a) remain appropriate for powered-lift and rotorcraft. In this regard, the FAA has determined it is reasonable to continue to exclude any aircraft that has a passenger-seat configuration of more than 30 seats or a payload capacity that exceeds 7,500 pounds, as part 121 would govern such operations. As described previously, the SFAR: Integration of Powered-Lift will include proposals for applying specific operating rules to powered-lift in accordance with this appendix.

This proposed rule would also amend the references to RFMs currently within section 4 of the subpart. As with the amendment to § 136.13, described above in section III.B.2.iii of this preamble, using this term is consistent with the reference to Aircraft Flight Manual in § 135.81. Accordingly, the FAA proposes to include the term ''aircraft flight manual'' in the regulatory text.

Finally, the FAA proposes to amend part 136 by re-codifying appendix A as a new subpart and applying the requirements to operations of powered-lift and rotorcraft.

3. Flights for the Benefit of Charitable, Nonprofit, or Community Events

Operators that conduct passenger-carrying flights for certain charitable, nonprofit, and community events are conducted in accordance with § 91.146. Similar to § 91.147, the terms of § 91.146 require flights conducted under § 91.146 be nonstop and begin and end at the same airport, not proceed further than a 25-statute-mile radius of that airport, utilize only a public airport adequate for the aircraft used in the operation, have no more than 30 seats (excluding crewmember seats) and a maximum payload capacity of 7,500 pounds, not be an aerobatic or formation flight, hold a standard airworthiness certificate, occur only in day visual flight rules conditions, and fulfill other criteria. Section 91.146 excludes these flights from the applicability of part 119 and requires each flight conducted under § 91.146 occur in accordance with the safety provisions of part 136, subpart A. Moreover, passenger-carrying flights or series of flights cannot exceed four charitable events or non-profit events per year.

The FAA proposes amending § 91.146 in a manner similar to the amendments the FAA proposes to make to § 91.147. The FAA's oversight of such flights is generally consistent with the level of oversight the FAA applies to commercial air tour flights under § 91.147. As with the proposed amendment to § 91.147, the FAA expects that expanding the scope of § 91.146 to allow for powered-lift and rotorcraft flights in furtherance of charitable, nonprofit, and community events will enable innovative, efficient options while ensuring safety.

IV. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). The current threshold after adjustment for inflation is $165 million using the most current (2021) Implicit Price Deflator for the Gross Domestic Product. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

In conducting these analyses, the FAA has determined that this proposed rule (1) will have benefits that justify its costs, (2) will not be an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) will not be ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified above.

A. Regulatory Evaluation

This proposed rule would enable operations of powered-lift to occur in accordance with 49 U.S.C. 44701(d), 44705, and 44711. Currently, the FAA's rules governing certificate holders' operations only apply to airplanes and rotorcraft, and do not mention powered-lift. The proposed rule would amend the definitions for the five kinds of operations codified at § 110.2—commuter, domestic, flag, on-demand, and supplemental—to ensure the operations occur in accordance with the statutory mandates, and to apply the appropriate set of operating rules to operations in powered-lift. The proposed rule would also amend the appropriate applicability of sections within part 119 to enable powered-lift, subject to applicable exemptions, to conduct air carrier and certain other commercial operations, commercial air tours, and noncommon carriage operations.

The proposed rule would also amend certain aircraft-specific exceptions from the applicability of part 119. Furthermore, this proposed rule would alter the requirements for management personnel in certain certificate holder management positions to ensure personnel have appropriate experience. This proposed rule would extend the applicability of certain operating rules that apply to commercial air tours such that they would apply to operators that conduct flights in powered-lift and rotorcraft. Finally, this proposed rule would make various additional amendments in the interest of ensuring clarity. By including powered-lift in the existing operational framework, the proposed rule would not result in a reduction in safety because it maintains the risk-based approach to safety. When operations present a higher level of risk, based on volume and frequency, the FAA subjects such operations to a regulatory framework that mitigates those risks.

The current parameters for determining whether a certificate holder is conducting operations under parts 121, 125, or 135 would be identical for certificate holders using powered-lift in their operations under this proposed

[39] Id. § 2.

rule. These parameters are shown below.

Parameter	Passenger		Cargo	Non-common carriage
	Scheduled	Nonscheduled	Scheduled/ nonscheduled	
Part 135 Operating Rules *				
Passenger Seating	<= 9 seats	<= 30 seats	NA	< 20 seats.
Maximum Payload	<= 7,500 lbs.		<= 7,500 lbs	< 6,000 lbs.
Kind of Operation	Pt 135 Commuter if 5 or more roundtrips/week; otherwise, Pt 135 On Demand.	Pt 135 On Demand	Pt 135 On Demand	Pt 135 On Demand.
Aircraft Type	NonTurbojet	Includes Turbojet	Includes Turbojet	Includes Turbojet.
Part 121 Operating Rules				**Part 125**
Passenger Seating	> 9 seats	> 30 seats	NA	>= 20 seats.
Maximum Payload	> 7,500 lbs.		> 7,500 lbs	>= 6,000 lbs.
Kind of Operation	Part 121 Domestic if flown within the 48 contiguous United States or DC; otherwise, Part 121 Flag.	Part 121 Supplemental	Part 121 Supplemental	Part 125.
Aircraft Type	Includes Turbojet		Includes Turbojet	Includes Turbojet.

* All Rotorcraft Operations are conducted under Part 135.
NA= Not applicable.

The table below lists the proposed amendments. The first column identifies the part and section the FAA proposes to amend while the second column describes the change from the current state. The third column briefly describes the proposed change as either enabling, relieving, constraining, or as a technical amendment.

Section	Proposed change	Impact
PART 91—GENERAL OPERATING AND FLIGHT RULES Subpart B—Flight Rules		
§ 91.146 Passenger-carrying flights for the benefit of a charitable, nonprofit, or community event.	The proposed regulatory text would be revised to allow passenger-carrying flights for the benefit of a charitable, nonprofit, or community event to be conducted with powered-lift. The section would also be amended to replace the term ''helicopters'' with ''rotorcraft''.	Enabling.
§ 91.147 Passenger-carrying flights for compensation or hire.	The proposed regulatory text would be revised to allow passenger-carrying flights for compensation or hire to be conducted with powered-lift. The section would also be amended to replace the term ''helicopters'' with ''rotorcraft''.	Enabling.
PART 91—GENERAL OPERATING AND FLIGHT RULES Subpart K—Fractional Ownership Operation		
§ 91.1015 Management specifications	The proposed regulatory text would replace the requirement for operations specifications to contain copies of *all* deviations and exemptions (including those applicable to a specific aircraft) with a requirement to include deviations and exemptions applicable only to the operator or *airmen*.	Relieving.
PART 110—GENERAL REQUIREMENTS		
§ 110.2 Definitions	Certain definitions in this section would be revised to enable powered lift to conduct the kinds of air carrier operations.	Enabling.

Section	Proposed change	Impact
PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS Subpart A—General		
§ 119.1 Applicability	Section 119.1(a) would be revised to incorporate powered-lift with seating for 20 or more passengers or a maximum payload capacity of 6,000 pounds or more, of certificate holders when common carriage is not involved. Section 119.1(e) would include powered-lift and rotorcraft in the list of certain, specific types of operations that are excluded from the applicability of part 119. Section § 119.1(a) would be corrected to include certain airplanes and powered-lift with a passenger-seat configuration of less than 20 seats and a payload capacity of less than 6,000 pounds to be consistent with the existing § 119.23.	Enabling. Technical amendment.
§ 119.5 Certifications, authorizations, and prohibitions.	Section 119.5 would be revised to incorporate powered-lift with seating for 20 or more passengers or a maximum payload capacity of 6,000 pounds or more, into the aircraft types authorized by the Administrator to be issued an operating certificate for conducting operations when common carriage is not involved.	Enabling.
PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS Subpart B—Applicability of Operating Requirements to Different Kinds of Operations Under Part 121, 125, and 135 of This Chapter		
§ 119.21 Commercial operators engaged in intrastate common carriage and direct air carriers.	Section 119.21(a) would be revised to require commercial operators of powered-lift that are engaged in intrastate common carriage of persons or property for compensation or hire, or as a direct air carrier, to comply with either part 121 or part 135 depending on the kind of operation they conduct. Domestic, flag, and supplemental operations are to be conducted under part 121. Commuter and on-demand operations are to be conducted under part 135.	Imposes requirements on certain operators of powered-lift that are equivalent to the requirements currently imposed on similar operators. No additional regulatory cost.
§ 119.23 Operators engaged in passenger-carrying operations, cargo operations, or both with airplanes when common carriage is not involved.	Section 119.23(a) would be revised to require commercial operators of powered-lift when common carriage is not involved to comply in accordance with requirements in either part 125 or part 135. Aircraft size in terms of number of seats and payload capacity determines which part is applicable to the operator.	Imposes requirements on certain operators of powered-lift that are equivalent to the requirements currently imposed on similar operators. No additional regulatory cost.
§ 119.49 Contents of operations specifications.	The proposed regulatory text would replace the requirement for a certificate holder's operations specifications to contain copies of *all* deviations and exemptions (including those applicable to a specific aircraft) with a requirement to include deviations and exemptions applicable only to the operator or airmen.	Relieving.
§ 119.65 Management personnel required for operations conducted under part 121 of this chapter.	The proposed rule would require certificate holders have a Chief Pilot, as qualified under § 119.67, for *each* category of aircraft the certificate holder uses. The proposed rule would continue to permit the Administrator to approve positions or numbers of positions other than those described in the regulation, based in part on the number and type of *aircraft* used.	Potential cost only if a certificate holder uses both powered-lift and airplanes. Amendment requires a part 121 certificate holder to have a Chief Pilot for each category of aircraft in the certificate holder's fleet. The proposed rule's reference to ''category'' would mean a broad classification of aircraft such as airplane and powered-lift.

Section	Proposed change	Impact
§ 119.67 Management personnel: Qualifications for operations conducted under part 121 of this chapter.	*Director of Operations:* The proposed regulatory text for the Part 121 certificate holder Director of Operations management position is restructured for clarity. It also replaces the term ''airplane'' with ''aircraft''. *Chief Pilot:* The proposed regulatory text is restructured for clarity and replaces ''airplanes'' with ''aircraft,'' which could encompass airplanes and powered-lift. The amendment also requires the holder(s) of the Chief Pilot position for a Part 121 certificate holder to have an airline transport pilot (ATP) certificate, with appropriate ratings, for at least one of the aircraft within each category of the certificate holder's fleet. Similarly, the Chief Pilot will need the Pilot in Command time as the current regulation states. *Director of Maintenance:* The proposed regulatory text replaces ''airplanes'' with ''aircraft,'' which could encompass airplanes and powered-lift. *Chief Inspector:* The proposed regulatory text is restructured for clarity and replaces ''airplanes'' with ''aircraft,'' which could encompass airplanes and powered-lift.	Imposes requirements on operators of powered-lift that are equivalent to the requirements currently imposed on certificate holders that use airplanes. No additional regulatory cost.
PART 121—OPERATING REQUIREMENTS; DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS Subpart A—General		
§ 121.1 Applicability	The proposed regulatory text replaces ''airplanes'' with ''aircraft'' that certificate holders would take actions to support continued airworthiness of each aircraft, which includes powered-lift used in domestic, flag, or supplemental operations as defined in § 110.2.	Imposes requirements on operators of powered-lift that are equivalent to the requirements currently imposed on certificate holders that use airplanes. No additional regulatory cost.
§ 121.1(c) Applicability	The proposed regulatory text makes a technical correction to section 121.1(c) by removing ''SFAR No. 58'' and replacing it with ''subpart Y'' which was codified on September 16, 2005.	No impact—technical amendment.
PART 121—OPERATING REQUIREMENTS; DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS Subpart Q—Flight Time Limitations and Rest Requirements: Domestic Operations		
§ 121.470 Applicability	The proposed regulatory text of paragraph (a) would replace ''airplanes'' with ''aircraft'' to permit certificate holders using powered-lift in domestic, all-cargo operations of a certain size, to adhere to the requirements of §§ 135.261 through 135.272. These requirements set forth flight time limitations and rest requirements. In addition, paragraph (b) would permit certificate holders that conduct scheduled operations entirely within Alaska or Hawaii using specific size aircraft to have the option of complying with subpart R of part 121 for those operations.	Provides options to certificate holders using powered-lift in operations under part 121 that are equivalent to the options currently allowed. No additional regulatory cost.
PART 121—OPERATING REQUIREMENTS; DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS Subpart R—Flight Time Limitations and Rest Requirements: Flag Operations		
§ 121.480 Applicability	The proposed regulatory text would replace ''airplanes'' with ''aircraft'' to permit certificate holders using powered-lift in flag, all-cargo operations, and operations of a certain size to adhere to the requirements of §§ 135.261 through 135.273. These requirements set forth flight time limitations and rest requirements.	Provides options to certificate holders using powered-lift in operations under part 121 that are equivalent to the options currently allowed. No additional regulatory cost.
PART 121—OPERATING REQUIREMENTS; DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS Subpart S—Flight Time Limitations and Rest Requirements: Supplemental Operations		
§ 121.500 Applicability	The proposed regulatory text would replace ''airplanes'' with ''aircraft'' to permit certificate holders using powered-lift in supplemental, all-cargo operations, of a certain size, to adhere to the requirements of §§ 135.261 through 135.273. These requirements set forth flight time limitations and rest requirements.	Provides options to certificate holders using powered-lift in operations under part 121 that are equivalent to the options currently allowed. No additional regulatory cost.

Section	Proposed change	Impact
PART 125—CERTIFICATION AND OPERATIONS: *AIRCRAFT* HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT		
§ 125.1 Applicability	Part 125 applies only to noncommon carriage operations conducted with airplanes that have a seating configuration of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more. Noncommon carriage operations are those that occur for compensation or hire ''that does not involve a holding out to others.'' Operators that conduct noncommon carriage do not exhibit a willingness to transport people or property indiscriminately. As a result, they do not advertise, sell seats on a planned flight, or negotiate trip details. The proposed rule would amend § 125.1 to incorporate powered lift into the statements regarding applicability of part 125.	Imposes requirements on operators of powered-lift that are equivalent to the requirements currently imposed on certificate holders that use airplanes. No additional regulatory cost.
§ 125.23 Rules applicable to operations subject to this part.	This proposed rule would also amend § 125.23 to change the word ''airplane'' to ''aircraft,'' as § 125.23 generally addresses applicability of certain rules and standards concerning operations.	Imposes requirements on operators of powered-lift that are equivalent to the requirements currently imposed on certificate holders that use airplanes. No additional regulatory cost.
PART 136—COMMERCIAL AIR TOURS AND NATIONAL PARKS AIR TOUR MANAGEMENT Subpart A—National Air Tour Safety Standards		
§ 136.1 Applicability and definitions	The proposed change incorporates powered-lift and rotorcraft alongside airplanes for applicability of Part 136—Commercial Air Tours and National Parks Air Tour Management—Subpart A.	Enabling.
§ 136.3 Letters of Authorization	The proposed change would be a technical amendment that changes the phrase ''14 CFR 119.51'' to ''§ 119.51 of this chapter''.	No impact—technical amendment.
§ 136.5 Additional requirements for Hawaii.	The proposed amendment would be updated to reflect the recodification of Appendix A as Subpart D.	No impact—technical amendment.
§ 136.9 Life preservers for operations over water.	The proposed amendment to § 136.9 ensures the safety of each occupant for operations over water by requiring a multi-engine aircraft to be operated at a weight as provided in the approved aircraft flight manual for that aircraft.	Enabling—no impact over and above current requirements.
§ 136.11 Rotorcraft floats for over water.	The section title and this section would be revised to extend to other rotorcraft, the requirements for helicopter floats for operations that occur overwater beyond the shoreline.	Enabling—no impact over and above current requirements.
§ 136.13 Performance plan and operations.	The section title and this section would be revised to extend requirements for helicopter performance plans to rotorcraft. The performance plan must be based on information in the approved Aircraft Flight Manual for that aircraft.	Enabling—no impact over and above current requirements.
Subpart D—Special Operating Rules for Air Tour Operators in the State of Hawaii.	This amendment recodifies ''Appendix A'' as ''Subpart D'' and extends the applicability of operating rules for Air Tour Operators in the State of Hawaii to include operations conducted with powered-lift and rotorcraft.	Enabling—no impact over and above current requirements.

1. Benefits

This proposed rule would enable air carrier and other commercial operations of powered-lift to occur by extending the applicability of the appropriate set of operating rules that would apply both risk mitigation measures and a framework for FAA oversight, as necessary to ensure safety.

Operations that occur with powered-lift could offer many benefits. For example, some powered-lift may be capable of transporting heavier loads at higher altitudes and faster cruise speeds than helicopters, yet they maintain the capability of taking off and landing vertically. The faster cruise speeds and range could also improve response times by as much as 50 percent for search and rescue operations and allow a higher level of life-saving care during transport because of a smoother flight profile compared to helicopters.[40] In addition powered-lift operations could increase the efficiency of crew transport to oil rigs as they move further from land, or other offshore locations with smaller landing areas. Certificate holders may also seek to use powered-lift for transporting passengers point-to-point; for example, transportation could occur from a heliport and proceed at turbo-prop airspeeds and ranges. Using powered-lift for transport of passengers could increase the capacity of the NAS and reduce delays without requiring additional infrastructure.[41]

Powered-lift projects exist that are either in certification, design, proof of concept, or prototype phases of design refinement. One project underway is a 9-passenger tilt-rotor turboshaft design. This manufacturer is also in the conceptual design phase of a 20-

[40] *Military, GLOBALSECURITY.ORG* (last visited August 22, 2022), *available at https://www.globalsecurity.org/military/world/europe/aw609.htm.*

[41] Costa, Guillermo J., *Conceptual Design of a 150-Passenger Civil Tiltrotor,* NASA Ames Research Center—Aeromechanics Branch (Aug. 2012), (last visited August 22, 2022) *available at https://rotorcraft.arc.nasa.gov/Publications/files/Guillermo_Costa_TR150_Paper.pdf.*

passenger powered-lift. Another powered-lift project underway is seeking to become the first certificated electric Vertical Takeoff and Landing (eVTOL) operator under part 119 to carry passengers in the United States.

2. Costs and Costs Savings

Cost Savings—Operations Specifications

The FAA proposes to amend provisions in §§ 119.49(a)(12), (b)(12), (c)(11) and 91.1015(b)(9) as the FAA has determined they are broad and unduly burdensome. Currently, these provisions require a certificate holder's operations specifications to contain a list of exemptions and deviations issued under 14 CFR chapter 1 that are applicable to the aircraft, the operator, and airmen. The proposed rule would require *only* exemptions and deviations that apply to the certificate holder (rather than to the aircraft) to be retained in operations specifications. Although the amendment to these provisions is relieving, the costs savings are minimal because the operations specifications are maintained electronically.

Costs—Part 121 Certificate Holder Chief Pilot Management Position

As a result of applying the rules of part 121 to certificate holders that operate powered-lift and fulfill the terms of either domestic, flag, or supplemental operations, this proposed rulemaking expands the part 119 certificate holder requirements for the part 121 management position of Chief Pilot (§ 119.65). As amended, the certificate holder would be required to have a Chief Pilot for each category of aircraft used by the certificate holder to conduct operations. Currently, the Chief Pilot is only required to have an ATP certificate, with appropriate ratings, for at least one of the airplanes used in the certificate holder's operations. One person may be able to meet the requirements of the Chief Pilot. This person would have to be dual qualified in both airplanes and powered-lift. A certificate holder's cost may increase if more than one Chief Pilot is hired to meet the qualification requirements.

Although the definitional changes to § 110.2 would enable part 121 certificate holders to have a fleet mix of more than one category of aircraft, the FAA is unaware of whether such certificate holders would choose to do so. However, if a part 121 certificate holder chooses to conduct operations with aircraft other than airplanes, the certificate holder's cost of retaining a Chief Pilot would be minimal because the individual filling this position could be acting in the position of Chief Pilot while also serving as a line pilot. Should Part 121 certificate holders choose to conduct operations with a mixed aircraft fleet, it is expected that they would do so only if the expected benefits exceeded its costs. Subsequently, the economic impact of the proposed amendments for the qualifications of Chief Pilot will be minimal. The FAA seeks comment on whether the proposed change that would require a part 121 certificate holder to have a Chief Pilot for each category of aircraft used to conduct operations would be minimal cost to the certificate holder.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) established the purpose of the RFA was to ensure agencies, in issuing regulations, ''endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' [42] The RFA further directs agencies as follows: ''[t]o achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' [43]

The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify, and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The proposed rule may impact small entities but would have a minimal economic impact as the proposed rule is enabling while imposing minimal costs. First and foremost, the proposed rule changes definitions contained in § 110.2 and the appropriate applicability of sections within part 119 to enable powered-lift to conduct air carrier and other certain commercial operations, commercial air tours and noncommon carriage operations. Absent the proposed rule, an air carrier desiring to conduct operations using powered-lift would not be able to comply with the requirements of 49 U.S.C. 44701(d) or 44705. Such operations, therefore, would be prohibited in the absence of this proposed rule.

Secondly, the proposed rule would remove the requirement for a certificate holder to maintain a list of exemptions and deviations related to aircraft in its fleet as required by §§ 119.49(a)(12), (b)(12), (c)(11) and 91.1015(a)(9). The impact could provide minimal relief for certificate holders by reducing the volume of records certificate holders must retain in their operations specifications.

Lastly, due to a change in the definitions contained in 14 CFR 110.2, this proposed rule would enable part 121 certificate holders to conduct operations using powered-lift. As a result, the proposed rule would revise part 121 certificate holder management qualifications for the Chief Pilot. Current regulations require Chief Pilots to have an ATP certificate for at least one of the airplanes used in a certificate holder's operations. As proposed, the regulations would require the certificate holder to have a Chief Pilot qualified for each category of aircraft that the certificate holder uses.

The FAA determines that the expansion of the qualifications for the position of Chief Pilot resulting from enabling additional aircraft categories to conduct part 121 operations would impose a minimal economic impact for part 121 certificate holders. Considering that this rulemaking is enabling, a part 121 certificate holder will voluntarily choose to operate a fleet of more than one aircraft category only if the expected benefits of doing so exceed the costs. The FAA seeks comment on whether the proposed change that requires a part 121 certificate holder to have a Chief Pilot for each category of aircraft used to conduct operations would be minimal cost to the operator.

The Small Business Administration (SBA) defines small businesses that operate a scheduled or nonscheduled airline to be 1,500 employees or less.[44] At the end of calendar year 2021, employment data was available for each of the 59 carriers reporting employment

[42] Public Law 96–354 sec. 2(b), 94 Stat. 1164 (Sept. 19, 1980).

[43] Id.

[44] *U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System Codes* U.S. Small Business Admin., *available at https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

data to the U.S. Department of Transportation.[45] This data reveals that 23 of the 59 reporting carriers are large entities and 36 are small entities. This proposed rule would also affect over 2,600 additional entities for which employment data is sparse.[46] While some of these entities may be large, a majority are anticipated to be small.

If an agency determines that a rulemaking would not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking would not result in a significant economic impact on a substantial number of small entities. The FAA requests comments on this determination.

C. International Trade Impact Assessment

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 standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes 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.

The FAA has analyzed this proposed rule in conjunction with the requirements of the Trade Agreements Act of 1979, as amended by the Uruguay Round Agreements Act. The FAA has determined the proposed rule would not present any obstacle to foreign commerce of the United States. In addition, the proposed rule is not contrary to international standards.

D. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. The FAA determined that the proposed rule will not result in the expenditure of $165 million or more by State, local, or tribal governments, in the aggregate, or the private sector, in any one year.

This rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the regulations that implement the Act, codified at 5 CFR 1320.8(b)(2)(vi), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement, unless it displays a currently valid Office of Management and Budget (OMB) control number.

This action contains the following proposed revisions to existing information collection requests. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these proposed information collection request revisions to OMB for its review.

None of the information collection instruments would change for this proposed rule; the FAA would continue to collect the necessary information in the same manner that the FAA described in its prior notices concerning the information collections. The Office of Management and Budget has approved the FAA's collection of information for purposes of such compliance.[47] However, this NPRM proposes to increase the potential number of respondents to whom the information collection requirements apply.

Each section below identifies the information collections affected by this NPRM. The FAA has estimated the increase in the existing burden based on four-part 119 certificate holders beginning part 135 operations with powered-lift by the end of the third year following publication of the final rule.[48]

While this NPRM would permit part 119 certificate holders to conduct operations under part 121, the FAA does not believe that any such certificate holders would do so in the first three years following finalization of this NPRM. Therefore, the FAA has not estimated any burden increase for existing information collection 2120–0008, Part 121 Operating Requirements: Domestic, Flag, and Supplemental Operations, at this time. Further, the FAA does not believe that any such certificate holders would conduct operations under part 125 in the first three years following finalization of this NPRM. Therefore, the FAA has not estimated any burden increase for existing information collection 2120–0085. The FAA seeks comment regarding these assumptions.

1. Revision of Existing Information Collection 2120–0593: Federal Aviation Regulation Part 119—Certification: Air Carriers and Commercial Operators[49]

This proposed rule would extend the requirements of part 119 to certificate holders that conduct operations with powered-lift.

Abstract: Organizations that desire to become or remain certified as air carriers or commercial operators are mandated to report information to the FAA. The information collected reflects requirements necessary under parts 135, 121, and 125 to conform to 14 CFR part 119—Certification: Air Carriers and Commercial Operators. The FAA will use the information it collects and reviews to ensure compliance and adherence to regulations and, if applicable, to take enforcement action on violators of the regulations.

The FAA has estimated the increase in the existing burden based on four certificate holders beginning powered-lift operations by the end of the third

[45] *Airline Employment Data by Month,* Bureau of Transp. Statistics, *available at https://www.transtats.bts.gov/Employment/.* Information reported is from filings for December 2021.

[46] FAA Internal Data as of July 2022 shows the approximate number of certificate holders to be as follows: part 121—58; part 135—1,877; part 121 and 135—6; § 91.147 Air Tour Operators—957 (252 of § 91.147 operators also hold a part 135 certificate); part 125—38; part 91K Fractional Ownerships—10.

[47] *Certification: Air Carriers and Commercial Operators,* Supporting Statement: Information Collection Request Reference No. 2120–0593 (April 19, 2021), *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202011-2120-001.*

[48] Official FAA forecasts related to the operation of powered-lift in the National Airspace System (NAS) have yet to be developed. As of July 2022, approximately 10 applicants were undergoing type certification at FAA for powered-lift projects. Two of these projects have progressed further through the approval process and could be issued a type certificate as early as 2024. For purposes of estimating the increase in the existing information collection, it is determined four part 119 certificate holders will begin part 135 operations with powered-lift by the end of the third year following finalization of this proposed rule. Publicly available data was used to forecast the powered-lift fleet. Forecasts for airmen and departures were developed based on utilization of the fleet (*i.e.,* hours flown).

[49] Ibid.

year following finalization of this NPRM.[50] Note that not all information collection requirements are proposed to have a burden increase because of the proposed revision to this information collection.

TABLE 3—THREE-YEAR BURDEN ESTIMATE FOR INFORMATION COLLECTION 2120–0593 CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

Section	Section title	Number of respondents	Number of responses	Total responses	Time per response—technical ($32.21/hr)	Time per response—admin. asst. ($24.51/hr)	Total burden (hours)	Total burden (cost)
119.33c	Proving Test Plan	4	1	4	2.0	1.0	12	$356
119.35	Certificate Application Reqts—all Operators.	4	1	4	80.0	16.0	384	11,876
119.36	Certificate Application Reqts for Commercial Operators.	4	1	4	2.0	4.0	24	650
119.41c	Amending a Certificate	1	1	1	0.5	0.1	0.6	19
119.69e3	Management Personnel Required, Pt 135.	4	1	4	1.0	0.5	6	178
119.71f	Management Personnel Qualifications, Pt 135.	4	1	4	1.0	0.5	6	178
		.....	.....	.....	.....	.....	433	13,256

Note: Column and row totals may not sum due to rounding.

2. Revision of Existing Information Collection 2120–0607: Pilot Records Improvement Act of 1996/Pilot Records Database [51]

Abstract: With the exception of Form 8060–14 and –15, an operator utilizes the various 8060 forms to report a request for the applicable records of all applicants for the position of pilot with their company as needed under PRIA. The information collected on these forms will be used only to facilitate search and retrieval of the requested records, and submission is mandatory until PRIA sunsets. Operators then ''may use such records only to assess the qualification of the individual in deciding whether or not to hire the individual as a pilot.'' (49 U.S.C. 44703(h)(11)). For purposes of this incremental information collection the FAA expects pilots to access the pilot records database web-based application to release records to operators for review and to update employment history. In turn, the hiring operator uses the information to help them perform a comprehensive assessment of the pilot prior to making a hiring decision, as required by the Act.

The FAA has estimated the increase in the existing burden for this collection based on four-part 119 certificate holders employing 129 commercial pilots holding an airmen's certificate in the powered-lift category by the end of the third year following finalization of this proposed rule. Note that not all information collection requirements are proposed to have a burden increase as a result of the proposed revision to this information collection.

TABLE 6—THREE-YEAR BURDEN ESTIMATE FOR INFORMATION COLLECTION 2120–0607 [52] PILOT RECORDS DATABASE

	Year 1	Year 2	Year 3	Total
New Pilots	0	44	85	129
Cumulative Pilots	0	44	129	.....

[50] This burden is based on work performed by technical specialists and/or administrative assistants. The fully-burdened hourly wage used to estimate costs includes the base hourly wage for each job category plus an increase to account for fringe benefits and overhead. The base hourly wage for the technical specialist and administrative assistant is estimated to be $20.95 and $15.95, respectively (source: *https://www.payscale.com/research/US/Job=Technical_Specialist/Salary; https://www.payscale.com/research/US/Job=Administrative_Assistant/Hourly_Rate*). The base wage is increased by a multiplier of 34.1 percent for fringe benefits (source: *https://www.bls.gov/news.release/ecec.nr0.htm*) and 17.0 percent for overhead (source) Cody Rice, U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program'' June 10, 2002, *https://www.regulations.gov/document?D=EPA-HQ-OPPT-2014-0650-0005*). Summing together the base hourly wage, fringe benefits, and overhead results in a fully-loaded hourly wage of $32.21 for a technical specialist and $24.51 for an administrative assistant.

[51] Official FAA forecasts related to the operation of powered-lift in the National Airspace System (NAS) have yet to be developed. Thus, forecasts for operators of part 135 aircraft and fleet were prepared solely for the purpose of estimating the cost of the information collections affiliated with this proposed rule, and developed using publicly available data related to orders and options for powered-lift. FAA notes that none of the orders for the multitude of powered-lift aircraft models being developed are firm as of the time of this writing, with the exception of one model. Using the fleet forecast and an assumption for fleet utilization (*i.e.* hours flown), forecasts for airmen and departures were also developed to estimate costs of the paperwork burden.

[52] Occupational Employment and Wages, May 2019, 11–3121 Human Resources Managers, Bureau of Labor Statistics, Mean Hourly Wage Rate ($62.29). *https://www.bls.gov/oes/2019/may/oes113121.htm.* The fully-burdened wage rate is $91.33 and includes employee compensation that is related to fringe benefits and is estimated to be 31.8 percent of the fully-burdened wage. Source: Bureau of Labor Statistics, Employer Costs for Employee Compensation (*https://www.bls.gov/news.release/pdf/ecec.pdf*; data provided in news release vary slightly by month). The FAA used a ground instructor base hourly wage rate ($31.56) as a proxy for the pilot non-flying base hourly wage rate (source: Bureau of Labor Statistics (BLS) Occupational Employment Statistics for Air Transportation Industry. *https://www.bls.gov/oes/2019/may/oes131151.htm:* Training and Development Specialists (13–1151). The fully-burdened wage rate is $46.28 and includes employee compensation related to benefits that is estimated to be 31.8 percent of the fully-burdened wage. (Source: Bureau of Labor Statistics, Employer Costs for Employee Compensation.)

Pilot activity—by event	Events per year	Hrs per event	Year 1 (hrs)	Year 2 (hrs)	Year 3 (hrs)	Total (hrs)
Database Registration—New Pilots	1.0	0.33	0	14.5	28.1	42.6
Input Employment History—New Pilots	1.0	0.03	0	1.3	2.6	3.9
Total Time (Hours)			0.0	15.8	30.7	46.5
Pilot activity—by cost		Cost per hr	Year 1	Year 2	Year 3	Total
Database Registration—New Pilots		$46.28	$0	$671	$1,301	$1,972
Input Employment History—New Pilots		46.28	0	60	120	181
Total Cost			0	731	1,421	2,152
Operator activity—by event	Events per year	Hrs per event	Year 1 (hrs)	Year 2 (hrs)	Year 3 (hrs)	Total (hrs)
Training/checking events—Cumul. Pilots	2.7	0.07	0	8.3	24.4	32.7
Ground training events—Cumul. Pilots	1.0	0.07	0	3.1	9.0	12.1
Verification of NDR * Search—New Pilots	0.5	0.01	0	0.2	0.4	0.6
Initial train/check—New Pilots	1.0	0.07	0	3.1	6.0	9.1
Total Time (Hours)			0	14.7	39.8	54.5
Operator events—by cost		Cost per hr	Year 1	Year 2	Year 3	Total
Training/checking events—Cumul. Pilots		$91.33	$0	$758	$2,228	$2,986
Ground training events—Cumul. Pilots		91.33	0	283	822	1,105
Verification of NDR * Search—New Pilots		91.33	0	18	37	55
Initial train/check—New Pilots		91.33	0	283	548	4,146
Total Cost			0	1,343	3,635	8,293

Note: Row and column totals may not sum due to rounding.

3. Revision of Existing Information Collection 2120–0535: Anti-Drug Program for Personnel Engaged in Specified Aviation Activities [53]

Abstract: Part 119 certificate holders with the authority to operate under part 121 and 135, air tour operators as defined in 14 CFR 91.147, non-FAA or Military Air Traffic Control Facilities, contractors, or repair stations under 14 CFR part 145 that conduct drug and alcohol testing programs are mandated to report information to this collection. The FAA uses this information for determining program compliance or non-compliance of regulated aviation employers, oversight planning, determining who must provide a mandatory annual Management Information System (MIS) testing information, and communicating with entities subject to the program regulations. In addition, the information is used to ensure that appropriate action is taken regarding crewmembers and other safety-sensitive employees who have tested positive for drugs or alcohol or have refused to submit to testing. The collection includes reporting, recordkeeping, and disclosure information. Using the information reported on the annual MIS allows the FAA Administrator to determine the random testing rates for the following year, which is published in the **Federal Register**.

The FAA has estimated the incremental increase in the existing burden for this collection based on four powered-lift operators entering service by the end of the third year following finalization of this proposed rule. Below are the reporting requirements for this information collection. Note that not all information collection requirements are proposed to have a burden increase because of the proposed revision to this information collection.

TABLE 8—THREE-YEAR BURDEN ESTIMATE FOR INFORMATION COLLECTION 2120–0535 ANTI-DRUG PROGRAM FOR PERSONNEL ENGAGED IN SPECIFIED AVIATION ACTIVITIES

PRA task item	Responses (three years)	Time per response (hours)	Total 3-yr burden (hours)	Fully-burdened hourly wage ($25.33)	Total 3-yr burden ($)
Promulgate Policy	4	16.00	64.0	$25.33	$1,621
Registration (New or Amended)	4	1.00	4.0	25.33	101
Supervisory Drug and Alcohol Training	6	0.25	1.6	25.33	41
Employee Training Documentation	129	0.25	32.3	25.33	817
Reasonable Cause/Suspicion Documentation	1.5	2.00	3.0	25.33	76
Voluntary Disclosure	1.0	40.00	40.0	25.33	1,013
Emergency Maintenance	1	1.25	1.3	25.33	32

[53] Official FAA forecasts related to the operation of powered-lift in the National Airspace System (NAS) have yet to be developed. Thus, forecasts for operators of part 135 aircraft and fleet were prepared solely for the purpose of estimating the cost of the information collections affiliated with this proposed rule, and developed using publicly available data related to orders and options for powered-lift. FAA notes that none of the orders for the multitude of powered-lift aircraft models being developed are firm as of the time of this writing, with the exception of one model. Using the fleet forecast and an assumption for fleet utilization (*i.e.* hours flown), forecasts for airmen and departures were also developed to estimate costs of the paperwork burden.

TABLE 8—THREE-YEAR BURDEN ESTIMATE FOR INFORMATION COLLECTION 2120–0535 ANTI-DRUG PROGRAM FOR PERSONNEL ENGAGED IN SPECIFIED AVIATION ACTIVITIES—Continued

PRA task item	Responses (three years)	Time per response (hours)	Total 3-yr burden (hours)	Fully-burdened hourly wage ($25.33)	Total 3-yr burden ($)
Scientifically Valid Random Testing Process	83	1.00	82.8	25.33	2,097
Medical Review Officer Recordkeeping Provision	4	0.25	1.0	25.33	25
Total Incremental Change for OMB 2120–0535	234		229.9		5,823

Note: Row and column totals may not sum due to rounding.

The FAA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the FAA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FAA's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these updated estimates to OMB for its review. Individuals and organizations may send comments on the information collection requirement to the address listed in the **ADDRESSES** section at the beginning of this preamble by February 6, 2023. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Office Building, Room 10202, 725 17th Street NW, Washington, DC 20053.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these standards and recommended practices.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f for regulations and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism (Aug. 4, 1999). The agency has determined this action would not have a substantial, direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, this proposed rule would not have federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. The agency has determined that it would not be a ''significant energy action'' under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The agency may change this proposal in light of the comments it receives.

B. Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this

NPRM. Submissions containing CBI should be sent to the person in the **FOR FURTHER INFORMATION CONTACT** section of this document. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

C. Electronic Access and Filing

A copy of this NPRM, all comments received, any final rule, and all background material may be viewed online at *https://www.regulations.gov* using the docket number listed above. A copy of this proposed rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *https://www.federalregister.gov* and the Government Publishing Office's website at *https://www.govinfo.gov.* A copy may also be found at the FAA's Regulations and Policies website at *https://www.faa.gov/regulations_policies.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

List of Subjects

14 CFR Part 91

Air carrier, Air taxis, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Transportation.

14 CFR Part 110

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 136

Air transportation, Aircraft, Aviation safety, National parks, Recreation and recreation areas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Amend § 91.146 by revising the introductory text of paragraph (b) and paragraphs (b)(2), (b)(3), (b)(5), and (b)(7) to read as follows:

§ 91.146 Passenger-carrying flights for the benefit of a charitable, nonprofit, or community event.

* * * * *

(b) Passenger-carrying flights in airplanes, powered-lift, or rotorcraft for the benefit of a charitable, nonprofit, or community event identified in paragraph (c) of this section are not subject to the certification requirements of part 119 or the drug and alcohol testing requirements in part 120 of this chapter, provided the following conditions are satisfied and the limitations in paragraphs (c) and (d) of this section are not exceeded:

* * * * *

(2) The flight is conducted from a public airport that is adequate for the aircraft used, or from another location the FAA approves for the operation;

(3) The aircraft has a maximum of 30 seats, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds;

* * * * *

(5) Each aircraft holds a standard airworthiness certificate, is airworthy, and is operated in compliance with the applicable requirements of subpart E of this part;

* * * * *

(7) Reimbursement of the operator of the aircraft is limited to that portion of the passenger payment for the flight that does not exceed the pro rata cost of owning, operating, and maintaining the aircraft for that flight, which may include fuel, oil, airport expenditures, and rental fees;

* * * * *

■ 3. Amend § 91.147 by revising paragraph (a) to read as follows:

§ 91.147 Passenger-carrying flights for compensation or hire.

* * * * *

(a) For the purposes of this section and for drug and alcohol testing, *Operator* means any person conducting nonstop passenger-carrying flights in an airplane, powered-lift, or rotorcraft for compensation or hire in accordance with § 119.1(e)(2), § 135.1(a)(5), or § 121.1(d) of this chapter that begin and end at the same airport and are conducted within a 25-statute mile radius of that airport.

* * * * *

■ 4. Amend § 91.1015 by revising paragraph (a)(9) to read as follows:

§ 91.1015 Management specifications.

(a) * * *

(9) Any authorized deviation and exemption that applies to the person conducting operations under this subpart; and

* * * * *

PART 110—GENERAL REQUIREMENTS

■ 5. The authority citation for part 110 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

■ 6. Amend § 110.2 by revising the introductory text of the definition of ''commercial air tour'', the definitions of ''commuter operation'', ''domestic operation'', ''flag operation'', ''on-demand operation'', and ''supplemental operation'' to read as follows:

§ 110.2 Definitions.

* * * * *

Commercial air tour means a flight conducted for compensation or hire in an airplane, powered-lift, or rotorcraft where a purpose of the flight is sightseeing. The FAA may consider the following factors in determining whether a flight is a commercial air tour:

* * * * *

Commuter operation means any scheduled operation conducted by any

person operating one of the following types of aircraft with a frequency of operations of at least five round trips per week on at least one route between two or more points according to the published flight schedules:

(1) Rotorcraft; or

(2) Airplanes or powered-lift that:

(i) Are not turbojet-powered;

(ii) Have a maximum passenger-seat configuration of 9 seats or less, excluding each crewmember seat; and

(iii) Have a maximum payload capacity of 7,500 pounds or less.

* * * * *

Domestic operation means any scheduled operation conducted by any person operating any aircraft described in paragraph (1) of this definition at locations described in paragraph (2) of this definition:

(1) Airplanes or powered-lift that:

(i) Are turbojet-powered;

(ii) Have a passenger-seat configuration of more than 9 passenger seats, excluding each crewmember seat; or

(iii) Have a payload capacity of more than 7,500 pounds.

(2) Locations:

(i) Between any points within the 48 contiguous States of the United States or the District of Columbia; or

(ii) Operations solely within the 48 contiguous States of the United States or the District of Columbia; or

(iii) Operations entirely within any State, territory, or possession of the United States; or

(iv) When specifically authorized by the Administrator, operations between any point within the 48 contiguous States of the United States or the District of Columbia and any specifically authorized point located outside the 48 contiguous States of the United States or the District of Columbia.

* * * * *

Flag operation means any scheduled operation conducted by any person operating any aircraft described in paragraph (1) of this definition at locations described in paragraph (2) of this definition:

(1) Airplanes or powered-lift that:

(i) Are turbojet-powered;

(ii) Have a passenger-seat configuration of more than 9 passenger seats, excluding each crewmember seat; or

(iii) Have a payload capacity of more than 7,500 pounds.

(2) Locations:

(i) Between any point within the State of Alaska or the State of Hawaii or any territory or possession of the United States and any point outside the State of Alaska or the State of Hawaii or any territory or possession of the United States, respectively; or

(ii) Between any point within the 48 contiguous States of the United States or the District of Columbia and any point outside the 48 contiguous States of the United States and the District of Columbia; or

(iii) Between any point outside the U.S. and another point outside the U.S.

* * * * *

On-demand operation means any operation for compensation or hire that is one of the following:

(1) Passenger-carrying operations conducted as a public charter under part 380 of this chapter or any operations in which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative that are any of the following types of operations:

(i) Common carriage operations conducted with airplanes or powered-lift, including any that are turbojet-powered, having a passenger-seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less. The operations described in this paragraph do not include operations using a specific airplane or powered-lift that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) of this chapter, for those operations are considered supplemental operations;

(ii) Noncommon or private carriage operations conducted with airplanes or powered-lift having a passenger-seat configuration of less than 20 seats, excluding each crewmember seat, and a payload capacity of less than 6,000 pounds; or

(iii) Any rotorcraft operation.

(2) Scheduled passenger-carrying operations conducted with one of the following types of aircraft, other than turbojet-powered aircraft, with a frequency of operations of less than five round trips per week on at least one route between two or more points according to the published flight schedules:

(i) Airplanes or powered-lift having a maximum passenger-seat configuration of 9 seats or less, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less; or

(ii) Rotorcraft.

(3) All-cargo operations conducted with airplanes or powered-lift having a payload capacity of 7,500 pounds or less, or with rotorcraft.

* * * * *

Supplemental operation means any common carriage operation for compensation or hire conducted with any aircraft described in paragraph (1) of this definition that is a type of operation described in paragraph (2) of this definition:

(1) Airplanes or powered-lift that:

(i) Have a passenger-seat configuration of more than 30 seats, excluding each crewmember seat.

(ii) Have a payload capacity of more than 7,500 pounds.

(iii) Are propeller-powered and:

(A) Have a passenger-seat configuration of more than 9 seats and less than 31 seats, excluding each crewmember seat; and

(B) Are used in domestic or flag operations but are so listed in the operations specifications as required by § 119.49(a)(4) of this chapter for such operations.

(iv) Are turbojet-powered and:

(A) Have a passenger seat configuration of 1 or more but less than 31 seats, excluding each crewmember seat; and

(B) Are used in domestic or flag operations and are so listed in the operations specifications as required by § 119.49(a)(4) of this chapter for such operations.

(2) Types of operation:

(i) Operations for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative.

(ii) All-cargo operations.

(iii) Passenger-carrying public charter operations conducted under part 380 of this chapter.

* * * * *

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 7. The authority citation for part 119 is revised to read as follows:

Authority: Pub. L. 111–216, sec. 215 (August 1, 2010); 49 U.S.C. 106(f), 106(g), 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

■ 8. Amend § 119.1 by revising paragraph (a)(2), adding paragraph (a)(3), and revising the introductory text of paragraph (e), paragraphs (e)(2), (e)(4)(v), (e)(5), the introductory text of paragraph (e)(7), paragraphs (e)(7)(i), (e)(7)(iii), and (e)(7)(vii), to read as follows:

§ 119.1 Applicability.

(a) * * *

(2) When common carriage is not involved, in operations of any U.S.-

registered civil airplane or powered-lift with a seat configuration of 20 or more passengers, or a maximum payload capacity of 6,000 pounds or more; or

(3) When noncommon carriage is involved, except as provided in § 91.501(b) of this chapter, or in private carriage for compensation or hire, in operations of any U.S.-registered civil airplane or powered-lift with a passenger-seat configuration of less than 20 seats and a payload capacity of less than 6,000 pounds.

* * * * *

(e) Except for operations when common carriage is not involved conducted with any airplane or powered-lift having a passenger-seat configuration of 20 seats or more, excluding any required crewmember seat, or a payload capacity of 6,000 pounds or more, this part does not apply to—

* * * * *

(2) Nonstop Commercial Air Tours that occur in an airplane, powered-lift, or rotorcraft having a standard airworthiness certificate and passenger-seat configuration of 30 seats or fewer and a maximum payload capacity of 7,500 pounds or less that begin and end at the same airport, and are conducted within a 25-statute mile radius of that airport, in compliance with the Letter of Authorization issued under § 91.147 of this chapter. For nonstop Commercial Air Tours conducted in accordance with part 136, subpart B of this chapter, National Parks Air Tour Management, the requirements of this part apply unless excepted in § 136.37(g)(2). For Nonstop Commercial Air Tours conducted in the vicinity of the Grand Canyon National Park, Arizona, the requirements of SFAR 50–2, part 93, subpart U, and this part, as applicable, apply.

* * * * *

(4) * * *

(v) Powered-lift or rotorcraft operations in construction or repair work (but this exception does apply to transportation to and from the site of operations); and

* * * * *

(5) Sightseeing flights conducted in hot air balloons or gliders;

* * * * *

(7) Powered-lift or rotorcraft flights conducted within a 25 statute mile radius of the airport of takeoff if—

(i) Not more than two passengers are carried in the aircraft in addition to the required flightcrew;

* * * * *

(iii) The aircraft used is certificated in the standard category and complies with the 100-hour inspection requirements of part 91 of this chapter;

* * * * *

(vii) Cargo is not carried in or on the aircraft;

* * * * *

■ 9. Amend § 119.5 by revising paragraphs (b) and (c) to read as follows:

§ 119.5 Certifications, authorizations, and prohibitions.

* * * * *

(b) A person not authorized to conduct direct air carrier operations, but authorized by the Administrator to conduct operations as a U.S. commercial operator, will be issued an Operating Certificate.

(c) A person not authorized to conduct direct air carrier operations, but authorized by the Administrator to conduct operations when common carriage is not involved as an operator of any U.S.-registered civil airplane or powered-lift with a seat configuration of 20 or more passengers, or a maximum payload capacity of 6,000 pounds or more, will be issued an Operating Certificate.

* * * * *

■ 10. Amend § 119.21 by revising the introductory text of paragraph (a) to read as follows:

§ 119.21 Commercial operators engaged in intrastate common carriage and direct air carriers.

(a) Each person who conducts airplane or powered-lift operations as a commercial operator engaged in intrastate common carriage of persons or property for compensation or hire in air commerce, or as a direct air carrier, shall comply with the certification and operations specifications requirements in subpart C of this part, and shall conduct its:

* * * * *

■ 11. Amend § 119.23 by revising the section heading, paragraphs (a) introductory text, (a)(2), and the introductory text of paragraph (b) to read as follows:

§ 119.23 Operators engaged in passenger-carrying operations, cargo operations, or both with airplanes or powered-lift when common carriage is not involved.

(a) Each person who conducts operations when common carriage is not involved with any airplane or powered-lift having a passenger-seat configuration of 20 seats or more, excluding each crewmember seat, or a payload capacity of 6,000 pounds or more, must, unless deviation authority is issued—

* * * * *

(2) Conduct its operations in accordance with the requirements of part 125 of this chapter; and

* * * * *

(b) Each person who conducts noncommon carriage (except as provided in § 91.501(b) of this chapter) or private carriage operations for compensation or hire with any airplane or powered-lift having a passenger-seat configuration of less than 20 seats, excluding each crewmember seat, and a payload capacity of less than 6,000 pounds, must—

* * * * *

■ 12. Amend § 119.49 by revising paragraphs (a)(12), (b)(12), and (c)(11) to read as follows:

§ 119.49 Contents of operations specifications.

(a) * * *

(12) Any authorized deviation or exemption from any requirement of this chapter that applies to the certificate holder.

* * * * *

(b) * * *

(12) Any authorized deviation or exemption from any requirement of this chapter that applies to the certificate holder.

* * * * *

(c) * * *

(11) Any authorized deviation or exemption from any requirement of this chapter that applies to the certificate holder.

* * * * *

■ 13. Amend § 119.65 by revising paragraphs (a)(3) and (b)(2) to read as follows:

§ 119.65 Management personnel required for operations conducted under part 121 of this chapter.

(a) * * *

(3) Chief Pilot for each category of aircraft the certificate holder uses, as listed in § 61.5(b)(1) of this chapter.

* * * * *

(b) * * *

(2) The number and type of aircraft used; and

* * * * *

■ 14. Revise § 119.67 to read as follows:

§ 119.67 Management personnel: Qualifications for operations conducted under part 121 of this chapter.

(a) *Director of Operations.* To serve as Director of Operations under § 119.65(a), a person must hold an airline transport pilot certificate and—

(1) If the certificate holder uses large aircraft, at least 3 years of supervisory or managerial experience within the last 6 years in large aircraft, in a position

that exercised operational control over any operations conducted under parts 121 or 135 of this chapter.

(2) If the certificate holder uses large aircraft, at least 3 years of experience as pilot in command under parts 121 or 135 of this chapter in large aircraft in at least one of the categories of aircraft the certificate holder uses, as listed in § 61.5(b)(1) of this chapter. In the case of a person becoming Director of Operations for the first time, he or she must have accumulated this experience as pilot in command within the past 6 years.

(3) If the certificate holder uses only small aircraft in its operations, the experience required in paragraphs (a)(1) and (2) of this section may be obtained in either large or small aircraft.

(b) *Chief Pilot.* To serve as Chief Pilot under § 119.65(a), a person must:

(1) Hold an airline transport pilot certificate with appropriate ratings in the category of aircraft that the certificate holder uses in its operations under part 121 and over which the Chief Pilot exercises responsibility; and

(2) Have at least 3 years of experience as pilot in command in the same category of aircraft that the certificate holder uses, as listed in § 61.5(b). The experience as pilot in command described in this paragraph (b)(2) must:

(i) Have occurred within the past 6 years, in the case of a person becoming a Chief Pilot for the first time.

(ii) Have occurred in large aircraft operated under parts 121 or 135 of this chapter. If the certificate holder uses only small aircraft in its operation, this experience may be obtained in either large or small aircraft.

(iii) Be in the same category of aircraft over which the Chief Pilot exercises responsibility.

(c) *Director of Maintenance.* To serve as Director of Maintenance under § 119.65(a), a person must:

(1) Hold a mechanic certificate with airframe and powerplant ratings;

(2) Have 1 year of experience in a position responsible for returning aircraft to service;

(3) Have at least 1 year of experience in a supervisory capacity under either paragraph (c)(4)(i) or (ii) of this section maintaining the same category and class of aircraft as the certificate holder uses; and

(4) Have 3 years of experience within the past 6 years in one or a combination of the following—

(i) Maintaining large aircraft with 10 or more passenger seats, including, at the time of appointment as Director of Maintenance, experience in maintaining the same category and class of aircraft as the certificate holder uses; or

(ii) Repairing aircraft in a certificated airframe repair station that is rated to maintain aircraft in the same category and class of aircraft as the certificate holder uses.

(d) *Chief Inspector.* To serve as Chief Inspector under § 119.65(a), a person must:

(1) Hold a mechanic certificate with both airframe and powerplant ratings, and have held these ratings for at least 3 years;

(2) Have at least 3 years of maintenance experience on different types of large aircraft with 10 or more passenger seats with an air carrier or certificated repair station, 1 year of which must have been as maintenance inspector; and

(3) Have at least 1 year of experience in a supervisory capacity maintaining the same category and class of aircraft as the certificate holder uses.

(e) *Deviation.* A certificate holder may request a deviation to employ a person who does not meet the appropriate airman experience, managerial experience, or supervisory experience requirements of this section if the Manager of the Air Transportation Division or the Manager of the Aircraft Maintenance Division, as appropriate, finds that the person has comparable experience and can effectively perform the functions associated with the position in accordance with the requirements of this chapter and the procedures outlined in the certificate holder's manual. Deviations under this paragraph may be granted after consideration of the size and scope of the operation and the qualifications of the intended personnel. The Administrator may, at any time, terminate any grant of deviation authority issued under this paragraph (e).

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 15. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40119, 41706, 42301 preceding note added by Pub. L. 112–95, sec. 412, 126 Stat. 89, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44729, 44732; 46105; Pub. L. 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112–95 126 Stat 62 (49 U.S.C. 44732 note).

■ 16. Amend § 121.1 by revising paragraphs (c) and (g) to read as follows:

§ 121.1 Applicability.

* * * * *

(c) Each person who applies for provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum segment under subpart Y of this part, and each person employed or used by an air carrier or commercial operator under this part to perform training, qualification, or evaluation functions under an Advanced Qualification Program under subpart Y of this part.

* * * * *

(g) This part also establishes requirements for operators to take actions to support the continued airworthiness of each aircraft.

§ 121.470 [Amended]

■ 18. Amend § 121.470 in paragraphs (a) and (b) by removing the word ''airplanes'' and adding, in its place, the word ''aircraft''.

§ 121.480 [Amended]

■ 19. Amend § 121.480 in paragraph (a) by removing the word ''airplanes'' and adding, in its place, the word ''aircraft''.

§ 121.500 [Amended]

■ 20. Amend § 121.500 in paragraph (a) by removing the word ''airplanes'' and adding, in its place, the word ''aircraft''.

PART 125—[Amended]

PART 125—CERTIFICATION AND OPERATIONS: AIRCRAFT HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 21. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 22. The heading for part 125 is revised as set forth above.

■ 23. Amend § 125.1 by revising paragraph (a), the introductory text of paragraph (b), paragraphs (b)(4), (c), and (e) to read as follows:

§ 125.1 Applicability.

(a) Except as provided in paragraphs (b) through (d) of this section, this part prescribes rules governing the operations of U.S.-registered civil airplanes and powered-lift, when those aircraft have a seating configuration of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more when common carriage is not involved.

(b) The rules of this part do not apply to the operations of aircraft specified in paragraph (a) of this section, when—

* * * * *

(4) They are being operated under part 91 by an operator certificated to operate those aircraft under the rules of parts 121, 135, or 137 of this chapter, they are being operated under the applicable rules of part 121 or 135 of this chapter by an applicant for a certificate under part 119 of this chapter, or they are being operated by a foreign air carrier or a foreign person engaged in common carriage solely outside the United States under part 91 of this chapter;

* * * * *

(c) This part, except § 125.247, does not apply to the operation of aircraft specified in paragraph (a) of this section when they are operated outside the United States by a person who is not a citizen of the United States.

* * * * *

(e) This part also establishes requirements for operators to take actions to support the continued airworthiness of each aircraft.

■ 24. Revise the introductory text of § 125.23 to read as follows:

§ 125.23 Rules applicable to operations subject to this part.

Each person operating an aircraft in operations under this part shall—

* * * * *

PART 136—COMMERCIAL AIR TOURS AND NATIONAL PARKS AIR TOUR MANAGEMENT

■ 25. The authority citation for part 136 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

■ 26. Amend § 136.1:

■ a. By revising paragraph (a), the introductory text of paragraph (b), and paragraph (c); and

■ b. In paragraph (d):

■ i. By revising the introductory text of the definition of ''commercial air tour'';

■ ii. By removing the definition of ''suitable landing area for helicopters''; and

■ iii. By adding the definition of ''suitable landing area for rotorcraft''

The revisions and addition read as follows:

§ 136.1 Applicability and definitions.

(a) This subpart applies to each person operating or intending to operate a commercial air tour in an airplane, powered-lift, or rotorcraft and, when applicable, to all occupants of those aircraft engaged in a commercial air tour. When any requirement of this subpart is more stringent than any other requirement of this chapter, the person operating the commercial air tour must comply with the requirement in this subpart.

(b) This subpart applies to:

* * * * *

(c) This subpart does not apply to operations conducted in balloons, gliders (powered and un-powered), parachutes (powered and un-powered), gyroplanes, or airships.

(d) * * *

Commercial Air Tour means a flight conducted for compensation or hire in an airplane, powered-lift, or rotorcraft where a purpose of the flight is sightseeing. The FAA may consider the following factors in determining whether a flight is a commercial air tour for purposes of this subpart:

* * * * *

Suitable landing area for rotorcraft means an area that provides the operator reasonable capability to land in an emergency without causing serious injury to persons. This suitable landing area must be site-specific, designated by the operator, and accepted by the FAA.

* * * * *

■ 27. Revise § 136.3 to read as follows:

§ 136.3 Letters of Authorization.

Operators subject to this subpart who have Letters of Authorization may use the procedures described in § 119.51 of this chapter to amend or have the FAA reconsider those Letters of Authorization.

■ 28. Revise § 136.5 to read as follows:

§ 136.5 Additional requirements for Hawaii.

Any operator subject to this subpart who meets the criteria of § 136.71 must comply with the additional requirements and restrictions in subpart D of this part.

■ 29. In § 136.9, revise the section heading and paragraphs (b)(1) through (b)(3) to read as follows:

§ 136.9 Life preservers for operations over water.

* * * * *

(b) * * *

(1) The aircraft is equipped with floats;

(2) The airplane is within power-off gliding distance to the shoreline for the duration of the time that the flight is over water; or

(3) The aircraft is a multiengine that can be operated with the critical engine inoperative at a weight that will allow it to climb, at least 50 feet a minute, at an altitude of 1,000 feet above the surface, as provided in the approved aircraft flight manual for that aircraft.

* * * * *

■ 30. Revise § 136.11 to read as follows:

§ 136.11 Rotorcraft floats for over water.

(a) A rotorcraft used in commercial air tours over water beyond the shoreline must be equipped with fixed floats or an inflatable flotation system adequate to accomplish a safe emergency ditching, if—

(1) It is a single-engine rotorcraft; or

(2) It is a multi-engine rotorcraft that cannot be operated with the critical engine inoperative at a weight that will allow it to climb, at least 50 feet a minute, at an altitude of 1,000 feet above the surface, as provided in the approved aircraft flight manual for that aircraft.

(b) Each rotorcraft that is required to be equipped with an inflatable flotation system under this section must have:

(1) The activation switch for the flotation system on one of the primary flight controls; and

(2) The flotation system armed when the rotorcraft is over water beyond the shoreline and is flying at a speed that does not exceed the maximum speed prescribed in the approved aircraft flight manual for flying with the flotation system armed.

(c) Neither fixed floats nor an inflatable flotation system is required for a rotorcraft under this section when that rotorcraft is:

(1) Over water only during the takeoff or landing portion of the flight; or

(2) Operated within power-off gliding distance to the shoreline for the duration of the flight and each occupant is wearing a life preserver from before takeoff until the aircraft is no longer over water.

■ 31. Revise § 136.13 to read as follows:

§ 136.13 Performance plan.

(a) Each operator that uses a rotorcraft must complete a performance plan before each commercial air tour or flight operated under §§ 91.146 or 91.147 of this chapter. The pilot in command must review for accuracy and comply with the performance plan on the day the flight occurs. The performance plan must be based on information in the approved aircraft flight manual for that aircraft taking into consideration the maximum density altitude for which the operation is planned, in order to determine:

(1) Maximum gross weight and center of gravity (CG) limitations for hovering in ground effect;

(2) Maximum gross weight and CG limitations for hovering out of ground effect; and

(3) Maximum combination of weight, altitude, and temperature for which height/velocity information in the approved aircraft flight manual is valid.

(b) Except for the approach to and transition from a hover for the purpose

of takeoff and landing, or during takeoff and landing, the pilot in command must make a reasonable plan to operate the rotorcraft outside of the caution/warning/avoid area of the limiting height/velocity diagram.

(c) Except for the approach to and transition from a hover for the purpose of takeoff and landing, during takeoff and landing, or when necessary for safety of flight, the pilot in command must operate the rotorcraft in compliance with the plan described in paragraph (b) of this section.

Appendix A to Part 136—[Removed]

■ 32. Remove Appendix A to part 136.

■ 33. Add new subpart D to part 136 to read as follows:

Subpart D—Special Operating Rules for Air Tour Operators in the State of Hawaii

Sec.
136.71 Applicability.
136.73 Definitions.
136.75 Equipment and requirements.

Subpart D—Special Operating Rules for Air Tour Operators in the State of Hawaii

§ 136.71 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart prescribes operating rules for air tour flights conducted in airplanes, powered-lift, or rotorcraft under visual flight rules in the State of Hawaii pursuant to parts 91, 121, and 135 of this chapter.

(b) This subpart does not apply to:

(1) Operations conducted under part 121 of this chapter in airplanes with a passenger seating configuration of more than 30 seats or a payload capacity of more than 7,500 pounds.

(2) Flights conducted in gliders or hot air balloons.

§ 136.73 Definitions.

For the purposes of this subpart:

Air tour means any sightseeing flight conducted under visual flight rules in an airplane, powered-lift, or rotorcraft for compensation or hire.

Air tour operator means any person who conducts an air tour.

§ 136.75 Equipment and requirements.

(a) *Flotation equipment.* No person may conduct an air tour in Hawaii in a rotorcraft beyond the shore of any island, regardless of whether the rotorcraft is within gliding distance of the shore, unless:

(1) The rotorcraft is amphibious or is equipped with floats adequate to accomplish a safe emergency ditching and approved flotation gear is easily accessible for each occupant; or

(2) Each person on board the rotorcraft is wearing approved flotation gear.

(b) *Performance plan.* Each operator must complete a performance plan that meets the requirements of this paragraph (b) before each air tour flight conducted in a rotorcraft.

(1) The performance plan must be based on information from the current approved aircraft flight manual for that aircraft, considering the maximum density altitude for which the operation is planned to determine the following:

(i) Maximum gross weight and center of gravity (CG) limitations for hovering in ground effect;

(ii) Maximum gross weight and CG limitations for hovering out of ground effect; and

(iii) Maximum combination of weight, altitude, and temperature for which height-velocity information from the performance data is valid.

(2) The pilot in command (PIC) must comply with the performance plan.

(c) *Operating limitations.* Except for approach to and transition from a hover, and except for the purpose of takeoff and landing, the PIC of a rotorcraft may only operate such aircraft at a combination of height and forward speed (including hover) that would permit a safe landing in event of engine power loss, in accordance with the height-speed envelope for that rotorcraft under current weight and aircraft altitude.

(d) *Minimum flight altitudes.* Except when necessary for takeoff and landing, or operating in compliance with an air traffic control clearance, or as otherwise authorized by the Administrator, no person may conduct an air tour in Hawaii:

(1) Below an altitude of 1,500 feet above the surface over all areas of the State of Hawaii;

(2) Closer than 1,500 feet to any person or property; or

(3) Below any altitude prescribed by federal statute or regulation.

(e) *Passenger briefing.* Before takeoff, each PIC of an air tour flight of Hawaii with a flight segment beyond the ocean shore of any island shall ensure that each passenger has been briefed on the following, in addition to requirements set forth in §§ 91.107, 121.571, or 135.117 of this chapter:

(1) Water ditching procedures;

(2) Use of required flotation equipment; and

(3) Emergency egress from the aircraft in event of a water landing.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and 44701(a), on November 21, 2022.

Jodi L. Baker,

Deputy Associate Administrator, Aviation Safety.

[FR Doc. 2022–25711 Filed 12–6–22; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R03–RCRA–2022–0280; FRL–9951–01–R3]

Delaware: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Delaware has applied to Environmental Protection Agency (EPA) for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). By this action, EPA proposes to grant final authorization to Delaware. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the revisions by a direct final rule. EPA did not make a proposal prior to the direct final rule because EPA believes this action is not controversial and does not expect comments that oppose it. EPA has explained the reasons for this authorization in the preamble to the direct final rule. Unless EPA receives written adverse comments pertaining to this State revision during the comment period, the direct final rule will become effective on the date it establishes, and EPA will not take further action on this proposed rulemaking. However, if EPA receives adverse comments pertaining to this State revision, EPA will publish a timely withdrawal in the **Federal Register**, and this direct final rule will not take effect. EPA will then respond to public comments in a later final rule based on this proposed rulemaking. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send written comments by January 6, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–RCRA–2022–0351, at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from

www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.* The EPA encourages electronic submittals, but if you are unable to submit electronically or need other assistance, please contact Claudia Scott, the contact listed in the **FOR FURTHER INFORMATION CONTACT** provision below. Please also contact Ms. Scott if you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you.

FOR FURTHER INFORMATION CONTACT: Claudia Scott, RCRA Programs Branch, Land, Chemicals and Redevelopment Division, U.S. Environmental Protection Agency Region 3, Four Penn Center, 1600 John F. Kennedy Blvd., (Mail Code 3LD30), Philadelphia, PA 19103–2852; phone: (215) 814–3240, email: *scott.claudia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has explained the reasons for this action in the preamble to the direct final rule. For additional information, see the direct final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended,*42 U.S.C. 6912*(a), 6926, 6974(b).

Adam Ortiz,

Regional Administrator, EPA Region III.

[FR Doc. 2022–22798 Filed 12–6–22; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 87, No. 234
Wednesday, December 7, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for East Branch of the Tahquamenon National Wild and Scenic River, Hiawatha National Forest, Chippewa County, Michigan

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of availability.

SUMMARY: In accordance with Section 3(b) of the Wild and Scenic Rivers Act, the USDA Forest Service, Washington Office, is transmitting the final boundary of East Branch of the Tahquamenon National Wild and Scenic River to Congress. The East Branch of the Tahquamenon Wild and Scenic River boundary description is available for review at: *https://www.fs.usda.gov/activity/hiawatha/recreation/wateractivities.*

ADDRESSES: The Tahquamenon Wild and Scenic River boundary is available for review at the website listed under **SUMMARY**, to view the documents in person, arrangements should be made in advance by contacting the offices listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Elizabeth Schleif, Regional Land Surveyor, by telephone at 404–297–3886 or via email at *elizabeth.schleif@usda.gov.* Alternatively, contact Jordan Ketola on the Hiawatha National Forest at 906–428–5825 or *jordan.ketola@usda.gov.* Individuals who use Telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The East Branch of the Tahquamenon Wild and Scenic River boundary is available for review on the website listed under summary. Or in person at the following offices, if arrangements are made in advance: USDA Forest Service, Yates Building, 14th and Independence Avenues SW, Washington, DC 20024, phone—800–832–1355; Eastern Region Regional Office, 626 E. Wisconsin Ave., Milwaukee, WI 53202, phone—414–297–3600; and Hiawatha National Forest Supervisor's Office, 820 Rains Drive, Gladstone, MI 49837, phone—906–428–5800. Please contact the appropriate office prior to arrival.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at 202–720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at 800–877–8339. Additionally, program information may be made available in languages other than English.

The Michigan Scenic Rivers Act of 1991 (Pub. L. 102–249) of March 3, 1992, designated East Branch of the Tahquamenon, Michigan as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. As specified by law, the boundary will not be effective until ninety days after Congress receives the transmittal.

Dated: November 22, 2022.

Troy Heithecker,

Associate Deputy Chief, National Forest System.

[FR Doc. 2022–26583 Filed 12–6–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Alabama Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Alabama Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act, as well as make recommendations on recreation fee proposals for sites on the National Forests in Alabama, consistent with the Federal Lands Recreation Enhancement Act. General information and meeting details can be found at the following website: *https://www.fs.usda.gov/main/alabama/workingtogether/advisorycommittees.*

DATES: The meeting will be held on January 11, 2023, 9–12 p.m., Central Standard Time. All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting is open to the public and will be held at the National Forests in Alabama Supervisor's Office, located at 2946 Chestnut Street, Montgomery, Alabama 36107. The public may also join virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under *Summary* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: Tammy Freeman Brown, Designated Federal Officer (DFO), by phone at 334–315–4926 or email at *tammy.freemanbrown@usda.gov;* or Dawn Suiter, RAC Coordinator at 334–224–5336 or email at *dawn.suiter@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Discuss the purpose of RAC, operating guidelines and responsibilities;

2. Conduct Ethics Training for members;

3. Discuss previously approved Title II projects, current funding, and outreach on potential Title II projects, and processes;

4. Schedule next meeting;

The meeting is open to the public. The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda.

Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Dawn Suiter, 2946 Chestnut Street, Montgomery, Alabama, 36107; or by email to *dawn.suiter@usda.gov.* Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at 202–720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at 800–877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: December 1, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–26546 Filed 12–6–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Nez Perce-Clearwater National Forests; Idaho; Hungry Ridge Restoration Project

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement.

SUMMARY: The USDA Forest Service is giving notice of its intent to prepare a Supplemental Environmental Impact Statement (SEIS) for the Hungry Ridge Restoration Project on the Salmon River Ranger District of the Nez Perce-Clearwater National Forests, in Idaho. The Forest Supervisor plans to prepare a SEIS to further evaluate old growth and cumulative effects under National Forest Management Act (NFMA) and National Environmental Policy Act (NEPA) consistent with Case No. 3:21–cv–00189–CWD Memorandum and Decision Order (June 24, 2022).

DATES: There is no comment period at this time. The draft SEIS will be advertised for public comment as required by 40 CFR 1503.1. The draft SEIS is anticipated to be available for public review and comment in early 2023 and will be announced in the **Federal Register**, on the Nez Perce-Clearwater National Forests' project website and other local media. The comment period for the draft SEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

ADDRESSES: Nez Perce Clearwater National Forests, 1008 Highway 64, Kamiah, Idaho 83536.

FOR FURTHER INFORMATION CONTACT: Jennie Fischer, Interdisciplinary Team Leader, *jennie.fischer@usda.gov;* 208–983–4048. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The Supplemental Environmental Impact Statement will improve the Hungry Ridge Restoration final Enivironmntal Impact Satement (FEIS) (September 2020, EIS No. 20200185) by providing an updated analysis of the environmental effects related to old growth and analysis of cumulative effects of the Hungry Ridge and End of the World projects on old growth. The Final Record of Decision was signed in March 2021. The SEIS will address the Judge's order regarding old growth and cumulative effects.

If needed, the Forest Supervisor of the Nez Perce-Clearwater National Forests will issue a new Record of Decision (ROD) after evaluating the SEIS and public comments. If needed, an objection period for a new ROD will be provided, consistent with 36 CFR part 218.

Purpose and Need for Action

The overall purpose of the Hungry Ridge Restoration project is to manage forest vegetation to restore natural disturbance patterns; improve long-term resilience at the stand and landscape levels; reduce the potential risk to private property and structures; improve watershed conditions; and maintain/improve habitat structure, function and diversity. Timber outputs from the proposed action would be used to offset treatment costs, support the economic structure of local communities, and provide for regional and national needs.

Proposed Action

The proposed action was presented as Alternative 2 in the FEIS (September 2020). The Hungry Ridge Restoration project is located approximately 17 miles southeast of Grangeville in Idaho County, Idaho and includes the following actions: 7,164 acres of commercial timber harvest and fuels reduction; 12,372 acres of prescribed burning, and 10 acres of hand thinning around private property to reduce fuel levels. A combination of ground-based and aerial logging systems would be used. Associated road work includes up to: nine miles of permanent road construction, 23 miles of temporary road construction that would be decommissioned, two miles of road reconstruction, 34 miles of road reconditioning, road maintenance for log haul, and four miles of road long term storage. Approximately 1.8 miles of private road would be used under a road use agreement. Restoration actions to improve watershed conditions include approximately 25 miles road decommissioning, replacement of 18 culverts, improvement at two trail stream crossings, 87 acres of hardwood planting, and 75 acres of soil restoration. Monitoring and one project-specific amendment to the Nez Perce National Forest Land and Resource Management Plan (Forest Plan) are also proposed.

Preliminary Alternatives

The additional alternative the SEIS may consider is in response to impacts to old growth. The Hungry Ridge Restoration FEIS (September 2020)

evaluated the potential effects of four alternatives, including No Action and three action alternatives. The proposed action addresses the need to: manage vegetation to provide forest products, to reduce hazardous fuels on forest lands and adjacent to private property, reduce effects to wild and scenic rivers, reduce effects to steep slopes, reduce effects to wilderness characteristics, improve watershed condition through changes to access management, treatment of road and trail stream crossings. Alternatives were developed based on the potential effects to: old growth and old growth-dependent species; watershed and fish habitat, visual resources from timber harvest, new road construction, mechanical treatment in Forest Plan Management Area 20, and landscape prescribed burning.

Expected Impacts

Preliminary significant impacts to be evaluated included: effects to old growth and cumulative effects.

Responsible Official

Cheryl F. Probert, Nez Perce—Clearwater Forest Supervisor, Nez Perce-Clearwater National Forests Supervisor's Office, 1008 Highway 64, Kamiah, Idaho 83536.

Scoping Comments and the Objection Process

A Notice of Intent was published in the **Federal Register** on February 12, 2014, and initiated the scoping period for the Hungry Ridge Restoration Project. That notice started a 45-day scoping period. In accordance with 40 CFR 1502.9(d)(3), there will be no scoping conducted for this SEIS. The court's Decision on the Hungry Ridge Restoration FEIS established the scope of this SEIS.

The Forest will be soliciting future participation via the GovDelivery email notification system, rather than postal mail. Details about the upcoming project information will sent to you through GovDelivery. To sign up for GovDelivery and take advantage of new electronic notifications, please visit the Hungry Ridge Restoration project web page at: *https://www.fs.usda.gov/project/?project=43661.* Updates will not be sent via postal mail.

Nature of Decision To Be Made

The deciding official will review the additional information to determine whether direct, indirect and cumulative effects on old growth in the Hungry Ridge Restoration project area meet the requirements of Appendix N of the Forest Plan; if there are cumulative impacts to old growth by the Hungry Ridge Restoration Project and the End of the World Restoration Project; and whether a new decision is needed to comply with the Forest Plan.

Dated: December 2, 2022.

Troy Heithecker,

Associate Deputy Chief, National Forest System.

[FR Doc. 2022–26582 Filed 12–6–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for East Fork Hood River National Wild and Scenic River, Mt. Hood National Forest, Hood River County, Oregon

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of availability.

SUMMARY: In accordance with Section 3(b) of the Wild and Scenic Rivers Act, the USDA Forest Service, Washington Office, is transmitting the final boundary of East Fork Hood River National Wild and Scenic River to Congress. The East Fork Hood River Wild and Scenic River boundary description is available for review on *https://www.fs.usda.gov/main/mthood/landmanagement/planning.*

ADDRESSES: The East Fork Hood River Wild and Scenic River boundary is available for review at the website listed under **SUMMARY**, to view the documents in person, arrangements should be made in advance by contacting the offices listed under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting John Matthews, Regional Land Surveyor, by telephone at 503–808–2420 or via email at *john.matthews@usda.gov.* Alternatively, contact Michelle Lombardo on the Mt. Hood National Forest at 971–303–2083 or *michelle.lombardo@usda.gov.* Individuals who use Telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The East Fork Hood River Wild and Scenic River boundary is available for review for review on the website listed under **SUMMARY**, or in person by contacting the following offices: at the following offices: USDA Forest Service, Yates Building, 14th and Independence Avenues SW, Washington, DC 20024, phone—800–832–1355; Pacific Northwest Regional Office, 1220 SW Third Avenue, Portland, OR 97204, phone—503–808–2468; and Mt Hood National Forest Supervisor's Office, 16400 Champion Way, Sandy, OR 97055, phone—503–668–1700. Please contact the appropriate office prior to arrival.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at 202–720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at 800–877–8339. Additionally, program information may be made available in languages other than English.

The Omnibus Public Land Management Act of 2009 (Pub. L. 111–11) of March 30, 2009, designated East Fork Hood River, Oregon as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. As specified by law, the boundary will not be effective until ninety days after Congress receives the transmittal.

Dated: November 22, 2022.

Troy Heithecker,

Associate Deputy Chief, National Forest System.

[FR Doc. 2022–26585 Filed 12–6–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for the Paint National Wild and Scenic River, Ottawa National Forest, Iron and Gogebic Counties, Michigan

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of availability.

SUMMARY: In accordance with Section 3(b) of the Wild and Scenic Rivers Act, the USDA Forest Service, Washington Office, is transmitting the final boundary of Paint Wild and Scenic River to Congress. The Paint Wild and Scenic River boundary description is available for review at: *https://www.fs.usda.gov/activity/ottawa/recreation/wateractivities.*

ADDRESSES: The Paint Wild and Scenic River boundary is available for review at the website listed under Summary, to view the documents in person, arrangements should be made in advance by contacting the offices listed

under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Elizabeth Schleif, Regional Land Surveyor, by telephone at 404–297–3886 or via email at *elizabeth.schleif@usda.gov.* Alternatively, contact Jordan Ketola on the Ottawa National Forest at 906–428–5825 or *jordan.ketola@usda.gov.* Individuals who use Telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Paint Wild and Scenic River boundary is available for review on the website listed under summary. Or in person by contacting the following offices: USDA Forest Service, Yates Building, 14th and Independence Avenues SW, Washington, DC 20024, phone—800–832–1355; Eastern Region Regional Office, 626 E. Wisconsin Ave., Milwaukee, WI 53202, phone—414–297–3600; and Ottawa National Forest Supervisor's Office, E6248 US Highway 2 Ironwood, MI 49938, phone—906–932–1330. Please contact the appropriate office prior to arrival.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at 202–720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at 800–877–8339. Additionally, program information may be made available in languages other than English.

The Michigan Scenic Rivers Act of 1991 (Pub. L. 102–249) of March 3, 1992, designated Paint, Michigan as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. As specified by law, the boundary will not be effective until ninety days after Congress receives the transmittal.

Dated: November 22, 2022.

Troy Heithecker,

Associate Deputy Chief, National Forest System.

[FR Doc. 2022–26584 Filed 12–6–22; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Texas Advisory Committee; Cancellation

AGENCY: Commission on Civil Rights.

ACTION: Notice; cancellation of meeting date.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** concerning a meeting of the Texas Advisory Committee. The meeting scheduled for Wednesday, December 14, 2022, at 1 p.m. (CT) is cancelled. The notice is in the **Federal Register** of Wednesday, November 16, 2022, in FR Doc. 2022–24970, in the first and second column of page 68673.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, (202) 701–1376, *bpeery@usccr.gov.*

Dated: December 2, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–26573 Filed 12–6–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–57–2022]

Foreign-Trade Zone (FTZ) 38—Spartanburg County, South Carolina; Notification of Proposed Production Activity; BMW Manufacturing Company, LLC (Passenger Motor Vehicles), Spartanburg, South Carolina

BMW Manufacturing Company, LLC submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Spartanburg, South Carolina within Subzone 38A. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on November 29, 2022.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.* The proposed material(s)/component(s) would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed foreign-status materials and components include: textile floor mats consisting of a blend of manmade fiber yarns fused into a plastic backing; roof antennas; vehicle cameras; suppression filters; and, trap circuits (duty rate ranges from duty-free to 6.7%). The request indicates the materials/components are subject to duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is January 17, 2023.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov.*

Dated: December 1, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–26556 Filed 12–6–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges; In the Matter of: Jose Miguel Lazarin-Zurita, Inmate Number: 28052–509, FCI Forrest City Low, P.O. Box 9000, Forrest City, AR 72336

On July 15, 2021, in the U.S. District Court for the Western District of Texas, Jose Miguel Lazarin-Zurita (''Lazarin-Zurita'') was convicted of violating Section 38 of Arms Export Control Act (22 U.S.C. 2778) (''AECA''). Specifically, Lazarin-Zurita was convicted of willfully and knowingly attempting to export from the United States to Mexico, a Kel–Tec PLR–16 rifle, a 60-round capacity drum magazine for 5.56mm ammunition and two empty 30-round 5.56mm magazines in violation of 22 U.S.C. 2778. As a result of his conviction, the Court sentenced Lazarin-Zurita to 60 months in prison with credit for time served; five years of supervised release, and a $200 court assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, section 38 of the AECA, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e)

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 and, as amended, is codified at 50 U.S.C. 4801–4852.

(Prior Convictions). In addition, any Bureau of Industry and Security (BIS) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Lazarin-Zurita's conviction for violating section 38 of the AECA. BIS has provided notice and opportunity for Lazarin-Zurita to make a written submission to BIS, as provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). 15 CFR 766.25.[2] BIS has not received a submission from Lazarin-Zurita.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Lazarin-Zurita's export privileges under the Regulations for a period of 10 years from the date of Lazarin-Zurita's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Lazarin-Zurita had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until July 15, 2031, Jose Miguel Lazarin-Zurita, with a last known address of Inmate Number: 28052–509, FCI Forrest City Low, P.O. Box 9000, Forrest City, AR 72336, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession, or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed, or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed, or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, pursuant to section 1760(e) of ECRA (50 U.S.C. 4819(e)) and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to the Denied Person by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, the Denied Person may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to the Denied Person and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until July 15, 2031.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–26513 Filed 12–6–22; 8:45 am]

BILLING CODE 3510–33–P

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders, pursuant to amendments to the Regulations (85 *FR* 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges; In the Matter of: Gene Shilman, Inmate Number: 72521–050, FCI Danbury, Federal Correctional Institution, Route 37, Danbury, CT 06811

On May 27, 2021, in the U.S. District Court for the District of New Jersey, Gene Shilman (''Shilman'') was convicted of violating 18 U.S.C. 371. Specifically, Shilman was convicted of knowingly and intentionally conspiring to export from the United States to Russia and Ukraine, arms, ammunition, articles of war and certain commerce-controlled goods and technology, without first having obtained a license, in violation of 18 U.S.C. 371. As a result of his conviction, the Court sentenced Shilman to 24 months in prison, one year of supervised release, and a $200 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Shilman's conviction for violating 18 U.S.C. 371. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Shilman to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

received a written submission from Shilman.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Shilman's export privileges under the Regulations for a period of seven years from the date of Shilman's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Shilman had an interest at the time of his conviction.[3]

Accordingly, it is hereby *Ordered*:

First, from the date of this Order until May 27, 2028, Gene Shilman, with a last known address of Inmate Number: 72521–050, FCI Danbury, Federal Correctional Institution, Route 37, Danbury, CT 06811, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Shilman by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Shilman may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Shilman and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until May 27, 2028.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–26516 Filed 12–6–22; 8:45 am]

BILLING CODE 3510–DT–P

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 *FR* 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges; In the Matter of: Rene Sarmiento, Inmate Number: 16139–579, FCI Beaumont Low, Federal Correctional Institution, P.O. Box 26020, Beaumont, TX 77720

On November 19, 2020, in the U.S. District Court for the Southern District of Texas, Rene Sarmiento (''Sarmiento'') was convicted of violating 18 U.S.C. 554(a). Specifically, Sarmiento was convicted of fraudulently and knowingly exporting and sending, or attempting to export and send from the United States to Mexico, two DPMS Panther Arms AR–15 5.56mm caliber rifles; a Colt, Model Government, 9mm caliber pistol; and a Colt, Model Government, 45 caliber pistol, in violation of 18 U.S.C. 554. As a result of his conviction, the Court sentenced Sarmiento to 46 months in prison, three years supervised release, and a $100 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Sarmiento's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Sarmiento to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Sarmiento.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Sarmiento's export privileges under the Regulations for a period of 10 years from the date of Sarmiento's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

Sarmiento had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until November 19, 2030, Rene Sarmiento, with a last known address of Inmate Number: 16139–579, FCI Beaumont Low, Federal Correctional Institution, P.O. Box 26020, Beaumont, TX 77720, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Sarmiento by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Sarmiento may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Sarmiento and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until November 19, 2030.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–26515 Filed 12–6–22; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Tian Min Wu, Room 10–7–401 Kangjiayuan, Gaobeidian North Road, Chaoyang District, Beijing, China 100025; Order Denying Export Privileges

On June 9, 2021, in the U.S. District Court for the Central District of California, Tian Min Wu (''Wu'') was convicted of violating section 38 of the Arms Export Control Act (22 U.S.C 2778) (''AECA''). Specifically, Wu was convicted of knowingly and willfully soliciting the export of, attempting to export and causing others to export from the United States, a Decoder, a defense article as defined in Category XI of the United States Munition List, without first obtaining from the U.S. Department of State a license for such export or written approval. As a result of his conviction, the Court sentenced Wu to 52 months or time served in prison, three years of supervised release and a $100 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''), the export privileges of any person who has been convicted of certain offenses, including, but not limited to, section 38 of the AECA, may be denied for a period of up to ten (10) years from the date of his/her conviction. *See* 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Wu's conviction for violating section 38 of the AECA. BIS provided notice and opportunity for Wu to make a written submission to BIS, as provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). 15 CFR 766.25.[1] BIS has not received and considered a written submission from Wu.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Wu's export privileges under the Regulations for a period of 10 years from the date of Wu's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Wu had an interest at the time of his conviction.[2]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until June 9, 2031, Tian Min Wu, with a last known address of Room 10–7–401 Kangjiayuan, Gaobeidian North Road, Chaoyang District, Beijing, China 100025, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 *FR* 73411, November 18, 2020).

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730 through 774 (2022).

[2] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders, pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA (50 U.S.C. 4819(e)) and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Wu by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Wu may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Wu and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until June 9, 2031.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–26518 Filed 12–6–22; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges; In the Matter of: Mark Komoroski, 620 Fairchild Street, Nanticoke, PA 18634

On February 14, 2020, in the U.S. District Court for the Middle District of Pennsylvania, Mark Komoroski (''Komoroski''), was convicted of violating the International Emergency Economic Powers Act (50 U.S.C 1701, *et seq.*) (''IEEPA''). Specifically, Komoroski was convicted of unlawfully and willfully attempting to export and attempting to cause and to be exported from the United States to Russia one Leupold VX–6, 1–6x24mm CDS Matte FireDot Circle 112319 riflescope, an item designated ECCN 0A987 on the Commerce Control List at the time of export, and which required a license for export to Russia. Komoroski failed to first obtain the required authorization and license for such export from the U.S. Department of Commerce. As a result of his conviction, the Court sentenced Komoroski to seven months incarceration, two years of supervised release, $100 court assessment, and a $1,000 fine. Komoroski was also placed on U.S. Department of State's debarred list.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, IEEPA, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any Bureau of Industry and Security (BIS) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Komoroski's conviction for violating IEEPA, and has provided notice and opportunity for Komoroski to make a written submission to BIS, as provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). 15 CFR 766.25.[2] BIS has received and considered a written submission from Komoroski.

Based upon my review of the record, including Komoroski's submission, and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Komoroski's export privileges under the Regulations for a period of 10 years from the date of Komoroski's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Komoroski had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until February 14, 2030, Mark Komoroski, with a last known address of, 620 Fairchild Street, Nanticoke, PA 18634, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying,

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 and, as amended, is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730 through 774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders, pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of the Export Control Reform Act (50 U.S.C. 4819(e)) and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Komoroski by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Komoroski may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Komoroski and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until February 14, 2030.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–26517 Filed 12–6–22; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Mauricio Martell, 7214 N 37th Lane, McAllen, TX 78504; Order Denying Export Privileges

On January 14, 2020, in the U.S. District Court for the Southern District of Texas, Mauricio Martell (''Martell'') was convicted of violating 18 U.S.C. 554(a). Specifically, Martell was convicted of fraudulently and knowingly exporting and sending or attempting to export and send from the United States to Mexico (1) a Bushmaster, Model XM15–E2S, multi caliber rifle and (2) a Barrett, Model 82A1, .50 caliber rifle, in violation of 18 U.S.C. 554. As a result of his conviction, the Court sentenced Martell to 46 months in prison, three years of supervised release and a $100 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Martell's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Martell to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Martell.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Martell's export privileges under the Regulations for a period of 10 years from the date of Martell's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Martell had an interest at the time of his conviction.[3]

Accordingly, it is hereby *Ordered:*

First, from the date of this Order until January 14, 2030, Mauricio Martell, with a last known address of 7214 N 37th Lane, McAllen, TX 78504, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730 through 774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Martell by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Martell may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Martell and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until January 14, 2030.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–26519 Filed 12–6–22; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges; In the Matter of: Jacqueline Castro-Aguilera, 206 King Street, Gruver, TX 79040

On February 25, 2019, in the U.S. District Court for the District of New Mexico, Jacqueline Castro-Aguilera (''Castro-Aguilera'') was convicted of violating 18 U.S.C. 554(a). Specifically, Castro-Aguilera was convicted of fraudulently and knowingly attempting to export and send to Mexico, approximately 1000 rounds of .223 caliber ammunition, in violation of 18 U.S.C. 554. As a result of her conviction, the Court sentenced Castro-Aguilera to 33 months of confinement, three years of supervised release, and a $100 special assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Castro-Aguilera's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Castro-Aguilera to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Castro-Aguilera.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Castro-Aguilera's export privileges under the Regulations for a period of seven years from the date of Castro-Aguilera's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Castro-Aguilera had an interest at the time of her conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until February 25, 2026, Jacqueline Castro-Aguilera, with a last known address of 206 King Street, Gruver, TX 79040, and when acting for or on her behalf, her successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 *FR* 73411, November 18, 2020).

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Castro-Aguilera by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Castro-Aguilera may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Castro-Aguilera and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until February 25, 2026.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–26514 Filed 12–6–22; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–844]

Steel Concrete Reinforcing Bar From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that Deacero S.A.P.I. de C.V. (Deacero), Ingeteknos Estructurales, S.A. de C.V. (Ingetek), Aceros Nacionales, S.A. de C.V. (ANSA), and Company A (collectively, Deacero Group) and Grupo Acerero S.A. de C.V. (Acerero) made sales of subject merchandise in the United States at prices below normal value during the November 1, 2020, through October 31, 2021, period of review (POR). We invite interested parties to comment on these preliminary results.

DATES: Applicable December 7, 2022.

FOR FURTHER INFORMATION CONTACT: David Lindgren or Kyle Clahane, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1671 or (202) 482–5449, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 6, 2014, Commerce published the antidumping duty order on steel concrete reinforcing bar (rebar) from Mexico in the **Federal Register**.[1] On December 28, 2021, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), Commerce initiated an administrative review of the *Order*.[2] On July 8, 2022, we extended the deadline for the preliminary results to November 30, 2022.[3]

Commerce initiated this administrative review covering the following companies: Aceros Especiales Simec Tlaxcala, S.A. de C.V.; ArcelorMittal Mexico SA de CV.; Compania Siderurgica del Pacifico S.A. de C.V.; Deacero; Fundiciones de Acero Estructurales, S.A. de C.V.; Acerero; Grupo Chant, S.A.P.I. de C.V.; Grupo Simec; Operadora de Perfiles Sigosa, S.A. de C.V.; Orge S.A. de C.V.; Perfiles Comerciales Sigosa, S.A. de C.V.; RRLC S.A.P.I. de C.V.; Sidertul S.A. de C.V.; Siderurgicos Noroeste, S.A. de C.V.; Siderurgica del Occidente y Pacifico S.A. de C.V.; Simec International 6 S.A. de C.V.; Simec International 7, S.A. de C.V.; Simec International 9 S.A. de C.V.; and Simec International, S.A. de C.V.[4]

On January 26, 2022, we limited the number of respondents selected for individual examination in this administrative review to Deacero Group and Acerero.[5] We did not select the remaining companies for individual examination, and these companies remain subject to this administrative review.

Scope of the Order

The product covered by the *Order* is steel concrete reinforcing bar from Mexico. For a complete description of the scope, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(2) of the Act. Constructed export price was calculated in accordance with section 772 of the Act. Normal value was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our preliminary results, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary 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 Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Rate for Non-Selected Companies

The statute and Commerce's regulations do not identify the dumping margin to apply to respondents not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of

[1] *See Steel Concrete Reinforcing Bar from Mexico: Antidumping Duty Order,* 79 FR 65925 (November 6, 2014) (*Order*).

[2] *See Initiation of Antidumping Duty and Countervailing Duty Administrative Reviews,* 86 FR 73734 (December 28, 2021) (*Initiation Notice*).

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results,'' dated July 8, 2022.

[4] Commerce has previously collapsed 15 of the firms listed in the *Initiation Notice* (*i.e.,* Aceros Especiales Simec Tlaxcala, S.A. de C.V.; Compania Siderurgica del Pacifico S.A. de C.V.; Fundiciones de Acero Estructurales, S.A. de C.V.; Grupo Chant S.A.P.I. de C.V.; Grupo Simec; Operadora de Perfiles Sigosa, S.A. de C.V.; Orge S.A. de C.V.; Perfiles Comerciales Sigosa, S.A. de C.V.; RRLC S.A.P.I. de C.V.; Siderúrgicos Noroeste, S.A. de C.V.; Siderurgica del Occidente y Pacifico S.A. de C.V.; Simec International, S.A. de C.V.; Simec International 6 S.A. de C.V.; Simec International 7 S.A. de C.V.; and Simec International 9 S.A. de C.V.) into the single entity ''Grupo Simec.'' *See, e.g., Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019–2020,* 87 FR 34848 (June 8, 2022). Additionally, Commerce has preliminarily determined that Deacero, Ingetek, ANSA and Company A should be collapsed and treated as a single entity, collectively Deacero Group. *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Administrative Review on the Antidumping Duty Order of Steel Concrete Reinforcing Bar from Mexico; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum) at ''Affiliation and Collapsing.''

[5] *See* Memorandum, ''Respondent Selection,'' dated January 26, 2022.

the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when determining the dumping margin for respondents that are not individually examined in an administrative review. Section 735(c)(5)(A) of the Act states that the all-others rate should be calculated by averaging the weighted-average dumping margins for individually-examined respondents, excluding dumping margins that are zero, *de minimis,* or based entirely on facts available. Where the dumping margins for individually examined respondents are all zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.'' For the mandatory respondents, Deacero Group and Acerero, we preliminarily calculated dumping margins of 3.05 percent and 16.28 percent, respectively, and we have assigned to the non-selected companies a rate of 6.35 percent, which is the weighted average of Deacero Group and Acerero's margins based on publicly ranged data. For additional information, *see* the Preliminary Decision Memorandum at ''Rates for Non-Selected Companies.''

Preliminary Results of Review

We preliminarily determine the following weighted-average dumping margins exist for the POR:

Producer and/or exporter	Weighted-average dumping margin (percent)
Deacero S.A.P.I de C.V./Ingeteknos Estructurales, S.A. de C.V./Aceros Nacionales, S.A. de C.V./Company A	3.05
Grupo Acerero S.A. de C.V	16.28
ArcelorMittal Mexico SA de CV	6.35
Grupo Simec/Aceros Especiales Simec Tlaxcala, S.A. de C.V./Compania Siderurgica del Pacifico S.A. de C.V./Fundiciones de Acero Estructurales, S.A. de C.V./Grupo Chant S.A.P.I. de C.V./Operadora de Perfiles Sigosa, S.A. de C.V./Orge S.A. de C.V./ Perfiles Comerciales Sigosa, S.A. de C.V./RRLC S.A.P.I. de C.V./Siderúrgicos Noroeste, S.A. de C.V./Siderurgica del Occidente y Pacifico S.A. de C.V./Simec International, S.A. de C.V./Simec International 6 S.A. de C.V./Simec International 7 S.A. de C.V./ Simec International 9 S.A. de C.V.)	6.35
Sidertul S.A. de C.V	6.35

Disclosure and Public Comment

We intend to disclose the calculations performed in these preliminary results to parties in this proceeding within five days of the date of publication of this notice.[6] A timeline for the submission of case briefs and written comments will be provided to interested parties at a later date. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[7] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[8] Case and rebuttal briefs should be filed using ACCESS [9] and must be served on interested parties.[10] Executive Summaries should be limited to five pages total, including footnotes. Note that Commerce has temporarily modified certain of its requirements for service documents containing business proprietary information, until further notice.[11]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via Commerce's electric records system, ACCESS. An electronically filed request must be received successfully in its entirety by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[12] Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.[13] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised in any written briefs, no later than 120 days after the date of publication of this notice, unless extended.[14]

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If the weighted-average dumping margin for an individually examined respondent is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made during the POR to each importer and the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). Where an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2). If a respondent's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* ''{w} here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.'' [15] For entries of subject merchandise during the POR produced

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(d).

[8] *See* 19 CFR 351.309(c)(2) and (d)(2).

[9] *See generally* 19 CFR 351.303.

[10] *See* 19 CFR 351.303(f).

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to Covid–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[12] *See* 19 CFR 351.310(c).

[13] *See* 19 CFR 351.310(d).

[14] *See* section 751(a)(3)(A) of the Act; and 19 CFR 351.213(h).

[15] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

by each respondent for which the producer did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company (or companies) involved in the transaction.[16]

For the companies which were not selected for individual review, we intend to assign an assessment rate based on the review-specific average rate, calculated as noted in the ''Preliminary Results of Review'' section, above. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.[17] Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the final results of this review in the **Federal Register**, in accordance with 19 CFR 356.8(a).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for each company listed above will be that established in the final results of this administrative review, except if the rate is less than 0.50 percent, and therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or in the investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 20.58 percent, the rate established in the investigation of this proceeding.[18] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h)(1).

Dated: November 30, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2022–26559 Filed 12–6–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–067]

Forged Steel Fittings From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that Both-Well (Taizhou) Steel Fittings Co., Ltd. (Both-Well), the sole mandatory respondent in this review and an exporter of forged steel fittings from the People's Republic of China (China), as well as four additional exporters of forged steel fittings from China, sold subject merchandise in the United States at prices below normal value (NV) during the period of review (POR) November 1, 2020, through October 31, 2021. Further, Commerce preliminarily determines that Jiangsu Forged Pipe Fittings Co., Ltd. (Jiangsu) had no shipments of subject merchandise during the POR, and 20 companies for which this review was initiated are not eligible for a separate rate and are thus part of the China-wide entity. Interested parties are invited to comment on these preliminary results.

DATES: Applicable December 7, 2022.

FOR FURTHER INFORMATION CONTACT: Jinny Ahn, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0339.

SUPPLEMENTARY INFORMATION:

Background

This administrative review is being conducted in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). On December 28, 2021, Commerce published the notice of initiation of this administrative review, covering 26 companies.[1] On February 13, 2020, Commerce selected as the sole mandatory respondent, Both-Well (Taizhou) Steel Fittings Co., Ltd. (Both-Well), the company accounting for the largest volume of U.S. entries of subject merchandise into the United States as reported by U.S. Customs and Border Protection (CBP).[2] On February 18, 2022, Commerce issued the non-market economy (NME) antidumping duty questionnaire to Both-Well.

On July 5, 2022, Commerce extended the preliminary results deadline by 120 days.[3] For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[4]

[16] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[17] *See* section 751(a)(2)(C) of the Act.

[18] *See Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 79 FR 54967 (September 15, 2014).

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 73734 (December 28, 2021) (*Initiation Notice*).

[2] *See* Memorandum, ''Respondent Selection,'' dated February 17, 2022.

[3] *See* Memorandum, ''Forged Steel Fittings from the People's Republic of China: Extension of Deadline for Preliminary Results of the Third Antidumping Duty Administrative Review,'' dated July 5, 2022.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Forged Steel Fittings from the People's Republic of China; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Scope of the Order [5]

The merchandise covered by the *Order* is carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act and 19 CFR 351.213. We calculated export prices in accordance with section 772 of the Act. Because China is an NME country within the meaning of section 771(18) of the Act, NV has been calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics included in the Preliminary Decision Memorandum is included in Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Continuation of Administrative Review for Various Companies

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. On March 28, 2022, Jiangsu, Lianfa Stainless Steel Pipes & Valves (Qingyun) Co., Ltd. (Lianfa); Xin Yi International Trade Co., Limited (Xin Yi); and Yingkou Guangming Pipeline Industry Co., Ltd. (Yingkou Guangming) timely withdrew their requests for review.[6] However, because there is still an active review request for these four companies,[7] we are not rescinding this review with respect to these four companies, pursuant to 19 CFR 351.213(d)(1).

Preliminary Determination of No Shipments

Jiangsu reported that it made no shipments of subject merchandise to the United States during the POR.[8] To confirm this no-shipment claim, Commerce issued a no-shipment inquiry to CBP requesting that it review Jiangsu's no-shipment claim.[9] CBP reported that it did not have information to contradict Jiangsu's no-shipment claim.[10] Because Jiangsu certified that it made no shipments of subject merchandise, and there is no information which contradicts its claim, Commerce preliminarily determines that Jiangsu did not have shipments of subject merchandise to the United States during the POR. Consistent with Commerce's practice, Commerce will not rescind the review with respect to this company, but, instead, will complete the review and issue assessment instructions to CBP based on the final results.[11]

Separate Rates

Commerce preliminarily finds that 20 companies for which a review was initiated did not establish their eligibility for a separate rate because they failed to provide a separate rate application, a separate rate certification, or a no-shipment certification if they were already eligible for a separate rate.[12] As such, we preliminarily determine these 20 companies are part of the China-wide entity.

Additionally, Commerce preliminarily finds that the information placed on the record by four companies in addition to Both-Well demonstrates that these companies are eligible for a separate rate. These four companies are: Lianfa; Qingdao Bestflow Industrial Co., Ltd.; Xin Yi; and Yingkou Guangming. For additional information, *see* the Preliminary Decision Memorandum.

Weighted-Average Dumping Margin for Non-Examined Companies Granted a Separate Rate

In these preliminary results, the sole mandatory respondent (*i.e.,* Both-Well) has received a weighted-average dumping margin that is not zero, *de minimis,* or based entirely on facts available. Therefore, in accordance with section 735(c)(5)(A) of the Act, we find it appropriate to assign the calculated weighted-average dumping margin for Both-Well (*i.e.,* 29.31 percent) as the weighted-average dumping margin for the non-examined, separate rate respondents. For additional information, *see* the Preliminary Decision Memorandum.

The China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[13] Under this policy, the China-wide entity will not be under review unless a party specifically requests and Commerce initiates, or Commerce self-initiates, a review of the China-wide entity.[14] Because no party requested a review of the China-wide entity and no review was initiated for this POR, the China-wide entity is not under review and the China-wide entity's rate (*i.e.,* 142.72 percent) is not subject to change.[15] For additional information, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

Commerce preliminarily determines that the following weighted-average dumping margins exist for the POR:

Exporter	Weighted-average dumping margin (percent)
Both-Well (Taizhou) Steel Fittings Co., Ltd	29.31
Review-Specific Rate Applicable to the Following Companies	
Lianfa Stainless Steel Pipes & Valves (Qingyun) Co., Ltd	29.31
Qingdao Bestflow Industrial Co., Ltd	29.31
Xin Yi International Trade Co., Limited	29.31
Yingkou Guangming Pipeline Industry Co., Ltd	29.31

[5] *See Forged Steel Fittings from Italy and the People's Republic of China: Antidumping Duty Orders,* 83 FR 60397 (November 26, 2018) (*Order*).

[6] *See* Jiangsu, Lianfa, Xin Yi, and Yingkou Guangming's Letter, ''Withdrawal of Requests for Administrative Review,'' dated March 28, 2022.

[7] *See* Petitioner's Letter, ''Request for Administrative Review,'' dated November 30, 2021.

[8] See Jiangsu's Letter, ''No Sales Certification,'' dated January 24, 2022.

[9] *See* Message Number 2181402, ''No Shipments Inquiry for Forged Steel Fittings from the People's Republic of China Exported by Jiangsu Forged Pipe Fittings Co., Ltd. (A–570–067),'' dated June 30, 2022.

[10] See Memorandum, ''No Shipment Inquiry for Jiangsu Forged Pipe Fittings Co., Ltd. during the Period 11/01/2020 through 10/31/2021,'' dated July 25, 2022.

[11] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR at 51306 (August 28, 2014).

[12] *See* Appendix II of this notice which identifies these 20 companies.

[13] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[14] *Id.*

[15] *See Order,* 83 FR 60397.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed for these preliminary results to the parties under administrative protective order within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c)(ii), interested parties may each submit a case brief no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the case briefs are filed.[16] Parties who submit a case brief or a rebuttal brief in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.[17] If a request for a hearing is made, Commerce will announce the date and time of the hearing.

All submissions to Commerce must be filed electronically using Enforcement and Compliance's electronic records system, ACCESS,[18] and must also be served on interested parties.[19] An electronically filed document must be received successfully in its entirety by ACCESS, by 5 p.m. Eastern Time (ET) on the date that the document is due. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[20]

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review. Upon issuance of the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[21] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review. 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).

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review, when the company-specific weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent), and, for Both-Well, when the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis.* Where either a company's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,*[22] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. If Both-Well's weighted-average dumping margin is not zero or *de minimis* in the final results of this review, Commerce will instruct CBP to collect the appropriate antidumping duties at the time of liquidation, in accordance with 19 CFR 351.212(b)(1).[23] We intend to calculate importer-specific *ad valorem* assessment rates by dividing the total amount of dumping calculated for all reviewed U.S. sales to the importer by the total entered value of the merchandise sold to the importer by Both-Well.[24]

For the respondents that were not selected for individual examination in this administrative review but qualified for a separate rate, the assessment rate will be equal to the weighted-average dumping margin determined in the final results of this review.

For the final results, if we continue to find that the 20 companies, identified in Appendix II, are ineligible for a separate rate and are, therefore, considered part of the China-wide entity, we will instruct CBP to apply an antidumping duty assessment rate of 142.72 percent (*i.e.,* the rate for the China-wide entity) to all entries of subject merchandise during the POR which were exported by those companies.

For entries that were not reported in the U.S. sales data submitted by Both-Well during this review, Commerce will instruct CBP to liquidate such entries at the antidumping duty assessment rate for the China-wide entity.[25] Additionally, if Commerce determines in the final results that Jiangsu had no shipments of the subject merchandise, any suspended entries that entered under Jiangsu's case number (*i.e.,* at Jiangsu's cash deposit rate) will be liquidated at the antidumping duty assessment rate for the China-wide entity.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for companies listed above that have a separate rate, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review (except, if the rate is *de minimis,* then the cash deposit rate will be zero); (2) for previously examined Chinese and non-Chinese exporters not listed above that received a separate rate in a prior completed segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific cash deposit rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 142.72 percent); and (4) for all non-Chinese exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter.

[16] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020) (''To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications are in effect).'').

[17] *See* 19 CFR 351.310(c).

[18] *See* 19 CFR 351.303.

[19] *See* 19 CFR 351.303(f).

[20] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 41363 (July 10, 2020).

[21] *See* 19 CFR 351.212(b)(1).

[22] *See* 19 CFR 351.106(c)(2).

[23] Commerce will apply the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[24] *See* 19 CFR 351.212(b)(1).

[25] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 at 65694–65695, for a full discussion of this practice.

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213, and 19 CFR 351.221(b)(4).

Dated: November 30, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

Appendix II—Companies Preliminarily Not Eligible for a Separate Rate and Treated as Part of the China-Wide Entity

1. Cixi Baicheng Hardware Tools, Ltd.
2. Dalian Guangming Pipe Fittings Co., Ltd.
3. Eaton Hydraulics (Luzhou) Co., Ltd.
4. Eaton Hydraulics (Ningbo) Co., Ltd.
5. Jiangsu Haida Pipe Fittings Group Co.
6. Jinan Mech Piping Technology Co., Ltd.
7. Jining Dingguan Precision Parts Manufacturing Co., Ltd.
8. Luzhou City Chengrun Mechanics Co., Ltd.
9. Ningbo HongTe Industrial Co., Ltd.
10. Ningbo Long Teng Metal Manufacturing Co., Ltd.
11. Ningbo Save Technology Co., Ltd.
12. Ningbo Zhongan Forging Co., Ltd.
13. Q.C. Witness International Co., Ltd.
14. Shanghai Lon Au Stainless Steel Materials Co., Ltd.
15. Witness International Co., Ltd.
16. Yancheng Boyue Tube Co., Ltd.
17. Yancheng Haohui Pipe Fittings Co., Ltd.
18. Yancheng Jiuwei Pipe Fittings Co., Ltd.
19. Yancheng Manda Pipe Industry Co., Ltd.
20. Yuyao Wanlei Pipe Fitting Manufacturing Co., Ltd.

[FR Doc. 2022–26557 Filed 12–6–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–068]

Forged Steel Fittings From the People's Republic of China: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on forged steel fittings from the People's Republic of China (China) for the period of review January 1, 2020, through December 31, 2020. Commerce preliminarily determines that countervailable subsidies are being provided to producers/exporters of forged steel fittings from China subject to this review. We are also rescinding this review with respect to 21 companies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable December 7, 2022.

FOR FURTHER INFORMATION CONTACT: Zachariah Hall or Shane Subler, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6261 or (202) 482–6241, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 2021, Commerce published the notice of initiation of an administrative review of the CVD order on forged steel fittings from China.[1] On July 8, 2022, Commerce extended the time period for issuing the preliminary results of this review by 120 days.[2] Accordingly, the deadline for the preliminary results in this administrative review was postponed to November 30, 2022.[3]

For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[4] A list of topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary 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 Preliminary Decision Memorandum can be accessed directly *https://access.trade.gov/public/FRNoticesListLayout.aspx/.*

Scope of the Order

The merchandise covered by the order is forged steel fittings. For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.

Rescission of Administrative Review, In Part

Based on our analysis of U.S. Customs and Border Protection (CBP) information, we preliminarily determine that 21 companies had no entries of subject merchandise during the POR.[5] On February 14, 2022, we notified parties that we intended to rescind this administrative review with respect to the 21 companies because they have no reviewable suspended entries.[6] No parties commented on the notification of intent to rescind the review in part. Pursuant to 19 CFR 351.213(d)(3), we are rescinding the administrative review of these companies. We have included a list of these 21 companies in Appendix II of this notice. For additional information regarding this determination, *see* the Preliminary Decision Memorandum.[7]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a government financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[8] For a full description of the methodology underlying our

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[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 73734 (December 28, 2021).

[2] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review,'' dated July 8, 2022.

[3] *Id.* at 2.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results: Administrative Review of the Countervailing Duty Order on Forged Steel Fittings from the People's Republic of China; 2020,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* Appendix II.

[6] *See* Memorandum, ''Notice of Intent to Rescind Review, In Part,'' dated February 14, 2022.

[7] *See* Preliminary Decision Memorandum at 3–4.

[8] *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.

preliminary conclusions, *see* the Preliminary Decision Memorandum.

As explained in the Preliminary Decision Memorandum, Commerce relied on adverse facts available because the Government of China did not act to the best of its ability in responding to Commerce's requests for information and, consequently, we have drawn an adverse inference, where appropriate, in selecting from among the facts otherwise available.[9] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Preliminary Rate for Non-Selected Companies Under Review

Reviews were requested of four companies that Commerce did not select for individual examination as mandatory respondents and for which Commerce is not rescinding the review. The statute and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides the basis for calculating the all-others rate in an investigation. Section 705(c)(5)(A)(i) of the Act instructs Commerce, as a general rule, to calculate an all-others rate equal to the weighted average of the countervailable subsidy rates established for exporters and/or producers individually examined, excluding any rates that are zero, *de minimis,* or based entirely on facts available.

In this review, the sole mandatory respondent, Both-Well (Taizhou) Steel Fittings, Co., Ltd. (Both-Well), had a rate that was not zero, *de minimis,* or based entirely on facts available. Thus, for the four companies listed below that were not selected as mandatory company respondents and for which Commerce is not rescinding the review, Commerce is basing the subsidy rates on the rate calculated for Both-Well.

Preliminary Results of Review

We preliminarily find the following net countervailable subsidy rates for the period January 1, 2020, through December 31, 2020:

Producer/exporter	Subsidy rate (percent)
Both-Well (Taizhou) Steel Fittings, Co., Ltd	13.42
Review-Specific Average Rate Applicable to the Following Companies:	
Eaton Hydraulics (Ningbo) Co., Ltd	13.42
Jinan Mech Piping Technology Co., Ltd	13.42
Qingdao Bestflow Industrial Co., Ltd	13.42
Yingkou Guangming Pipeline Industry Co., Ltd	13.42

Assessment Rate

In accordance with 19 CFR 351.221(b)(4)(i), we preliminarily assigned subsidy rates in the amounts for the producers/exporters shown above. Upon completion of the administrative review, consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue instructions directly to CBP no earlier than 35 days after publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Rate

Pursuant to section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts indicated for the producers/exporters listed above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, 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 instructions, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We intend to disclose to interested parties the calculations performed for these preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within seven days after the time limit for filing case briefs.[10] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this review are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless the deadline is extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Notification to Interested Parties

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213.

[9] *See* sections 776(a) and (b) of the Act.

[10] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020) (''To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications are in effect).'').

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

Dated: November 30, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Diversification of China's Economy
V. Non-Selected Companies Under Review
VI. Partial Rescission of Review
VII. Subsidies Valuation
VIII. Benchmarks and Discount Rates
IX. Use of Facts Otherwise Available and Adverse Inferences
X. Analysis of Programs
XI. Recommendation

Appendix II

List of Companies Subject to Rescission of Review

1. Cixi Baicheng Hardware Tools, Ltd.
2. Dalian Guangming Pipe Fittings Co., Ltd.
3. Eaton Hydraulics (Luzhou) Co., Ltd.
4. Jiangsu Forged Pipe Fittings Co., Ltd.
5. Jiangsu Haida Pipe Fittings Group Co. Ltd.
6. Jining Dingguan Precision Parts Manufacturing Co., Ltd.
7. Lianfa Stainless Steel Pipes & Valves (Qingyun) Co., Ltd.
8. Luzhou City Chengrun Mechanics Co., Ltd.
9. Ningbo HongTe Industrial Co., Ltd.
10. Ningbo Long Teng Metal Manufacturing Co., Ltd.
11. Ningbo Save Technology Co., Ltd.
12. Ningbo Zhongan Forging Co., Ltd.
13. Q.C. Witness International Co., Ltd.
14. Shanghai Lon Au Stainless Steel Materials Co., Ltd.
15. Witness International Co., Ltd.
16. Xin Yi International Trade Co., Limited
17. Yancheng Boyue Tube Co., Ltd.
18. Yancheng Haohui Pipe Fittings Co., Ltd.
19. Yancheng Jiuwei Pipe Fittings Co., Ltd.
20. Yancheng Manda Pipe Industry Co., Ltd.
21. Yuyao Wanlei Pipe Fitting Manufacturing Co., Ltd.

[FR Doc. 2022–26558 Filed 12–6–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing Establishment of the NIST Safety Commission

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The NIST Safety Commission (Commission) has been established as a discretionary advisory committee under agency authority in accordance with the provisions of FACA. It has been determined that the establishment of the Commission is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Dr. S. Shyam Sunder, Director of the Special Programs Office and Chief Data Officer, National Institute of Standards and Technology, at 301–975–6713 or *sunder@nist.gov.*

SUPPLEMENTARY INFORMATION: The NIST Safety Commission (Commission) has been established as a discretionary advisory committee under agency authority pursuant to 15 U.S.C. 1512 and in accordance with the Federal Advisory Committee Act, as amended (FACA), 5 U.S.C. App. The Secretary of Commerce has determined that the establishment of the Commission is necessary and in the public interest.

The Commission will provide advice to the NIST Director on matters relating to NIST safety policies; safety management system, practices, and performance; and safety culture. It will be tasked with assessing the state of NIST's safety culture and how effectively the existing safety protocols and policies have been implemented across NIST. The NIST Director may charge the Commission with specific areas of focus.

Members of the Commission will be appointed by the Director of NIST. The Commission will be composed of not more than seven members who are qualified to provide advice to the NIST Director on matters relating to safety policies; safety management system, practices, and performance; and safety culture. Commission membership will be balanced fairly and drawn from industry, academia, federal laboratories, and other relevant sectors.

The Commission will function solely as an advisory body, in accordance with the provisions of FACA. The Charter for the Commission will be filed with the appropriate entities no earlier than 15 calendar days following the date of publication of this notice.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2022–26550 Filed 12–6–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Industrial Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Industrial Advisory Committee (Committee) will hold an open meeting in-person and via web conference on Thursday, December 8, 2022, from 9 a.m. to 3 p.m. Eastern Time. The primary purposes of this meeting are to update the Committee on the progress of the Creating Helpful Incentives to Produce Semiconductors (CHIPS) Research & Development (R&D) Programs, receive updates from the Committee working groups, and allow the Committee to deliberate and discuss the progress that has been made. The final agenda will be posted on the NIST website at *https://www.nist.gov/chips/industrial-advisory-committee.*

DATES: The Industrial Advisory Committee will meet on Thursday, December 8, 2022, from 9 a.m. to 3 p.m. Eastern Time. The meeting will be open to the public.

ADDRESSES: The meeting will be held in person and via web conference, from the Grand Hyatt Washington Hotel, located at 1000 H St. NW, Washington, DC. For instructions on how to attend and/or participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Tamiko Ford at *Tamiko.Ford@NIST.gov* or (202) 594–6793.

SUPPLEMENTARY INFORMATION: The Committee was established pursuant to 15 U.S.C. 4656(b). The Committee is currently composed of 24 members, appointed by the Secretary of Commerce, to provide advice to the United States Government on matters relating to microelectronics research, development, manufacturing, and policy. Background information on the CHIPS Act and information on the Committee is available at *https://www.nist.gov/chips/industrial-advisory-committee.*

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Industrial Advisory Committee will meet on Thursday, December 8, 2022, from 9 a.m. to 3 p.m. Eastern Time. The meeting will be open to the public and will be held in-person and via web conference. Interested members of the public will be able to participate in the meeting from remote locations or in-person. The primary purposes of this meeting are to update the Committee on the progress of the CHIPS R&D Programs, receive updates from the Committee working groups, and allow the Committee to deliberate and discuss the progress that has been made. The final agenda will be posted on the NIST website at *https://www.nist.gov/chips/industrial-advisory-committee.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to items on the Committee's agenda for this meeting are invited to submit comments in advance of the meeting. Approximately ten minutes will be reserved for public comments, which will be read on a first-come, first-served basis. Only comments received through the registration link will be read during this period. Please note that all submitted comments will be treated as public documents and will be made available for public inspection. Comments read during this period will not be considered for response. All comments must be submitted via the registration link *https://events.nist.gov/profile/18507* by 5 p.m. Eastern Time, Wednesday, December 7, 2022. Additional written comments may be submitted after the meeting to Ben Davis at *Benjamin.Davis@NIST.gov.*

All visitors to the meeting are required to pre-register to be admitted. Space is limited and in-person attendance will be allowed on a first-come, first-served basis. Anyone wishing to attend this meeting in-person or via web conference must register by 5 p.m. Eastern Time, Wednesday, December 7, 2022, to attend. Please submit your full name, the organization you represent (if applicable), email address, and phone number via *https://events.nist.gov/profile/18507.* Non-U.S. citizens must submit additional information; please contact Tamiko Ford at *Tamiko.Ford@nist.gov for more information.* For participants attending in person, please note that you must present a state-issued driver's license or identification card for access to the meeting. The license or identification card must be issued by a state that is compliant with the REAL ID Act of 2005 (Pub. L. 109–13), or by a state that has an extension for REAL ID compliance. NIST currently accepts other forms of federal-issued identification in lieu of a state-issued driver's license. Registration for in-person attendance will be available on site and open from 8:30 a.m. until 10 a.m.

Pursuant to 41 CFR 102–3.150(b), the **Federal Register** notice for this meeting is being published fewer than 15 calendar days prior to the meeting as exceptional circumstances exist. It is imperative that the meeting be held on December 8, 2022 to accommodate the scheduling priorities of the key participants and due to the urgent nature of the Committee's work. The **Federal Register** notice could not be published previously due to logistical requirements needed to accommodate the timing requirement of the meeting and to ensure opportunities for public access and participation.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2022–26669 Filed 12–6–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC586]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to Echo Offshore LLC (Echo) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from the date of issuance through May 31, 2023.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Rachel Wachtendonk, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements

pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

Echo plans to conduct a high resolution seismic survey using a single 20-cubic inch airgun along with three additional high-resolution sources: a sidescan sonar, a sub-bottom profiler, and a multibeam echosounder. The survey will occur in South Timbalier Lease Block 133. See Echo's application for more details.

Consistent with the preamble to the final rule, the survey effort proposed by Echo in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, 5398, January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

As sources will be used simultaneously, exposure modeling results were generated using the single airgun proxy, as it produces the greater value for each species (as opposed to the high-resolution geophysical proxy, involving use of the same package of three additional instruments planned for use by Echo). Because the proxy assumes use of a 90 in^3 airgun, the take numbers authorized through this LOA are considered conservative (*i.e.,* they likely overestimate take due to differences in the sound source planned for use by Echo, as compared to those modeled for the rule). The survey is planned to occur for a single day in Zone 2, and is expected to occur in Winter, but could occur in Summer if unexpectedly delayed. Therefore, the take estimates for each species are based on the season that produces the greater value.

Based on the results of our analysis, NMFS has determined that the level of taking authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See Table 1 in this notice and Table 9 of the rule (86 FR 5322, January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322, January 19, 2021; 86 FR 5438, January 19, 2021).

The take numbers for authorization, which are determined as described above, are used by NMFS in making the necessary small numbers determinations, through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391, January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take [1]	Abundance [2]	Percent abundance
Rice's whale [3]	0	51	n/a
Sperm whale	0	2,207	n/a
Kogia spp.	0	4,373	n/a
Beaked whales	0	3,768	n/a
Rough-toothed dolphin	[4] 0	4,853	n/a
Bottlenose dolphin	31	176,108	0.1
Clymene dolphin	0	11,895	n/a
Atlantic spotted dolphin	[5] 26	74,785	0.0
Pantropical spotted dolphin	0	102,361	n/a
Spinner dolphin	0	25,114	n/a
Striped dolphin	0	5,229	n/a
Fraser's dolphin	[6] 0	1,665	n/a
Risso's dolphin	0	3,764	n/a
Melon-headed whale	0	7,003	n/a
Pygmy killer whale	0	2,126	n/a
False killer whale	[6] 0	3,204	n/a
Killer whale	0	267	n/a
Short-finned pilot whale	0	1,981	n/a

[1] Scalar ratios were not applied in this case due to brief survey duration.

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For the Rice's whale and killer whale, the larger estimated SAR abundance estimate is used.

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

[4] Modeled take of 1 decreased to zero. For rough-toothed dolphin, use of the exposure modeling produces results that are smaller than the average GOM group size (*i.e.,* estimated exposure value of 1, relative to assumed average group size of 14) (Maze-Foley and Mullin, 2006). NMFS' typical practice is to increase exposure estimates to the assumed average group size for a species in order to ensure that, if the species is encountered, exposures will not exceed the authorized take number. However, given the very short survey duration and small estimated exposure value NMFS has determined that is unlikely the species would be encountered at all. As a result, in this case NMFS has not authorized take for this species.

[5] Modeled take of 7 increased to account for potential encounter with group of average size (Maze-Foley and Mullin, 2006).

[6] Modeled take of less than 0.5 was rounded down to zero.

Based on the analysis contained herein of Echo's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes and therefore is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Echo authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: December 2, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–26568 Filed 12–6–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC595]

Marine Mammals; File No. 27029

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Echo Pictures Ltd., c/o Offspring Films, 1st & 2nd floor, Dock House, Welsh Back, Bristol, United Kingdom, BS1 4SB, has applied in due form for a permit to conduct commercial and educational photography on marine mammals.

DATES: Written, telefaxed, or email comments must be received on or before January 6, 2023.

ADDRESSES: These documents are 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. 27029 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 Carrie Hubard, (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.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to film up to 24 species of non-listed marine mammals for a wildlife documentary series. Filming may occur on the U.S. east coast from Florida to Maine from platforms including vessels, unmanned aircraft systems, and underwater (snorkelers, divers, and towed, pole, or drop-in cameras). See the application for species and numbers of animals by filming platform. The permit is requested for 2 years.

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: December 1, 2022.

Amy C. Sloan,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–26569 Filed 12–6–22; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m. EST, Wednesday, December 14, 2022.

PLACE: CFTC headquarters office, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.cftc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Authority: 5 U.S.C. 552b.

Dated: December 5, 2022.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2022–26736 Filed 12–5–22; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committee—Defense Advisory Committee for the Prevention of Sexual Misconduct

AGENCY: Department of Defense (DoD).

ACTION: Charter renewal of Federal Advisory Committee.

SUMMARY: The DoD is publishing this notice to announce that it is renewing the charter for the Defense Advisory

Committee for the Prevention of Sexual Misconduct (DAC–PSM).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, DoD Advisory Committee Management Officer, 703–697–1142.

SUPPLEMENTARY INFORMATION: The DAC–PSM's charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix) and 41 CFR 102–3.55(a)(4). The charter and contact information for the DAC–PSM's Designated Federal Officer (DFO) are found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

The DAC–PSM provides the Secretary of Defense, Deputy Secretary of Defense (''the DoD Appointing Authority''), the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), and, as applicable, the Secretary of Homeland Security, with independent advice and recommendations on the prevention of sexual assault (including rape, forcible sodomy, other sexual assault, and other sexual misconduct (including behaviors on the sexual assault continuum of harm)) involving members of the Armed Forces and the policies, programs, and practices of each Military Department, each Armed Force, each Military Service Academy (to include the United States Coast Guard Academy), at all DoD educational institutions and training facilities for the prevention of sexual assault, and other topics of special interest to the Department in response to specific tasks from the DoD Appointing Authority or the USD(P&R). The DAC–PSM is composed of no more than 20 members who are eminent authorities in the field and who have expertise in the prevention of sexual assault and behaviors on the sexual assault continuum of harm; adverse behaviors, including the prevention of suicide and the prevention of substance abuse; the change of culture of large organizations; implementation science; sexual assault prevention efforts of institutions of higher education, public health officials, and such other individuals as the DoD Appointing Authority considers appropriate. Members will consist of talented, innovative private sector leaders with a diversity of background, experience, and thought in support of the DAC–PSM missions.

Individual members are appointed according to DoD policy and procedures, and serve a term of service of one-to-four years with annual renewals. One member will be appointed as Chair of the DAC–PSM. No member, unless approved by the DoD Appointing Authority according to DoD policy and procedures, may serve more than two consecutive terms of service on the DAC–PSM, or serve on more than two DoD Federal advisory committees at one time.

DAC–PSM members who are not full-time or permanent part-time Federal civilian officers or employees are appointed as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee members. DAC–PSM members who are full-time or permanent part-time Federal civilian officers or employees are designated pursuant to 41 CFR 102–3.130(a), to serve as regular government employee members. In accordance with § 550B(b)(3) of the Fiscal Year 2020 National Defense Authorization Act, no active duty member of the Armed Forces shall be appointed as a DAC–PSM member.

All DAC–PSM members are appointed to provide advice based on their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official DAC–PSM-related travel and per diem, members serve without compensation.

The public or interested organizations may submit written statements about the DAC–PSM's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the DAC–PSM. All written statements shall be submitted to the DFO for the DAC–PSM, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: December 2, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–26570 Filed 12–6–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees—Defense Health Board

AGENCY: Department of Defense (DoD).

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The DoD is publishing this notice to announce that it is renewing the Defense Health Board (DHB).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, DoD Advisory Committee Management Officer, 703–692–5952.

SUPPLEMENTARY INFORMATION: The DHB is being renewed in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., App.) and 41 CFR 102–3.50(d). The charter and contact information for the DHB's Designated Federal Officer (DFO) are found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

The DHB provides independent advice and recommendations to maximize the safety and quality of, as well as access to, health care for DoD health care beneficiaries. The DHB will focus on matters pertaining to a. DoD healthcare policy and program management; b. delivery of high-quality health care services to DoD beneficiaries; c. the promotion of health, wellness, and prevention within the DoD; d. the treatment of disease and injury by the DoD; e. health research priorities; and f. other health-related matters of special interest to the DoD, as determined by the Secretary of Defense, the Deputy Secretary of Defense, (''the DoD Appointing Authority''), or the Under Secretary of Defense for Personnel and Readiness. All DHB work will be in response to written terms of reference approved by the DoD Appointing Authority or the USD(P&R), unless otherwise provided by in statute or Presidential directive.

The DHB is composed of no more than 20 members, and as determined by the DoD Appointing Authority, the DHB's total parent-level and subcommittee level membership cannot exceed 50 members unless otherwise directed by the DoD Appointing Authority. Membership will consist of private and public healthcare leaders with a diversity of background, experience, and thought in support of the DHB's mission in one or more of the following disciplines: health systems, clinical health care, infectious disease, public health, trauma medicine, beneficiary representation, health informatics, patient care safety/quality care, neuroscience, and/or behavioral health. Individual members will be appointed according to DoD policy and procedures, and serve a term of service of one-to-four years with annual renewals. One member will be appointed as Chair of the DHB. No member, unless approved according to DoD policy and procedures, may serve more than two consecutive terms of service on the DHB, or serve on more than two DoD Federal advisory committees at one time.

DHB members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, will be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee members. DHB members who are full-

time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, will be appointed pursuant to 41 CFR 102–3.130(a) to serve as regular government employee members.

All members of the DHB are appointed to exercise their own best judgment on behalf of the DoD, without representing any particular point of view, and to discuss and deliberate in a manner that is free from conflict of interest. Except for reimbursement of official DHB-related travel and per diem, members serve without compensation.

The public or interested organizations may submit written statements to the DHB membership about the DHB's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the DHB. All written statements shall be submitted to the DFO for the DHB, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: December 2, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–26572 Filed 12–6–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0119]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; 2023–24 National Postsecondary Student Aid Study (NPSAS:24) Field Test—Student Data Collection and Student Records

AGENCY: Institute of Education Sciences (IES), National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before January 6, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. 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 Carrie Clarady, (202) 245–6347.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: 2023–24 National Postsecondary Student Aid Study (NPSAS:24) Field Test—Student Data Collection and Student Records.

OMB Control Number: 1850–0666.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 7,237.

Total Estimated Number of Annual Burden Hours: 8,663.

Abstract: This request is to conduct the 2023–24 National Postsecondary Student Aid Study Field Test (NPSAS:24 FT) student data collection, consisting of a student record data abstraction and a student survey, carrying over the approved NPSAS:24 FT Institution Collection (OMB#1859–0666 v. 33). This study is being conducted by the National Center for Education Statistics (NCES), within the Institute of Education Sciences (IES), part of the U.S. Department of Education.

This submission covers materials and procedures related to the NPSAS:24 student data collection, which includes abstraction of student data from institutions and a student survey, administered primarily as a web survey, and carries over respondent burden, procedures, and materials related to the NPSAS:24 FT institution sampling, enrollment list collection, and matching to administrative data files as approved by OMB in September 2022 (OMB#1859–0666 v. 33). The materials and procedures are based on those developed for previous institution-based data collections, including the 2019–20 National Postsecondary Student Aid Study (NPSAS:20) [OMB #1850–0666 v.25].

The first NPSAS was implemented by NCES during the 1986–87 academic year to meet the need for national data about significant financial aid issues. Since 1987, NPSAS has been fielded every 2 to 4 years, most recently during the 2019–20 academic year (NPSAS:20). NPSAS:24 will be nationally-representative. The NPSAS:24 field test sample size will be 6,000 students, and the full-scale sample will include 137,000 nationally representative undergraduate and 25,000 nationally representative graduate students who will be asked to complete a survey and for whom we will collect student records and administrative data. If the full-scale budget allows, we will include state-representative sampling for the full-scale collection and provide the budget for a state-representative sampling plan in the 30-day full-scale package, planned for 2023. Also, if exercised, NPSAS:24 will serve as the base year for the 2024 cohort of the Baccalaureate and Beyond (B&B) Longitudinal Study and will include a nationally representative sample of students who will complete requirements for the bachelor's degree during the NPSAS year (*i.e.,* completed at some point between July 1, 2022 and June 30, 2023 for the field test and July 1, 2023 to June 30, 2024 for the full-scale). Subsets of questions in the student survey will focus on describing aspects of the experience of students in their last year of postsecondary education, including student debt and education experiences. This submission is designed to adequately justify the need for and overall practical utility of the full study, presenting the overarching plan for all phases of the student data collection and providing as much detail about the measures to be used as is available at the time of this submission.

As part of this submission, NCES is publishing a notice in the **Federal Register** allowing first a 60- and then a 30-day public comment period. Field test materials, procedures, and results

will inform the full-scale study. After completion of this field test, NCES will publish a notice in the **Federal Register** allowing additional 30-day public comment period on the final details of the NPSAS:24 full-scale student records and student survey data collections.

Dated: December 2, 2022.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–26562 Filed 12–6–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Common Instructions for Applicants to Department of Education Discretionary Grant Programs

AGENCY: Office for Planning, Evaluation and Policy Development, Department of Education.

ACTION: Notice; revised common instructions.

SUMMARY: On December 27, 2021, the Department of Education (Department) published a revised set of common instructions for applicants seeking funds under a Department discretionary grant competition as part of a broader effort to reduce barriers for applicants. These common instructions are referenced in individual competition notices inviting applications (NIAs). In this notice, the Department is publishing a revised version of the common instructions that supersedes the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Ronald B. Petracca, U.S. Department of Education, 400 Maryland Avenue SW, Room 6E306, Washington, DC 20202. Telephone: (202) 401–6008. Email: *Ronald.Petracca@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Background: This document provides applicants with a centralized and up-to-date set of instructions for applying to the Department's discretionary grant programs. Future NIAs will reference this document in lieu of providing this series of instructions within each NIA. Rarely, exceptions will need to be made to these instructions and will be noted in an individual competition NIA.

Revised Common Instructions:

The Department is making several changes to the revised common instructions for applicants provided in the notice published in the **Federal Register** on December 27, 2021 (86 FR 73264). Throughout section 4, the Department has removed reference to the Data Universal Numbering System number (DUNS) given the full implementation of the Unique Entity Identifier (UEI). The Department has also made some technical updates to the instructions.

The revised common instructions are set forth as follows:

Common Set of Instructions for Applicants:

Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package from the Department's website or *Grants.gov*.

To obtain a copy via the Department's website, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.*

2. *Content and Form of Application Submission:* Requirements concerning the content and form of an application, together with the forms you must submit, are in the application package for the program.

3. *Submission Dates and Times:* Submit applications for grants under the program electronically using *Grants.gov*. For information (including dates and times) about how to submit your application electronically, please refer to *Other Submission Requirements* in section 5 of these instructions.

The Department does not consider an application that does not comply with the deadline requirements.

4. *Unique Entity Identifier, Taxpayer Identification Number, and System for Award Management:* To do business with the Department, and to submit your application electronically using *Grants.gov*, you must—

a. Have a Unique Entity Identifier (UEI) and a Taxpayer Identification Number (TIN);

b. Be registered in the System for Award Management (*SAM.gov*), the Government's primary registrant database;

c. Provide your UEI number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service (IRS). If you are an individual, you can obtain a TIN from the IRS or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process usually takes approximately 7 to 10 business days, but may take longer, depending on the completeness and accuracy of the data you enter into the *SAM.gov* database. The Department recommends that you register early, at least 10 to 14 business days before the application deadline. If you are unable to submit an application on *Grants.gov* by the application deadline because you do not have an active SAM registration, you will not be considered for funding.

Note: Once your *SAM.gov* registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov*.

If you are currently registered with *SAM.gov*, you may not need to make any changes. However, please make certain that the TIN associated with your UEI is correct.

Note: You must update your SAM registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with registering in *SAM.gov* or updating your existing SAM registration, see the Quick Start Guide for Grant Registrations and the Entity Registration Video at *https://sam.gov/content/entity-registration.*

In addition, in order to submit your application via *Grants.gov*, you must (1) register as an applicant using your UEI number and (2) be designated by your organization's E-Biz Point of Contact as an Authorized Organization Representative (AOR). Details on these steps are outlined at the following *Grants.gov* web page: *https://www.grants.gov/web/grants/register.html.*

5. *Other Submission Requirements:*

a. *Electronic Submission of Applications.*

The Department is participating as a partner in the Government-wide *Grants.gov* site. Submit applications electronically using *Grants.gov* and do not email them unless explicitly allowed in a competition NIA.

You may access the electronic grant applications at *www.grants.gov.* You may search for the downloadable application package for this competition by the Assistance Listing Number (ALN). Do not include the ALN's alpha suffix in your search (*e.g.,* search for 84.184, not 84.184D).

A *Grants.gov* applicant must apply online using Workspace, a shared environment in *Grants.gov* where

members of a grant team may simultaneously access and edit different web forms within an application. An applicant can create an individual Workspace for each application and establish, for that application, a collaborative application package that allows more than one person in the applicant's organization to work concurrently on an application. The *Grants.gov* system also enables the applicant to reuse forms from previous submissions, check forms in and out to complete them, and submit the application package. For access to further instructions on how to apply using *Grants.gov*, refer to: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*

Please note the following:

- Applicants needing assistance with *Grants.gov* may contact the *Grants.gov* Support Center either by calling 1–800–518–4726 or by sending an email to *support@grants.gov.* The *Grants.gov* Support Center is available 24 hours a day, seven days a week, except for Federal holidays. Applicants needing assistance from Principal Office staff with their applications should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section in the competition NIA prior to the application deadline date during normal business hours and no later than 5:00 p.m., Eastern Time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your internet connection. Therefore, the Department recommends that you leave yourself plenty of time to complete your submission.
- Applications received by *Grants.gov* are date- and time-stamped upon submission. Your application must be fully uploaded and submitted, received, and date- and time-stamped by the *Grants.gov* system no later than 11:59:59 p.m., Eastern Time, on the application deadline date. Except as otherwise noted in this section, the Department will not accept your application if it is submitted, received, and date- and time-stamped by the *Grants.gov* system—after 11:59:59 p.m., Eastern Time, on the application deadline date. The Department will not consider an application that does not comply with the deadline requirements. When the Department retrieves your application from *Grants.gov*, the Department will notify you if the Department is rejecting your application because it was late. Receipt of a date- and time-stamp from *Grants.gov* does not mean that your application meets program eligibility requirements described in the NIA.
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for the program to ensure that you submit your application on time. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through *Grants.gov*, please refer to the *Grants.gov* website at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*
- When you submit your application electronically, all documents must be submitted electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all Department-specific assurances and certifications.
- When you submit your application electronically, you must upload any narrative sections and all other attachments to your application as files in either Portable Document Format (PDF) or Microsoft Word. Although applicants have the option of uploading any narrative sections and all other attachments to their application in either PDF or Microsoft Word, the Department recommends applicants submit all documents as read-only flattened PDFs, meaning any fillable PDF files must be saved and submitted as non-fillable PDF files and not as interactive or fillable PDF files, to better ensure applications are processed in a more timely, accurate, and efficient manner. If you choose to submit your application in Microsoft Word, you may do so using any version of Microsoft Word (*i.e.,* a document ending in a .doc or .docx extension). If you upload a file type other than PDF or Microsoft Word or if you submit a password-protected file, the Department will be unable to review that material. Please note that this will likely result in your application not being considered for funding. The Department will not convert material from other formats to PDF or Microsoft Word.
- After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. *Grants.gov* will also notify you automatically by email if your application met all of the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered AOR, issues with your UEI number, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline date and time for submission of your application.

Once your application is successfully validated by *Grants.gov*, the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

Email confirmations and receipts from *Grants.gov* do not indicate receipt by the Department, nor do they mean that your application is complete or has met all application requirements. While your application may have been successfully validated by *Grants.gov*, it also must be reviewed in accordance with the Department's application requirements as specified in the competition NIA and in these application instructions. It is your responsibility to ensure that your submitted application has met all of the Department's requirements. Additionally, the Department may request that you provide us with original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you experience problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk immediately, toll-free, at 1–800–518–4726. The *Grants.gov* Support Center will provide you with a Support Desk Case Number documenting your communication. You must retain your Support Desk Case Number for future reference as proof of your communication with the Support Center. Please subsequently contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section in the competition NIA and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems within the *Grants.gov* system, the Department will grant you an extension until 11:59:59 p.m., Eastern Time, the following business day to enable you to transmit your application electronically, provided the Department can verify the technical issues that affected your ability to submit your application on

time via your *Grants.gov* Support Desk Case Number.

Note: The extensions to which the Department refers in this section apply only to technical problems with the *Grants.gov* system. The Department will not grant you an extension if you failed to fully register in order to submit your application to *Grants.gov* (including with the required UEI number and TIN currently registered in SAM) before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

b. *Submission of Paper Applications.*

The Department discourages paper applications, but if electronic submission is not possible (*e.g.,* you do not have access to the internet), (1) you must provide a prior written notification that you intend to submit a paper application and (2) your paper application must be postmarked by the application deadline date.

The prior written notification may be submitted by email or by mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of the competition NIA. If you submit your notification by email, it must be received by the Department no later than 14 calendar days before the application deadline date. If you mail your notification to the Department, it must be postmarked no later than 14 calendar days before the application deadline date.

If you submit a paper application, you must have, and include on your application, a UEI number and mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, OFO/G5 Functional Application Team, Mail Stop 5C231, Attention: (Assistance Listing Number + Suffix Letter), 400 Maryland Avenue SW, Washington, DC 20202–4260

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, the Department does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

The Department will not consider applications postmarked after the application deadline date.

Note for Mail Delivery of Paper Applications: If you mail your application to the Department—

(1) You must indicate on the envelope and in Item 11 of the SF 424 the ALN, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The G5 Functional Application Team will notify you of the Department's receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of the competition NIA.

Accommodations; Accessible Format: Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section in the competition NIA. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in the competition NIA.

On request to the person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Roberto J. Rodriguez,

Assistant Secretary for Planning, Evaluation and Policy Development.

[FR Doc. 2022–26554 Filed 12–6–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, January 5, 2023; 6 p.m.–8 p.m. ET.

ADDRESSES: The Ohio State University, Endeavor Center, 1862 Shyville Road, Room 165, Piketon, OH 45661.

Attendees should check with the Board Support Manager (below) for any meeting format changes due to COVID–19 protocols.

FOR FURTHER INFORMATION CONTACT: Eric Roberts, Board Support Manager, by Phone: (270) 554–3004 or Email: *eric@pgdpcab.org.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Review of Agenda
- Presentation
- Administrative Issues
- Public Comments

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Eric Roberts as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Comments received by no later than 5 p.m. ET on Monday, January 2,

2023, will be read aloud during the meeting. Comments will also be accepted after the meeting, by no later than 5 p.m. ET on Friday, January 13, 2023. Please submit comments to Eric Roberts at the aforementioned email address. Please put ''Public Comment'' in the subject line. Individuals who wish to make oral statements pertaining to agenda items should contact Eric Roberts at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Portsmouth, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Eric Roberts, Board Support Manager, Emerging Technology Center, Room 221, 4810 Alben Barkley Drive, Paducah, KY 42001; Phone: (270) 554–3004. Minutes will also be available at the following website: *https://www.energy.gov/pppo/ports-ssab/listings/meeting-materials.*

Signed in Washington, DC, on December 2, 2022.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2022–26594 Filed 12–6–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Establishment: High-Assay Low-Enriched Uranium (HALEU) Consortium

AGENCY: Office of Nuclear Energy, U.S. Department of Energy.

ACTION: Notice of establishment.

SUMMARY: Through this Notice, the Office of Nuclear Energy (NE), U.S. Department of Energy (DOE or the Department), announces the establishment of the High-Assay, Low-Enriched Uranium (HALEU) consortium pursuant to the Energy Act of 2020. This Notice outlines the Department's process for eligible entities to request membership in the consortium.

DATES: The HALEU consortium is established on December 7, 2022.

ADDRESSES: All entities interested in becoming a consortium member must submit by email at *HALEUConsortium@nuclear.energy.gov* their request for membership. Submit electronic comments in Microsoft Word or PDF file format and avoid the use of special characters or any form of encryption. Please include ''Membership in HALEU Consortium'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be sent to: Mark Angil, Email: *HALEUConsortium@nuclear.energy.gov;* Telephone: (301) 903–3962.

SUPPLEMENTARY INFORMATION:

I. Background

Section 2001(a)(1) of the Energy Act of 2020 (42 U.S.C. 16281(a)(1)) directs the Secretary of Energy (Secretary) to ''establish and carry out, through the Office of Nuclear Energy, a program to support the availability of HA–LEU for civilian domestic research, development, demonstration, and commercial use [the Program].'' Section 2001(a)(2)(F) (42 U.S.C. 16281(a)(2)(F)) requires the Secretary to ''establish, and from time to time update, a consortium, which may include entities involved in any stage of the nuclear fuel cycle, to partner with the Department to support the availability of HA–LEU for civilian domestic demonstration and commercial use.'' NE has created an associated website for this consortium: *https://www.energy.gov/ne/us-department-energy-haleu-consortium.*

The consortium will provide a forum through which the Department can work with individual members to support the availability of HALEU for civilian domestic demonstration and commercial use. The Department may use the consortium to collect data from individual members, exchange views with individual members on how best to ensure the availability of HALEU in the short term and long term, and develop arrangements to provide HALEU to individual members for demonstration projects and commercial uses. In this regard, the Department intends to undertake biennial surveys to estimate the quantity of HALEU necessary for domestic commercial use for each of the 5 years subsequent to a survey. In addition, the Department may work with individual members of the consortium to develop a schedule for cost recovery of HALEU made available to individual members of the consortium for commercial use.

The Department expects the members of the HALEU consortium to play a pivotal role in the deployment and commercialization of advanced nuclear reactors and related infrastructure. They will also help secure a critical domestic supply of HALEU to support meeting the Administration's climate, economic, and energy security goals.

II. Process for Applying for Membership

The HALEU consortium may include entities involved in any stage of the nuclear fuel cycle. DOE interprets this to mean that any entity that contributes to the production, distribution, or utilization of HALEU is eligible to join the consortium. Any such U.S. entities that are interested in partnering with DOE to support the availability of HALEU for civilian domestic demonstration and commercial use are encouraged to apply for membership in the consortium. At its discretion, DOE may also accept requests for membership in the consortium from entities whose facilities are located in ally or partner nations. Entities interested in becoming a member of the consortium are invited to file a request for membership by email at the following address: *HALEUConsortium@nuclear.energy.gov.* This request should explain the entity's involvement in the nuclear fuel cycle and the entity's interest in partnering with DOE. It should also provide contact information for the entity's representative(s), including name, affiliation, email, and phone number.

NE will coordinate HALEU consortium membership and consortium activities consistent with its purposes and objectives. Upon receipt of a request and confirmation that the requestor is an entity engaged in the nuclear fuel cycle and eligible for membership, NE will notify the entity that it is a member of the consortium and list the entity as a member of the consortium on the NE website.

If a member of the consortium wishes to resign its membership, the member should notify NE by email at *HALEUConsortium@nuclear.energy.gov.* Resignation from the consortium shall become effective immediately upon receipt by NE of notice of the entity's wish to resign.

Signing Authority

This document of the Department of Energy was signed on November 29, 2022, by Dr. Kathryn Huff, Assistant Secretary for Nuclear Energy, Office of Nuclear 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 December 2, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–26577 Filed 12–6–22; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10480–01–OA]

Local Government Advisory Committee (LGAC) Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), EPA herby provides notice of a meeting for the Local Government Advisory Committee (LGAC) and the Small Communities Advisory Subcommittee (SCAS) on the date and time described below. This meeting will be open to the public. For information on public attendance and participation, please see the registration information under **SUPPLEMENTARY INFORMATION**. Due to holiday schedules, EPA is announcing this meeting with less than 15 calendar days' of notice.

DATES: The LGAC will meet virtually December 16th, 2022, from 12 p.m. through 2 p.m. Eastern Standard Time.

FOR FURTHER INFORMATION CONTACT: Paige Lieberman, Designated Federal Officer (DFO), at *LGAC@epa.gov* or 202–564–9957 Information on Accessibility: For information on access or services for individuals requiring accessibility accommodations, please contact Paige Lieberman by email at *LGAC@epa.gov.* To request accommodation, please do so five (5) business days prior to the meeting, to give EPA as much time as possible to process your request.

SUPPLEMENTARY INFORMATION: The LGAC has been deliberating on the following issues and will discuss and vote on recommendations at this meeting.

TOPIC 1: Green Gas Reduction Fund

Read background on the program here: *https://www.epa.gov/inflation-reduction-act/greenhouse-gas-reduction-fund.*

TOPIC 2: Lead and Copper Rule Improvements

Read background on the proposed rule here: *https://www.epa.gov/ground-water-and-drinking-water/lead-and-copper-rule-improvements.*

All interested persons are invited to attend and participate. The LGAC will hear comments from the public from approximately 1:40–1:50 p.m. (EST). Individuals or organizations wishing to address the Committee or Subcommittee will be allowed a maximum of five (5) minutes to present their point of view. Also, written comments should be submitted electronically to *LGAC@epa.gov* for the LGAC and SCAS. Please contact the DFO at the email listed under **FOR FURTHER INFORMATION CONTACT** to schedule a time on the agenda by December 14, 2021. Time will be allotted on a first-come first-served basis, and the total period for comments may be extended if the number of requests for appearances requires it.

Registration

The meeting will be held virtually through an online audio and video platform. Members of the public who wish to participate should register by contacting the Designated Federal Officer (DFO) at *LGAC@epa.gov* by December 14, 2022. The agenda and other supportive meeting materials will be available online at *https://www.epa.gov/ocir/*local-government-advisory-committee-lgac and will be emailed to all registered. In the event of cancellation for unforeseen circumstances, please contact the DFO or check the website above for reschedule information.

Dated: December 1, 2022.

Paige Lieberman,

Designated Federal Officer, U.S. Environmental Protection Agency.

[FR Doc. 2022–26563 Filed 12–6–22; 8:45 am]

BILLING CODE 6560–50–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.: 201397.

Agreement Name: Hyundai Glovis/Bahri Space Charter Agreement.

Parties: Hyundai Glovis Co., Ltd.; The National Shipping Company of Saudi Arabia d/b/a Bahri AS.

Filing Party: Wayne Rohde, Cozen O'Connor.

Synopsis: The Agreement authorizes the parties to charter space to/from one another in all trades in the foreign commerce of the United States.

Proposed Effective Date: 1/15/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/72505.

Dated: December 2, 2022.

William Cody,

Secretary.

[FR Doc. 2022–26580 Filed 12–6–22; 8:45 am]

BILLING CODE 6730–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3435–PN]

Medicare and Medicaid Programs: Application From the Center for Improvement in Healthcare Quality for Initial CMS Approval of Its Critical Access Hospital Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with request for comment.

SUMMARY: This proposed notice acknowledges the receipt of an application from the Center for Improvement in Healthcare Quality (CIHQ) for initial recognition as a national accrediting organization for critical access hospitals (CAHs) that wish to participate in the Medicare or Medicaid programs.

DATES: To be assured consideration, comments must be received at one of

the addresses provided below, by January 6, 2023.

ADDRESSES: In commenting, please refer to file code CMS–3435–PN.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3435–PN, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3435–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Caecilia Blondiaux, (410) 786–2190.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a critical access hospital (CAH), provided that certain requirements are met by the CAH. Sections 1820(c)(2) and 1820(e) of the Social Security Act (the Act), establish statutory authority for states and the Secretary of the Department of Health and Human Services (the Secretary) to determine criteria for facilities seeking designation as a CAH. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 485, subpart F specify the conditions that a CAH must meet to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for CAHs.

Generally, to enter into an agreement, a CAH must first be certified by a state survey agency as complying with the applicable conditions or requirements set forth in part 485 of our regulations. Thereafter, the CAH is subject to regular surveys by a state survey agency to determine whether it continues to meet these requirements.

However, there is an alternative to surveys by state agencies. Section 1865(a)(1) of the Act states that if a provider entity demonstrates through accreditation by an approved national accrediting organization (AO) that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements for that entity. Accreditation by an AO is voluntary and is not required for Medicare participation.

If an AO is recognized by the Centers for Medicare & Medicaid Services (CMS) as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national AO applying for approval of its accreditation program under part 488, subpart A, must provide us with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of AO are set forth at § 488.5.

The Center for Improvement in Healthcare Quality (CIHQ) has submitted an initial application for CMS-approval of its CAH accreditation program.

II. Approval of Accreditation Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.5 require that our findings concerning review and approval of a national AO's requirements consider, among other factors, the applying AO's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of CIHQ's initial request for approval of its CAH accreditation program. This notice also solicits public comment on whether the CIHQ's requirements meet or exceed the Medicare conditions of participation (CoPs) for CAHs.

III. Evaluation of Deeming Authority Request

CIHQ submitted all the necessary materials to enable us to make a determination concerning its request for initial approval of its CAH accreditation program. This application was determined to be complete on October 31, 2022. Under 1865(a)(2) of the Act and our regulations at § 488.5 (Application and re-application procedures for national AO), our review and evaluation of the CIHQ will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of the CIHQ's standards for hospitals as compared with CMS' CAH CoPs.
- The CIHQ's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of the CIHQ's processes to those of state agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ CIHQ's processes and procedures for monitoring a CAH found out of compliance with CIHQ's program requirements. These monitoring procedures are used only when the CIHQ identifies noncompliance. If noncompliance is identified through

validation reviews or complaint surveys, the state survey agency monitors corrections as specified at § 488.9.

++ CIHQ's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ CIHQ's capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ The adequacy of the CIHQ's staff and other resources, and its financial viability.

++ CIHQ's capacity to adequately fund required surveys.

++ CIHQ's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ CIHQ's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

++ CIHQ's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: December 2, 2022.

Lynette Wilson,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2022–26596 Filed 12–6–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No. 0970–0248]

Submission for Office of Management and Budget (OMB) Review; Annual Report on State Maintenance-of-Effort (MOE) Programs—ACF–204 (Annual MOE Report) (Office of Management and Budget

AGENCY: Office of Family Assistance, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension of the ACF–204 (Annual MOE Report; OMB #0970–0248, expiration November 30, 2022). There are no changes requested to this information collection.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Annual MOE Report is used to collect descriptive program characteristics information on the programs operated by states and territories in association with their Temporary Assistance for Needy Families (TANF) programs. All state and territory expenditures claimed toward states and territories MOE requirements must be appropriate, *i.e.,* meet all applicable MOE requirements. The Annual MOE Report provides the ability to learn about and to monitor the nature of state and territory expenditures used to meet states and territories MOE requirements, and it is an important source of information about the different ways that states and territories are using their resources to help families attain and maintain self-sufficiency. In addition, the report is used to obtain state and territory program characteristics for ACFs annual report to Congress, and the report serves as a useful resource to use in Congressional hearings about how TANF programs are evolving, in assessing state and the territory MOE expenditures, and in assessing the need for legislative changes.

Respondents: The 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents per year	Total number of annual responses per respondent	Average burden hours per response	Annual burden hours
ACF–204; Annual MOE Report	54	1	118	6,372

Estimated Total Annual Burden Hours: 6,372.

Authority: Section 402 of the Social Security Act (42 U.S.C. 602), as amended by Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–26542 Filed 12–6–22; 8:45 am]

BILLING CODE 4184–82–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1262]

Notice of Approval of Product Under Voucher: Rare Pediatric Disease Priority Review Voucher

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of approval of a product redeeming a priority review voucher. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the issuance of priority review vouchers as well as the approval of products redeeming a priority review voucher. FDA has determined that IMJUDO (tremelimumab), approved October 23, 2022, meets the criteria for redeeming a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Cathryn Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1394, email: *Cathryn.Lee@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is announcing the approval of a product redeeming a rare pediatric disease priority review voucher. Under section 529 of the FD&C Act (21 U.S.C. 360ff), which was added by FDASIA, FDA will report the issuance of rare pediatric disease priority review vouchers and the approval of products for which a voucher was redeemed. FDA has determined that IMJUDO (tremelimumab), approved October 23, 2022, meets the redemption criteria.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm.*

For further information about IMJUDO (tremelimumab), approved October 23, 2022, go to the ''Drugs@FDA'' website at *https://www.accessdata.fda.gov/scripts/cder/daf/.*

Dated: December 1, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–26565 Filed 12–6–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–2301]

Small Volume Parenteral Drug Products and Pharmacy Bulk Packages for Parenteral Nutrition: Aluminum Content and Labeling Recommendations; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Small Volume Parenteral Drug Products and Pharmacy Bulk Packages for Parenteral Nutrition: Aluminum Content and Labeling Recommendations.'' This draft guidance is intended to clarify the key factors in determining the appropriate aluminum content in a small volume parenteral (SVP) drug product and/or a pharmacy bulk package (PBP) intended as a component of parenteral nutrition (PN) and provide FDA's recommendations regarding the concentration of aluminum in SVP drug products and PBPs for PN. Additionally, this guidance is intended to assist applicants in determining the appropriate content and placement of information on aluminum in SVP and PBP human prescription drug product labeling.

DATES: Submit either electronic or written comments on the draft guidance by February 6, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2022–D–2301 for ''Small Volume Parenteral Drug Products and Pharmacy Bulk Packages for Parenteral Nutrition: Aluminum Content and Labeling Recommendations.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

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

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

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Thao Vu, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5232, Silver Spring, MD 20993–0002, 241–308–2929.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Small Volume Parenteral Drug Products and Pharmacy Bulk Packages for Parenteral Nutrition: Aluminum Content and Labeling Recommendations.'' Aluminum, one of the most abundant metallic elements on earth, occurs naturally in several minerals, ores, oxides, and silicates. Although humans are exposed to aluminum through drinking water, foods, and drugs, aluminum's oral bioavailability is poor, so healthy individuals typically face little risk of toxicity. Despite that, aluminum toxicity has been documented in medical literature for more than 30 years, with manifestations that include osteomalacia and reduced bone mineralization, neurological dysfunction and dialysis encephalopathy, microcytic hypochromic anemia, and cholestasis.

A long-implicated, major source of aluminum exposure is PN, resulting from contamination of ingredients. Patients with underlying renal impairment who receive prolonged courses of PN support are at greatest risk of exposure to toxic levels of aluminum from PN. Preterm neonates and infants who often require many days of PN support and have immature kidneys that are incapable of excreting aluminum efficiently are at particularly high risk.

Research indicates that patients with renal impairment, including premature neonates, who receive parenteral levels of aluminum at greater than 4 to 5 microgram/kilogram/day (mcg/kg/day) accumulate aluminum at levels associated with central nervous system and bone toxicity. Because patients with renal impairment, including all preterm neonates, comprise a major portion of those requiring PN support, we recommend that the total aluminum exposure (TAE) from PN uniformly should not exceed 5 mcg/kg/day. To determine TAE, one must consider all sources of aluminum content in PN, including each large volume parenteral and each SVP drug product and PBP in PN. This guidance describes an approach to deriving the recommended aluminum concentration limit in an SVP drug product for PN, based on the proposed clinical dose, concentration of drug or dose volume, and the known or estimated contribution of aluminum from other products in the PN.

Additionally, this guidance is intended to assist applicants in determining the appropriate content and placement of information on aluminum in SVP and PBP human prescription drug product labeling. This guidance provides recommendations to help ensure that information on the aluminum content is appropriate and placed in the proper sections and subsections within the Highlights of Prescribing Information and on the container label and carton labeling. This will help to assure that the information is clear and accessible to healthcare practitioners and includes content that guides the safe and effective use of the drug product.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Small Volume Parenteral Drug Products and Pharmacy Bulk Packages for Parenteral Nutrition: Aluminum Content and Labeling Recommendations.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014. The collections of information in FDA's guidance entitled ''Formal Meetings Between the FDA and Sponsors or Applicants of PDUFA Products'' (available at *https://www.fda.gov/media/109951/download*) have been approved under OMB control numbers 0910–0001 and 0910–0429. The collections of information in 21 CFR 201.56 and 201.57 have been approved under OMB control number 0910–0572. The collections of information in FDA's guidance entitled ''Formal Meetings Between FDA and ANDA Applicants of Complex Products Under GDUFA'' (available at *https://www.fda.gov/media/107626/download*) have been approved under OMB control number 0910–0718. The collections of information in FDA's guidance entitled ''Controlled Correspondence Related to Generic Drug Development'' (available at *https://www.fda.gov/media/109232/download*) have been approved under OMB control number 0910–0797.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: December 1, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–26564 Filed 12–6–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–6580]

Homeopathic Drug Products; Guidance for Food and Drug Administration Staff and Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a final guidance for FDA staff and industry entitled ''Homeopathic Drug Products.'' The guidance describes how FDA intends to prioritize enforcement and regulatory action with regard to drug products, including biological products, labeled as homeopathic and marketed in the United States without the required FDA approval.

DATES: The announcement of the guidance is published in the **Federal Register** on December 7, 2022.

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

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2017–D–6580 for ''Homeopathic Drug Products; Guidance for Food and Drug Administration Staff and Industry; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

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

Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Elaine Lippmann, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6238, Silver Spring, MD 20993, 301–796–3602, *Elaine.Lippmann@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911, *Stephen.Ripley@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** on October 25, 2019 (84 FR 57441), FDA announced the availability of a revised draft guidance for FDA staff and industry entitled ''Drug Products Labeled as Homeopathic.'' This revised draft guidance was intended to describe how FDA intends to prioritize enforcement and regulatory action with regard to drug products, including biological products, labeled as homeopathic and marketed in the United States without the required FDA approval. After review of the comments received on the revised draft guidance, as well as comments on the original draft guidance published on December 20, 2017, we are issuing this final guidance with minor revisions for clarity and transparency.

As part of the process of issuing this final guidance, FDA has also taken into consideration the Citizen Petition filed on behalf of Americans for Homeopathy Choice received by FDA on June 5, 2020, the reasoning set forth in FDA's response to that Petition, and the references cited therein. And as part of the process of issuing FDA's response to that Petition, FDA has taken into consideration the comments received on the original and revised draft guidances, the reasoning set forth in this final guidance, and the references cited therein.

This final guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). 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

This guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances*, *https://www.fda.gov/regulatory-information/search-fda-guidance-documents*, or *https://www.regulations.gov*.

Dated: December 1, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–26567 Filed 12–6–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Advisory Committee on Children and Disasters; Meeting

AGENCY: Office of the Assistant Secretary for Strategic Preparedness and Response (ASPR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The National Advisory Committee on Children and Disasters (NACCD or the Committee) is required by section 2811A of the PHS Act, as amended by the Pandemic and All Hazards Preparedness and Advancing Innovation Act (PAHPAIA) and governed by the provisions of the Federal Advisory Committee Act (FACA). The NACCD shall evaluate issues and programs and provide findings, advice, and recommendations to the Secretary of HHS and ASPR to support and enhance all-hazards public health and medical preparedness, response, and recovery aimed at meeting the unique needs of children and their families across the entire spectrum of their wellbeing. The Secretary of HHS has formally delegated authority to operate the NACCD to ASPR.

DATES: The NACCD will conduct a public meeting (virtual) on January 18, 2023 to discuss, finalize and vote on an initial set of recommendations to the HHS Secretary and ASPR regarding challenges, opportunities, and priorities for national public health and medical preparedness, response and recovery, specific to the needs of children and their families in disasters. A more detailed agenda and meeting registration link will be available on the NACCD meeting website *https://www.phe.gov/Preparedness/legal/boards/naccd/Pages/default.aspx.*

ADDRESSES: Members of the public may attend the meeting via a toll-free phone number or Zoom teleconference, which requires pre-registration. The meeting link to pre-register will be posted on *https://www.phe.gov/Preparedness/legal/boards/naccd/Pages/default.aspx.* Members of the public may provide written comments or submit questions for consideration to the NACCD at any time via email to *NACCD@hhs.gov.* Members of the public are also encouraged to provide comments after the meeting.

FOR FURTHER INFORMATION CONTACT: Zhoowan Jackson, NACCD Designated Federal Officer, Office of the Assistant Secretary for Strategic Preparedness and Response (ASPR), Department of Health and Human Services (HHS), Washington, DC; 202–205–4217, *NACCD@hhs.gov.*

SUPPLEMENTARY INFORMATION: The NACCD invites those who are involved in or represent a relevant industry, academia, health profession, health care consumer organization, or state, Tribal, territorial, or local government to request up to four minutes to address the committee live via Zoom. Requests to provide remarks to the NACCD during the public meeting must be sent to *NACCD@hhs.gov* at least 15 days prior to the meeting along with a brief description of the topic. We would specifically like to request inputs from the public on disaster behavioral health, COVID–19 pandemic lessons learned and other challenges, opportunities, and strategic priorities for national public health and medical preparedness, response and recovery specific to the needs of children and their families in disasters

Dawn O'Connell,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2022–26561 Filed 12–6–22; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Production of Cannabis and Related Materials for Research.

Date: January 6, 2023.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Preethy Nayar, Ph.D., M.B.B.S., Scientific Review Officer, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 443–4577, *nayarp2@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 2, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–26611 Filed 12–6–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information on Proposed Simplified Review Framework for NIH Research Project Grant Applications

AGENCY: National Institutes of Health, HHS.

ACTION: Request for information.

SUMMARY: The purpose of this Request for Information (RFI) is to solicit public input on a proposed revised framework for evaluating and scoring peer review criteria for National Institutes of Health (NIH) research project grant (RPG) applications. NIH is proposing a revised simplified framework that will reorganize five major regulatory criteria under three scored categories and reduce the number of non-score driving review considerations that reviewers evaluate in judging the scientific merit of RPG applications. The proposed changes pertain to those RPGs with standard review criteria. All the factors required by regulation will continue to be evaluated. NIH is not proposing to revise the regulatory criteria. Rather, NIH is proposing to revise its policy of how peer reviewers score the criteria, and how NIH organizes the criteria for review purposes. NIH believes that these changes will allow peer reviewers to refocus on the critical task of judging scientific merit and will improve those judgements by reducing bias.

DATES: The RFI is open for public comment for a period of 90 days. Comments must be received by 11:59:59 p.m. (ET) on March 10, 2023, to ensure consideration.

ADDRESSES: Submissions can be sent electronically to *https://rfi.grants.nih.gov/?s=638509b5409baa49f803e572*). NIH is specifically requesting public comment on the Proposed Revised Simplified Review Framework, a proposed revised framework for evaluating and scoring peer review criteria for NIH research project grant applications, described above. Response to this RFI is voluntary.

FOR FURTHER INFORMATION CONTACT: Questions about this request for information should be directed to Office of Extramural Research, Dr. Kristin Kramer, Phone number (301) 437–0911, Email *simplifiedreview@nih.gov.*

SUPPLEMENTARY INFORMATION:

Current Process

The first stage of NIH peer review serves to provide expert advice to NIH on the scientific and technical merit of grant applications. The NIH peer review regulations at 42 CFR part 52h.8 state that for research project grant applications, the scientific peer review group shall assess the overall impact that the project could have on the research field involved, taking into account, among other pertinent factors:

(a) The significance of the goals of the proposed research, from a scientific or technical standpoint;

(b) *Approach*: The adequacy of the approach and methodology proposed to carry out the research;

(c) *Innovation:* The innovativeness and originality of the proposed research;

(d) *Investigator(s):* The qualifications and experience of the principal investigator and proposed staff;

(e) *Environment:* The scientific environment and reasonable availability of resources necessary to the research;

(f) The adequacy of plans to include both genders, minorities, children and special populations as appropriate for the scientific goals of the research;

(g) The reasonableness of the proposed budget and duration in relation to the proposed research; and

(h) The adequacy of the proposed protection for humans, animals, and the environment, to the extent they may be adversely affected by the project proposed in the application.

By NIH policy at: *https://grants.nih.gov/grants/policy/nihgps/HTML5/section_2/2.4.1_initial_review.htm*# Addition, peer reviewers are currently also required to evaluate Biohazards, Resubmissions, Foreign Organizations, Select Agents, Resource Sharing Plans, and Authentication of Key Biological and/or Chemical Resources. NIH currently gives the first five of the regulatory factors the following categorical labels: Significance, Approach, Innovation, Investigator(s), and Environment.

The NIH peer review regulation does not address scoring. Scoring of all regulatory factors is determined by NIH policy. Currently, peer reviewers provide an Overall Impact Score (scored 1–9) that reflects the overall scientific and technical merit of the application and individual criterion scores for Significance, Investigators, Innovation, Approach, and Environment. The remaining factors, Protections for Human Subjects, Inclusion, Vertebrate Animals, Biohazards, Resubmission, Renewal, and Revision are evaluated and factored into the Overall Impact Score; however, they are not given individual scores. When reviewers judge any of these to be unacceptable, they are asked to provide justification for that assessment. Beyond these factors, reviewers are asked to assess the following additional review considerations, but these considerations are not considered when reviewers determine an Overall Impact Score: Applications from Foreign Organizations, Select Agents, Resource Sharing Plans, Authentication of Key Biological and/or Chemical Resources, Budget & Period of Support.

Proposal Development

NIH gathered input from many sources in forming this proposal. Unsolicited comments over a period of years, reflecting sustained concerns from reviewers and applicants regarding complexity of review criteria, administrative load, and potential biases led the Center for Scientific Review (CSR) to form a working group to the CSR Advisory Council. To inform that group, CSR published a Review Matters blog at: *https://www.csr.nih.gov/reviewmatters/2020/02/27/seeking-your-input-on-simplifying-review-criteria/* which was cross-posted on the Office of Extramural Research blog, Open Mike at: *https://nexus.od.nih.gov/all/2020/02/27/seeking-your-input-on-simplifying-review-criteria/.* The blog received more than 9,000 views by unique individuals and over 400 comments. The working group presented interim recommendations at: *https://public.csr.nih.gov/sites/default/files/2019-10/Review_criteria_wg_CSRAC_interim_report_7April2020.pdf* to the CSR Advisory Council, which adopted the recommendations, at public CSR Advisory Council meetings (March 2020 video *https://videocast.nih.gov/summary.asp?live=35649&bhcp=1&start=4307,* slides *https://public.csr.nih.gov/sites/default/files/presentations/200330/Simplifying_Review_Criteria_Workgroup_Interim_Rpt_final.pdf;* March 2021 video *https://videocast.nih.gov/watch=41574&start=4816,* slides *https://public.csr.nih.gov/sites//files/2021-04/Simplifying_Review_Criteria_29_March_2021.pdf*). Final recommendations from the CSR Advisory Council (report *https://public.csr.nih.gov/sitest/files/2021-04/Recommendations_of_the_CSRAC_Working_Group_on_Simplifying_Review-non-CT_and_CT.pdf*) were considered by the CSR Director, as well as major internal NIH extramural-focused committees that included leadership from across NIH

institutes and centers. This process produced many modifications and the final proposal presented below. Additional background information can be found here *https://grants.nih.gov/policyroposed-Framework/index.htm.*

Proposed Revised Simplified Review Framework

An Overall Impact Score (scored 1–9) will reflect the overall scientific and technical merit of the application. Reviewers will take into account their assessments of the three factors below and the following additional criteria in determining an Overall Impact Score. Of the three factors, only Factor 1: Importance of the Research and Factor 2: Feasibility and Rigor, will receive individual scores. In the revised framework, Factor 3: Expertise and Resources will not receive an individual score. The additional review criteria below will not receive individual scores but will be considered in arriving at the Overall Impact Score. Two review considerations will be evaluated but have no effect on the Overall Impact Score. Detailed descriptions of the three factors can be found here *https://grants.nih.gov/policyroposed-Framework/reviewer-guidance.htm.*

Factor 1: Importance of the Research (scored 1–9).

Factor 1 is based on the criteria Significance and Innovation.

Factor 2: Feasibility and Rigor (scored 1–9).

Factor 2 is based on the criteria Approach.

Factor 3: Expertise and Resources (rated as ''fully capable'', ''appropriate'' or ''additional capability/expertise needed'' or ''additional resources needed'')

Factor 3 is based on the criteria Investigator and Environment. If ''additional expertise/capability needed'' or ''additional resources needed'' is selected, justification must be provided.

Additional Criteria (not scored, but affecting Overall Impact):

- Human Subject Protections
- Inclusion of Women, Minorities, and Individuals Across the Lifespan
- Vertebrate Animals
- Biohazards
- Resubmission/Renewal/Revisions

Each of the Additional Criteria except the last will be rated as ''Appropriate'', with no comments required, or as ''Concerns'', which must be briefly justified. Resubmission/Renewal/Revisions will be given brief written evaluations.

Additional Review Considerations (not scored and having no effect on Overall Impact):

- Authentication of Key Biological and/or Chemical Resources
  - Rated as ''Appropriate'' with no comments required, or as ''Concerns'', which must be briefly described.
- Budget and Period of Support
  - Rated as ''Appropriate'', ''Excessive'', or ''Inadequate''; the latter two ratings requiring a brief account of concerns.

The additional review considerations, including Foreign Organizations, Select Agents, and Resource Sharing Plans, will no longer be evaluated by peer reviewers.

Restructuring the categorization and scoring of criteria in this way reduces the number of scores reviewers need to provide, and policy considerations reviewers need to take into account when evaluating scientific merit. It focuses reviewers on the two most important judgements about a proposed research project; how important the research is, and how rigorous and feasible the approach is. Evaluation of the investigators and research environment is framed in terms of whether the expertise and resources needed to accomplish the project are available, thus diminishing halo effects— diffuse judgements of investigator or institutional reputation that bias judgements of research importance, rigor, and feasibility.

Submitting a Response

Comments should be submitted electronically to the following web page at: *https://rfi.grants.nih.gov/?s=638509b5409baa49f803e572.*

This RFI is for planning purposes only and should not be construed as a policy, solicitation for applications, or as an obligation on the part of the Government to provide support for any ideas identified in response to it. Please note that the Government will not pay for the preparation of any information submitted or for its use of that information.

Please do not include any proprietary, classified, confidential, or sensitive information in your response. Responses will be compiled and a content analysis will be shared publicly after the close of the comment period. The NIH may use information gathered by this Notice to inform future policy development.

Dated: December 1, 2022.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2022–26603 Filed 12–6–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: January 6, 2023.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Room 3185, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Barbara J. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Room 3185, Bethesda, MD 20892, (301) 402–8837, *barbara.thomas@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS).

Dated: December 2, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–26588 Filed 12–6–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular and Surgical Devices.

Date: December 16, 2022.

Time: 7:00 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: Willard Wilson, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–867–5309, *willard.wilson@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: December 2, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–26587 Filed 12–6–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID SBIR Phase II Clinical Trial Implementation Cooperative Agreement (U44 Clinical Trial Required).

Date: January 13, 2023.

Time: 9:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room RML 31/31118A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Dylan Paul Flather, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room RML 31/31118A, Rockville, MD 20852, (406) 802–6209, *dylan.flather@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 2, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–26612 Filed 12–6–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

[Document Identifier: 0930–0092]

Agency Information Collection Request; 60-Day Public Comment Request; Correction

AGENCY: Substance Abuse and Mental Health Services Administration, Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The Substance Abuse and Mental Health Services Administration published a document in the **Federal Register** on November 22, 2022, concerning request for comments on Confidentiality of Substance Use Disorder Patient Records. The document only listed the Department of Health and Human Services in the headings and contained an incorrect Document Identifier and contact for further information or submission of public comments. This document corrects those errors. Comments on the information collect request must be received on or before January 23, 2023.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 22, 2022, at 87 FR 71341, in FR Doc. 2022–25343, the following corrections are made:

1. On page 71341, in the second column, in the headings, add ''Substance Abuse and Mental Health Services Administration'' following ''DEPARTMENT OF HEALTH AND HUMAN SERVICES'' and ''Document Identifier: OS–0990–New'' is corrected to read ''Document Identifier: 0930–0092''.

2. On page 71341, in the second column, correct the ''**ADDRESSES**'' and ''**FOR FURTHER INFORMATION CONTACT**'' captions to read:

ADDRESSES: Submit your comments to *Carlos.Grahamcommathhs.gov* or by calling (240) 276–0361.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0930–0092, and project title for reference, to Carlos Graham, Reports Clearance Officer; email: *CarlosGraham@hhs.gov,* or call (240) 276–0361.

Carlos Graham,

Reports Clearance Officer.

[FR Doc. 2022–26508 Filed 12–6–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4673–DR; Docket ID FEMA–2022–0001]

Florida; Amendment No. 12 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4673–DR), dated September 29, 2022, and related determinations.

DATES: This amendment was issued November 10, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 29, 2022.

Martin County for debris removal [Category A] and permanent work [Categories C–G] (already designated for emergency protective measures [Category B], including direct

federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–26544 Filed 12–6–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4675–DR; Docket ID FEMA–2022–0001]

Seminole Tribe of Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Seminole Tribe of Florida (FEMA–4675–DR), dated September 30, 2022, and related determinations.

DATES: This amendment was issued November 21, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 4, 2022.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–26540 Filed 12–6–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4671–DR; Docket ID FEMA–2022–0001]

Puerto Rico; Amendment No. 14 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4671–DR), dated September 21, 2022, and related determinations.

DATES: This amendment was issued November 21, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 21, 2022.

The municipalities of Barceloneta, Cataño, Dorado, Florida, Hatillo, Isabela, Luquillo, Quebradillas, Río Grande, San Juan, San Sebastián, Toa Baja, Trujillo Alto, and Vega Baja for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–26528 Filed 12–6–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3581–EM; Docket ID FEMA–2022–0001]

Virgin Islands; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the territory of the U.S. Virgin Islands (FEMA–3581–EM), dated July 25, 2022, and related determinations.

DATES: The declaration was issued July 25, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 25, 2022, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the territory of the U.S. Virgin Islands resulting from a water shortage and health impact from unprecedented sargassum seagrass influx beginning on July 15, 2022, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the territory of the U.S. Virgin Islands.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and

public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program for a period of 90 days.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Patrick Cornbill, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the territory of the U.S. Virgin Islands have been designated as adversely affected by this declared emergency:

The island of St. Croix for emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance for a period of 90 days.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–26529 Filed 12–6–22; 8:45 a.m.]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4673–DR; Docket ID FEMA–2022–0001]

Florida; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4673–DR), dated September 29, 2022, and related determinations.

DATES: This amendment was issued November 10, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective November 4, 2022.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–26526 Filed 12–6–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0049; OMB No. 1660–0006]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Flood Insurance Program Policy Forms

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 and other Federal agencies to take this opportunity to comment on an extension, with change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning information collected for the selling and servicing of National Flood Insurance Program (NFIP) policies by FEMA's direct servicing agent, NFIP Direct.

DATES: Comments must be submitted on or before February 6, 2023.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2022–0049. 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 Act Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joycelyn Collins, Underwriting Branch Program Analyst, Federal Insurance Directorate, at 202–701–3383 or *Joycelyn.Collins@fema.dhs.gov.* 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: The NFIP is authorized by Public Law 90–448

(1968) and expanded by Public Law 93–234 (1973). The National Flood Insurance Act of 1968 requires FEMA to provide flood insurance at full actuarial rates, reflecting the complete flood risk to structures built or substantially improved, on or after the effective date for the initial Flood Insurance Rate Map for the community, so that the risks associated with buildings in flood-prone areas are borne by those located in such areas and not by taxpayers at large. In accordance with Public Law 93–234, the purchase of flood insurance is mandatory when Federal or federally related financial assistance is being provided for acquisition or construction of buildings located, or to be located, within FEMA-identified special flood hazard areas of communities that participate in the NFIP.

FEMA also proposes changes to this information collection to implement a revised risk rating methodology that will apply to all policies issued or renewed on or after October 1, 2021. This revised methodology will require FEMA to collect new information necessary to sell and service flood insurance policies. However, the revised methodology is not expected to increase the overall information collection burden on the public due to the use of data from sources other than policyholders. As a result of this revised methodology, FEMA proposes to modify FEMA Forms FF–206–FY–21–117 (formerly 086–0–1), FF–206–FY–21–118 (formerly 086–0–2), and FF–206–FY–21–119 (formerly 086–0–3).

During the transition to the revised rating methodology, FEMA still needed to maintain the existing forms in this information collection. As a result, FEMA added FEMA Forms 086–0–1T, 086–0–2T, 086–0–3T, and 086–0–5T to this information collection. Now that the transition to the revised risk rating methodology has been completed, effective April 1, 2022, FEMA has discontinued the use of these forms and is removing them from this information collection.

Collection of Information

Title: National Flood Insurance Program Policy Forms.

Type of Information Collection: Extension, with change, of a currently approved information collection.

OMB Number: 1660–0006

FEMA Forms: FEMA Form FF–206–FY–21–117 (formerly 086–0–1), Flood Insurance Application; FEMA Form FF–206–FY–21–118 (formerly 086–0–2), Flood Insurance Cancellation/Nullification Request Form; and FEMA Form FF–206–FY–21–119 (formerly 086–0–3), Flood Insurance General Change Endorsement.

Abstract: To provide for the availability of policies for flood insurance, policies are marketed and administered through the facilities of licensed insurance agents or brokers in the various States. Applications, general change requests, and cancellations from agents or brokers are forwarded to a direct servicing agent designated as fiscal agent by the Federal Insurance and Mitigation Administration (FIMA), referred to as NFIP Direct. Upon receipt and examination of the application, general change request, cancellation, and required premium, the servicing company issues or updates the appropriate Federal flood insurance policy.

Affected Public: Individuals or households; State, local or Tribal Government; Business or other for profit; Not-for-profit institutions; and Farms.

Number of Respondents: 372,522.

Number of Responses: 372,522.

Estimated Total Annual Burden Hours: 51,628.

Estimated Total Annual Respondent Cost: $2,096,612.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $9,356,922.

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. 2022–26571 Filed 12–6–22; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4671–DR; Docket ID FEMA–2022–0001]

Puerto Rico; Amendment No. 15 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4671–DR), dated September 21, 2022, and related determinations.

DATES: This amendment was issued November 28, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 21, 2022.

The municipalities of Culebra, Loiza, and Vieques for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–26531 Filed 12–6–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3588–EM; Docket ID FEMA–2022–0001]

Seminole Tribe of Florida; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Seminole Tribe of Florida (FEMA–3588–EM), dated November 9, 2022, and related determinations.

DATES: The declaration was issued November 9, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 9, 2022, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in lands associated with the Seminole Tribe of Florida resulting from Tropical Storm Nicole beginning on November 7, 2022, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists for the Seminole Tribe of Florida.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Thomas J. McCool, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the Seminole Tribe of Florida have been designated as adversely affected by this declared emergency:

Emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program for the Seminole Tribe of Florida.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–26524 Filed 12–6–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3584–EM; Docket ID FEMA–2022–0001]

Florida; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Florida (FEMA–3584–EM), dated September 24, 2022, and related determinations.

DATES: This amendment was issued November 10, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective November 4, 2022.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–26525 Filed 12–6–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3587–EM; Docket ID FEMA–2022–0001]

Florida; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Florida (FEMA–3587–EM), dated November 8, 2022, and related determinations.

DATES: The declaration was issued November 8, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 8, 2022, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of

Florida resulting from Tropical Storm Nicole beginning on November 7, 2022, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Florida.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Thomas J. McCool, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Florida have been designated as adversely affected by this declared emergency:

Alachua, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Desoto, Dixie, Duval, Flagler, Gilchrist, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Jefferson, Lake, Lee, Levy, Manatee, Marion, Martin, Miami-Dade, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, St. Johns, St. Lucie, Sumter, Taylor, Volusia, and Wakulla and the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–26543 Filed 12–6–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3587–EM; Docket ID FEMA–2022–0001]

Florida; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Florida (FEMA–3587–EM), dated November 8, 2022, and related determinations.

DATES: This amendment was issued November 10, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of November 8, 2022.

Baker, Calhoun, Columbia, Franklin, Gadsden, Gulf, Hamilton, Holmes, Jackson, Lafayette, Leon, Liberty, Madison, Suwanee, Union, and Washington Counties for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–26532 Filed 12–6–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4672–DR; Docket ID FEMA–2022–0001]

Alaska; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alaska (FEMA–4672–DR), dated September 23, 2022, and related determinations.

DATES: This amendment was issued November 21, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alaska is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 23, 2022.

Pribilof Islands REAA for Public Assistance.

Bering Strait REAA, Kashunamiut REAA, Lower Kuskokwim REAA, and Lower Yukon REAA for debris removal [Category A] and permanent work [Categories C–G] (already designated for Individual Assistance and emergency protective measures [Category B] under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially

Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–26530 Filed 12–6–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ920000.L51010000. FX0000.LVRWA20A3450]

Notice of Intent To Prepare an Environmental Impact Statement and Notice of Segregation for the Proposed Jove Solar Project, La Paz County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent and segregation.

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 (FLPMA), the Bureau of Land Management (BLM) Yuma Field Office, Yuma, Arizona, intends to prepare an Environmental Impact Statement (EIS) to consider the effects of the Jove Solar Project (Jove Solar), an up to 600-megawatt (MW) solar photovoltaic (PV) project and battery storage system proposed on 3,495 acres of BLM-administered land in La Paz County, Arizona, and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues. The BLM also announces the segregation of the 3,495 acres of public lands from appropriation under the public land laws, including the Mining Law, but not the Mineral Leasing or Materials Acts, for a period of 2 years from the date of publication of this notice, subject to valid existing rights. This segregation will facilitate the orderly administration of the public lands while the BLM considers potential solar development on the described parcel.

DATES: This notice initiates the public-scoping process for the EIS. The BLM requests that the public submit comments concerning the scope of the analysis, potential alternatives, and identification of relevant information, and studies by January 6, 2023. To afford the BLM the opportunity to consider comments in the Draft EIS, 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 BLM will hold one virtual, and one in-person scoping meeting, 2 to 3 weeks after publication of this notice. Meeting details will be posted on the project website at least 15 days prior to the meetings. The segregation for the public lands identified in this notice takes effect on December 7, 2022.

ADDRESSES: You may submit comments related to Jove Solar by any of the following methods:

- *Website: https://go.usa.gov/xtGtR.*
- *Email: BLM_AZ_CRD_SOLAR@blm.gov*.
- *Fax:* 928–317–3250.
- *Mail:* BLM Yuma Field Office, Attention: Jove Solar Project, 7341 East 30th Street, Yuma, AZ 85365.

Documents pertinent to this proposal may be examined online at the project ePlanning website: *https://go.usa.gov/xtGtR* and at the Yuma Field Office.

FOR FURTHER INFORMATION CONTACT: Erica Stewart, Project Manager, telephone: (928) 317–3295; email: *estewart@blm.gov;* or at the Yuma Field Office. 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 for contacting Ms. Stewart. 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:

Purpose and Need for the Proposed Action

The BLM's purpose and need for action is to respond to the Applicant's application under Title V of FLPMA (43 U.S.C 1761(a)(4)) for a right-of-way (ROW) grant for Jove Solar.

Preliminary Proposed Action and Alternatives

The Proposed Action is to construct, operate, maintain, and decommission a solar PV facility and battery storage system on 3,495 acres of BLM-administered land in La Paz County, Arizona. The Jove Solar proposal includes PV modules, battery energy storage facilities, substations, electrical collector and connection lines, switch yards, monitoring and maintenance facilities, access roads, and temporary use areas. The Project may have a generating capacity of up to 600 megawatt alternating current (MWac) net capacity. The Project would connect into the authorized Ten West Link 500-kilovolt transmission line.

The Project is considering alternative PV module designs that would trade longer rows with a shorter height of single panel modules for shorter rows of taller dual panel modules.

The EIS will also evaluate the No Action Alternative. Under the No Action Alternative, the BLM would deny the application and the lands would remain open to multiple use and sustained yield as provided for in the Yuma Field Office Resource Management Plan (BLM 2008). The BLM welcomes comments on all preliminary alternatives as well as suggestions for additional alternatives.

Summary of Expected Impacts

Anticipated impacts on BLM-managed lands include approximately 3,495 acres of ground disturbance for the solar facility, battery storage systems, transmission lines, project buildings, construction laydown areas, and access roads. Impacts may include reduction in authorized grazing; vegetation removal; recreation, access, and land use changes; wildlife and migratory bird impacts including habitat loss and potential direct mortalities during construction; visual impacts including glint and glare and an increase in nighttime brightness; potential impacts to cultural resources and Native American concerns; socioeconomic impacts—both positive and adverse. Known resources to be addressed in the analysis include, but are not limited to: air quality, visual resources, environmental justice, social and economic values, land uses, Native American religious concerns, recreation, range, cultural, wildlife, migratory birds, threatened, endangered and sensitive species, soils, invasive species, and paleontology. The impact analysis will also consider the cumulative impacts to natural and cultural resources from reasonably foreseeable projects in the area.

Anticipated Permits and Authorizations

In addition to the requested ROW grant, other Federal, State, and local authorizations will be required for Jove Solar. These may include authorizations determined through consultation under the Endangered Species Act (ESA) (16 U.S.C. 1536), Clean Water Act (CWA) (33 U.S.C. 1251), and other laws and regulations determined to be applicable to Jove Solar.

Schedule for the Decision-Making Process

The BLM will provide additional opportunities for public participation consistent with the NEPA process, including a 45-day comment period on

the Draft EIS. The Draft EIS is anticipated to be available for public review in Summer 2023, the Final EIS is anticipated to be released in early 2024, with a Record of Decision expected in Spring 2024.

Public Scoping Process

This notice of intent initiates the scoping period. The BLM will hold one virtual and one in-person scoping meeting. The meeting dates, times, location, and information on how to attend will be announced at least 15 days in advance on the project ePlanning website at *https://go.usa.gov/xtGtR*. Project information and documents will also be posted on that website. Persons needing assistance (assistive technology, translators, or other assistance) should contact Project Manager Erica Stewart at the address provided above.

Segregation

Regulations found at 43 CFR 2804.25(f) allow the BLM to segregate public lands for potential rights-of-way for solar energy development from the operation of the public land laws, including the Mining Law, by publication of a **Federal Register** notice. The BLM uses this authority to preserve its ability to approve, approve with modifications, or deny proposed rights-of-way, and to facilitate the orderly administration of the public lands. This segregation is subject to valid existing rights, including existing mining claims located before this segregation notice. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not impact lands identified in this notice may be allowed with the approval of a BLM authorized officer during the segregation period. As provided in the regulations, the segregation of lands in this notice will not exceed 2 years from the date of publication unless extended for up to an additional 2 years through publication of a new notice in the **Federal Register**. The segregation period will terminate and the land will automatically reopen to appropriation under the public land laws, including the mining law at the earliest of the following dates: upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a right-of-way; without further administrative action at the end of the segregation provided for in the **Federal Register** notice initiating the segregation; or upon publication of a **Federal Register** notice terminating the segregation. Upon termination of the segregation of these lands, all lands subject to this segregation would automatically reopen to appropriation under the public land laws, including the mining law.

Legal Description for Parcel: The subject lands for the proposed solar facility are legally described as follows—

Gila and Salt River Meridian, Arizona

T. 2 N., R. 12 W.,
Secs. 3 thru 6, partly unsurveyed.
T. 2 N., R. 13 W.,
Secs. 1 and 2, partly unsurveyed.
T. 3 N., R. 12 W.,
Sec. 32.
T. 3 N., R. 13 W.,
Sec. 34, NE¼, E½NW¼, E½SW¼, and SE¼;
Sec. 35;
Sec. 36, N½, SW¼, and W½SE¼.

Lead and Cooperating Agencies

The BLM Yuma Field Office is the lead agency for this EIS. The following agencies have been invited to participate in the environmental analysis of the Project as Cooperating Agencies under a Memorandum of Understanding to Improve Public Land Renewable Energy Project Permit Coordination: United States Fish and Wildlife Service, Bureau of Reclamation, United States Department of Defense, United States Department of Energy, and United States Environmental Protection Agency. Various State and local agencies, including Arizona Game and Fish Department, Arizona State Land Department, and La Paz County, AZ have been invited to participate in the environmental analysis due to their special expertise on resources and issues to be analyzed.

Responsible Official

The Authorized Officer and Decision Maker for the project is the BLM Yuma Field Office Manager.

Nature of Decision To Be Made

In accordance with the BLM's multiple use and sustained yield mandates, the BLM will decide whether to approve, approve with modification(s), or deny issuance of a ROW grant to the Applicant for the proposed Project.

Additional Information

The BLM will identify, analyze, and consider mitigation to address the reasonably foreseeable impacts to resources from the proposed action and all analyzed reasonable alternatives and, in accordance with 40 CFR 1502.14(e), include appropriate mitigation measures not already included in the proposed action or alternatives. Mitigation may include avoidance, minimization, rectification, reduction or elimination over time, and compensation; and may be considered at multiple scales, including the landscape scale.

The BLM will utilize and coordinate the NEPA process 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 (NHPA) (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 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 MS 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 project 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 invitations 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).

Raymond Suazo,

Arizona State Director.

[FR Doc. 2022–26589 Filed 12–6–22; 8:45 am]

BILLING CODE 4310–32–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–22–054]

Sunshine Act Meetings

Agency Holding the Meeting: United States International Trade Commission.

TIME AND DATE: December 12, 2022 at 11 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. No. 731–TA–638 (Fifth Review) (Stainless Steel Wire Rod from India). The Commission currently is scheduled to complete and file its determinations and views of the Commission on December 20, 2022.
5. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: Tyrell Burch, Management Analyst, 202–205–2595.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: December 5, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–26709 Filed 12–5–22; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–681 and 731–TA–1591 (Final)]

White Grape Juice Concentrate From Argentina; Scheduling of the Final Phase of Anti-Dumping and Countervailing Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation nos. 701–TA–681 and 731–TA–1591 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of white grape juice concentrate (''WGJC'') from Argentina, provided for in subheading 2009.69.00 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be subsidized and sold at less-than-fair-value.

DATES: November 3, 2022.

FOR FURTHER INFORMATION CONTACT: Ahdia Bavari ((202) 205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.— For purposes of these investigations, Commerce has defined the subject merchandise as ''white grape juice concentrate with a Brix level of 65 to 68, whether in frozen or non-frozen forms. White grape juice concentrate is concentrated grape juice produced from grapes of the Vitis vinifera L. species with a white flesh, including fresh market table grapes and raisin grapes (*e.g.,* Thompson Seedless), as well as several varietals of wine grapes (*e.g.,* Chardonnay, Chenin Blanc, Sauvignon Blanc, Colombard, etc.). The scope of this investigation covers white grape juice concentrate regardless of whether it has been certified as kosher, organic, or organic kosher. The white grape juice concentrate subject to this investigation consists of 100 percent grape juice with no other types of juice intermixed and no additional sugars or additives included.

The scope does not cover white grape juice concentrate produced from grapes of the Vitis labrusca species (*e.g.,* Niagara).

The products covered by this investigation are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 2009.69.0040 and 2009.69.0060. The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.''

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Argentina of WGJC, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on March 31, 2022 by Delano Growers Grape Products, LLC, Delano, California.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the

investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on March 2, 2023, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.— The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on March 16, 2023. Information about the place and form of the hearing, including about how to participate in and/or view the hearing, will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.* Interested parties should check the Commission's website periodically for updates. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 9, 2023. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the investigations, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3pm the business day prior to the hearing.

A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference, if deemed necessary, to be held at 9:30 a.m. on March 14, 2023. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than 4:00pm on March 15, 2023. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is March 9, 2023. Parties shall also file written testimony in connection with their presentation at the hearing, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 23, 2023. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before March 23, 2023. On April 13, 2023, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 17, 2023, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: December 1, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–26521 Filed 12–6–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1330 (Review)]

Dioctyl Terephthalate from South Korea; Notice of Commission Determination To Conduct a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to the Tariff Act of 1930 to determine whether revocation of the antidumping duty order on dioctyl terephthalate from South Korea would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date.

DATES: October 4, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher S. Robinson (202–205–2602), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: : On October 4, 2022, the Commission determined that it should proceed to a

full review in the subject five-year review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that both the domestic and respondent interested party group responses to its notice of institution (87 FR 39556, July 1, 2022) were adequate. A record of the Commissioners' votes will be available from the Office of the Secretary and at the Commission's website.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 2, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–26601 Filed 12–6–22; 8:45 am]

BILLING CODE 7020–02–P

LEGAL SERVICES CORPORATION

Notice of Proposed Revisions to the Audit Guide for Recipients and Auditors, the Compliance Supplement (Appendix A), and Appendices B–E

AGENCY: Office of Inspector General, Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) Office of Inspector General (OIG) drafted revisions to its Audit Guide for Recipients and Auditors, (Audit Guide), the Compliance Supplement (Appendix A) and Appendices B–E. LSC OIG seeks comments on the draft Audit Guide, the draft Compliance Supplement (Appendix A), and Appendices B–E.

DATES: Comments must be received by February 6, 2023.

ADDRESSES: You may submit comments by any of the following methods.

Instructions: Electronic submissions are preferred via email with attachments in Acrobat PDF format. LSC OIG may not consider written comments sent via email after the end of comment period or comments sent via U.S. Mail not postmarked on or before the end of the comment period.

Email: audits@oig.lsc.gov. Please include ''Audit Guide Comment'' or ''Appendix X Comment'' in the subject line of the message.

Fax, U.S. Mail, Hand Delivery, or Courier: Please call (202) 295–1671 for instructions if you need to send materials by one of these methods.

FOR FURTHER INFORMATION CONTACT: Grace Nyakoe, Audit Director at 202–295–1662 or *gnyakoe@oig.lsc.gov.*

SUPPLEMENTARY INFORMATION: The Legal Services Corporation Office of Inspector General (LSC OIG) has conducted a comprehensive review of the Audit Guide, the Compliance Supplement, and Appendices B–E:

- Appendix A—Compliance Supplement
- Appendix B—Summary Report Form on Noncompliance with Laws and Regulations, Questioned Costs and Reportable Conditions (Summary Report Form or SRF)
- Appendix C—The Recipient 5-Day Letter to the OIG of the Independent Public Accountants (IPA) ''Special Report on Noncompliance with Laws and Regulations'' (Recipient 5-Day Letter)
- Appendix D—The Auditor 5-Day Letter to the OIG of the IPA's ''Special Report on Noncompliance with Laws and Regulations'' not Reported by Recipient (Auditor 5-Day Letter)
- Appendix E—The Auditor Notification on Cessation of Services

The LSC Audit Guide was published in December 1996 and is outdated. Aside from one Audit Bulletin issued in 1997, it has not been updated since then. Appendix A, Compliance Supplement for Audits of LSC Recipients was updated April 2016. The Audit Guide and appendices require revision to incorporate changes to LSC regulations, auditing standards, or other guidelines that have changed. The changes are to enhance clarity to guidance and suggested audit procedures.

Updating the Audit Guide, Compliance Supplement and appendices is essential in fulfilling the OIG's responsibility for oversight. The Audit Guide and appendices provide a uniform approach for audits of LSC recipients and describes recipients' responsibilities with respect to such audits. Audits of recipients are to be performed in accordance with this Audit Guide and Compliance Supplement (Appendix A), among other criteria. The Audit Guide gives auditors guidance in planning and performing audits to accomplish audit objectives.

Significant changes include eliminating the requirement to classify LSC recipients as High-Risk; adding a requirement to consider all LSC funds as major programs regardless of spending threshold; and revisions to suggested audit procedures for changes to 45 CFR part 1635—Timekeeping Requirement. The appendix designations have changed because we eliminated the appendices addressing a Sample Audit Agreement and Guide for Procurement of Audit Services. Information on these topics is readily available from other sources.

LSC OIG has published the draft Audit Guide, the Compliance Supplement (Appendix A) and Appendices B–E for comment on the ''Overview of Audit Guidance'' page at *https://www.oig.lsc.gov/ipa-resources/audit-guidance.* LSC OIG seeks comments on these documents. LSC OIG will review the comments and, if possible, implement the Audit Guide and the appendices with appropriate revisions before December 31, 2023. Once a final Audit Guide and appendices are published, the OIG will offer training to LSC grantees and their auditors.

(Authority: 42 U.S.C. 2996g(e))

Dated: December 1, 2022.

Stefanie Davis,

Senior Associate General Counsel.

[FR Doc. 2022–26523 Filed 12–6–22; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Requests: 2024–2026 IMLS Grant Application Forms

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments concerning the three-year approval of the forms necessary to submit an application to any IMLS grant program. A copy of the proposed information collection request can be obtained by

contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 5, 2023.

ADDRESSES: Send comments to Connie Bodner, Ph.D., Director of Grants Policy and Management, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Bodner can be reached by telephone: 202–653–4636, or by email at *cbodner@imls.gov.* Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except federal holidays. Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

FOR FURTHER INFORMATION CONTACT: Connie Bodner, Ph.D., Director of Grants Policy and Management, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington DC 20024–2135. Dr. Bodner can be reached by telephone at 202–653–4636, or by email at *cbodner@imls.gov*. Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: IMLS is particularly interested in public comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

I. Background

The Institute of Museum and Library Services is the primary source of federal support for the Nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

II. Current Actions

The purpose of this collection is to facilitate the administration of the IMLS application and review processes for its discretionary grants and cooperative agreements. IMLS uses standardized application forms for eligible libraries, museums, and other organizations to apply for its funding. The forms submitted for public review in this Notice are the IMLS Museum Program Information Form, the IMLS Library-Discretionary Program Information Form, and the IMLS Supplementary Information Form, each of which is included in one or more of the *Grants.gov* packages associated with IMLS grant programs.

Agency: Institute of Museum and Library Services.

Title: 2024–2026 IMLS Grant Application Forms.

OMB Control Number: 3137–0092.

Agency Number: 3137.

Respondents/Affected Public: Library and museum grant applicants.

Total Estimated Number of Annual Respondents: 2,950

Frequency of Response: Once per request.

Estimated Average Burden per Response: 12 minutes.

Estimated Total Annual Burden: 590 hours.

Total Annualized capital/startup costs: n/a.

Total Annual Costs: To be determined.

Public Comments Invited: Comments submitted in response to this Notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: December 2, 2022.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2022–26607 Filed 12–6–22; 8:45 am]

BILLING CODE 7036–01–P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Privacy Act of 1974; System of Records

AGENCY: Office of the Director of National Intelligence.

ACTION: Notice of a new system of records.

SUMMARY: ODNI provides notice that it is establishing a new Privacy Act system of records identified as ODNI–23, ''Workforce Health and Safety Records.'' ODNI proposed to add a new system of records to its inventory of records systems subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** the existence and character of records maintained by the agency. This new system of records is titled, ''Workforce Health and Safety Records.''

DATES: This new System of Records will go into effect on December 7, 2022, unless comments are received that result in a contrary determination. Routine uses applicable to ODNI–23, ''Workforce Health and Safety Records,'' will go into effect 30 days after date of publication.

ADDRESSES: You many submit comments by any of the following methods: Email: *transparency@dni.gov.* Mail: Director, Information Management Office, Chief Operating Officer, ODNI, Washington, DC 20511.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, the ODNI is establishing a new system ofrecords, ODNI–23, ''Workforce Health and Safety Records.'' The ODNI is committed to providing all ODNI personnel and visitors to and occupants of ODNI spaces or facilities with a safe and healthy environment. When necessary, the ODNI may develop and institute additional safety measures to protect its workforce and those individuals entering ODNI facilities. The ODNI will collect and maintain information in accordance with the Rehabilitation Act of 1973 and regulations and guidance published by the U.S. Occupational Safety and Health Administration, the U.S. Equal Employment Opportunity Commission, and the U.S. Centers for Disease Control and Prevention.

SYSTEM NAME AND NUMBER:

Workforce Health and Safety Records (ODNI–23).

SECURITY CLASSIFICATION:

The classification of records in this system ranges from UNCLASSIFIED to TOP SECRET.

SYSTEM LOCATION:

Office of the Director of National Intelligence, Washington, DC 20511.

SYSTEM MANAGER(S):

Chief Operating Officer (COO), ODNI, Washington, DC 20511.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1947, as amended, 50 U.S.C. 3002–3231; Federal workforce safety requirements, including the Occupational Safety and Health Act of 1970; Executive Order 12196, ''Occupational Safety and Health Programs for Federal Employees;'' 29 U.S.C. 668; 5 U.S.C. 7902; Americans with Disabilities Act of 1990, as amended; the Rehabilitation Act of 1973, as amended; Federal laws related to a specific public health emergency or public health threats, including, Executive Order 13991, ''Protecting the Federal Workforce and Requiring Mask-Wearing,'' Executive Order 13994, ''Ensuring a Data-Driven Response to COVID–19 and Future High-Consequence Public Health Threats,'' Executive Order 14042, ''Ensuring Adequate COVID Safety Protocols for Federal Contractors,'' and Executive Order 14043, ''Requiring Coronavirus Disease 2019 Vaccination for Federal Employees;'' 22 U.S.C. 2680b; National Defense Authorization Act for FY 2022, Public Law 117–81, Sec. 6603.

PURPOSE(S) OF THE SYSTEM:

ODNI may use the information collected (1) to facilitate the provision and enforcement of health safety protocols to ODNI workforce personnel and visitors to and occupants of ODNI spaces and facilities; (2) to inform individuals who may have been in proximity of a disease, illness, or other public health threat; (3) to identify the medical status of individuals to prevent such disease or illness from spreading; (4) to facilitate the provision of a reasonable accommodation or lawful exception to a public health safety requirement; (5) to facilitate reporting or tracking of medical testing results or screening results related to a public health or safety threat; (6) to determine and report the aggregate number of individuals compliant with a public health or safety requirement or the number of staff that received a legal exception and accommodation to a requirement; and (7) to properly process associated business, security, or human resources requirements, to include investigation into the facts and circumstances regarding exposure to a disease, illness, or other public health threat, reimbursement of approved expenses, claims for workers' compensation or other medical care or treatment, authorized administrative leave, new hires, and enforcement or disciplinary actions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former ODNI personnel and family members, including cadre employees, staff reserve, Highly Qualified Experts, military, detailees, Intergovernmental Personnel Act detailees, appointees, and interns; applicants for ODNI employment; visitors and assignees to and occupants of ODNI spaces and facilities; and contractors providing support to ODNI or inside ODNI spaces and facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may include full name; agency identification number (AIN); biographical and contact information; worksite and job information; supervisor's name and contact information; date(s) and circumstances of the individual's suspected or actual exposure to disease, illness, or public health threat, which may include medical symptoms, attire, location, and exposure information where the individual may have contracted, been exposed to, or spread the disease, illness or public health threat; information directly related to an individual's potential disease, injury, or illness, *e.g.,* vaccination status, testing results/information, previous medical symptoms, diagnoses, treatments, source of exposure and study participation; vaccination records, including the date, type, and dose of vaccine administered and any boosters; information relevant to a request for a reasonable accommodation or exception to public health safety requirements, *e.g.,* medical or religious exception for vaccination; records relating to compliance with health safety protocols or policies; information relating to health safety and disease mitigation measures, including contact tracing, temperature screening, quarantines, and other symptom screening questionnaires or records; business records, which may include receipts or insurance explanation of benefits, required for reimbursement of authorized expenses; human resource data associated with authorized administrative leave, workers' compensation claims, new hires, and enforcement or disciplinary process.

RECORD SOURCE CATEGORIES:

Records may be obtained from individuals; personnel at medical facilities when written permission is granted by the individual; individuals with direct or indirect knowledge about participation in public health safety requirements; individuals responsible for implementing or enforcing health safety protocols, associated human resources processes, to include hiring and disciplinary, mitigation measures, or other health safety requirements; security systems monitoring access to ODNI facilities, such as video surveillance, turnstiles, and access logs; ODNI internal systems; and property management companies responsible for managing ODNI facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, ODNI may disclose information contained in this system of records if the disclosure is compatible with the purpose for which the record was collected pursuant to the ''Routine Uses Applicable to More Than One ODNI Privacy Act System of Records,'' Subpart C of ODNI's Privacy Act Regulation published at 32 CFR part 1701 (73 FR 16531, 16541) and incorporated by reference (see also *http://www.dni.gov).* ODNI may also disclose information contained in this system ofrecords if the disclosure is compatible with the purpose for which the record was collected under the following additional routine use:

(i) A record from the Workforce Health and Safety Records system of records maintained by ODNI may be disclosed as a routine use to an individual's employer to provide information about the individual's health status, safety practices, or compliance with health and safety protocols when disclosure is necessary to maintain the safety and security of USG facilities.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records are stored in secure file-servers on secure private cloud-based systems that are connected only to a government network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records in this system are retrieved by name or other unique identifier.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Pursuant to 44 U.S.C. 3303a(d) and 36 CFR Chapter 12, Subchapter B-Records Management, these records are covered by the National Archives and Records Administration (NARA) General Records Schedule (ORS) 2.7, Workforce Health and Safety Records. All records will be retained and disposed of according to the applicable NARA ORS provisions.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Information in this system is safeguarded in accordance with recommended and/or prescribed administrative, physical, and technical safeguards. Records are maintained in secure government-managed facilities with access limited to authorized personnel. Physical security protections include guards and locked facilities requiring badges and passwords for access. Records are accessed only by current government-authorized personnel whose official duties require access to the records. Electronic authorization and authentication of users is required at all points before any system information can be accessed. Safeguards are in place to monitor and audit access. System backup is maintained separately.

RECORD ACCESS PROCEDURES:

As specified below, records in this system have been exempted from certain notification, access, and amendment procedures. A request for access shall be made in writing with the envelope and letter clearly marked ''Privacy Act Request.'' Requesters shall provide their full name and complete address. The requester must sign the request and have it verified by a notary public. Alternately, the request may be submitted under 28 U.S.C. 1746, ertifying the requester's identity and understanding that obtaining a record under false pretenses constitutes a criminal offense. Requests for access to information must be addressed to the Director, Information Management Office, Chief Operating Officer, Office of the Director of National Intelligence, Washington, DC 20511. Regulations governing access to one's records or for appealing an initial determination concerning access to records are contained in the ODNI regulation implementing the Privacy Act, 32 CFR part 1701 (73 FR 16531).

CONTESTING RECORD PROCEDURES:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to correct or amend non-exempt records should address their requests to ODNI at the address and according to the requirements set forth above under the heading ''Record Access Procedures.'' Regulations governing access to and amendment of one's records or for appealing an initial determination concerning access or amendment of records are contained in the ODNI regulation implementing the Privacy Act, 32 CFR part 1701 (73 FR 16531).

NOTIFICATION PROCEDURES:

As specified below, records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains non-exempt information about them should address inquiries to ODNI at the address and according to the requirements set forth above under the heading ''Record Access Procedures.''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Privacy Act authorizes ODNI to exempt records contained in this system of records from the requirements of subsections (c)(3), (d), (e)(l), (e)(4)(G), (H), (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(l) and (k)(5).

HISTORY:

None.

In accordance with 5 U.S.C. 552a(r), ODNI has provided a report of this revision to the Office of Management and Budget and to Congress.

Dated: November 30, 2022.

Gregory M. Koch,

Director, Information Management Office, Chief Operating Officer, Office of the Director of National Intelligence.

[FR Doc. 2022–26593 Filed 12–6–22; 8:45 am]

BILLING CODE 9500–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's (NSB) Committee on External Engagement hereby gives notice of a change in a previously scheduled meeting for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 87 FR 52419, August 25, 2022.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Monday, December 12, 2022, from 5–5:30 p.m. EDT.

CHANGES IN THE MEETING: The meeting will occur on Monday, December 19, at 4–4:30 p.m. EST. The matter to be considered remains the same.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000.

Christopher Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2022–26686 Filed 12–5–22; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247; NRC–2022–0202]

Holtec Decommissioning International, LLC, Holtec Indian Point 2, LLC; Indian Point Nuclear Generating Unit No. 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Renewed Facility License No. DPR–26, issued to Holtec Decommissioning International, LLC (HDI), on behalf of Holtec Indian Point 2, LLC, for Indian Point Nuclear Generating Unit No. 2. The proposed amendment would modify the Indian Point Unit 2 (IP2) staffing requirements, prohibit the transfer of Indian Point Unit 3 (IP3) spent fuel to the IP2 spent fuel pool (SFP), and prohibit storing spent fuel in the IP2 SFP. This change would support transfer of the spent fuel from the IP2 SFP to dry storage within an independent spent fuel storage installation (ISFSI) as part of ongoing decommissioning activities at the Indian Point Energy Center (IPEC).

DATES: Submit comments by January 6, 2023. Requests for a hearing or petition for leave to intervene must be filed by February 6, 2023.

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

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0202. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

FOR FURTHER INFORMATION CONTACT: Karl Sturzebecher, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–8534, email: *Karl.Sturzebecher@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0202 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–2022–0202.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The license amendment request is available in ADAMS under Accession No. ML22214A128.
- *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.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0202 in your comment submission.

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

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

II. Introduction

The NRC is considering issuance of an amendment to Renewed Facility License No. DPR–26 for Indian Point Nuclear Generating Unit No. 2 located in Westchester County, New York. The proposed amendment would modify the IP2 staffing requirements, prohibit the transfer of IP3 spent fuel to the IP2 SFP, and prohibit storing spent fuel in the IP2 SFP. This change would support transfer of the spent fuel from the IP2 SFP to dry storage within an onsite ISFSI as part of ongoing decommissioning activities at IPEC.

HDI expects that transfer of the spent fuel from the IP2 SFP to dry storage within an ISFSI will be completed in February 2023. HDI is requesting the proposed revisions to the IP2 renewed facility license and permanently defueled technical specifications (PDTS) to modify the IP2 staffing requirements to be commensurate with the hazards associated with a permanently shutdown and defueled facility that has transferred all spent fuel from its SFP to dry storage within an ISFSI.

Before issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented as follows:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Section 6 of the IP2 Defueled Safety Analysis Report (DSAR) described the design basis accidents (DBAs) related to the IP2 SFP. These postulated accidents are predicated on spent fuel being stored in the IP2 SFP. With the removal of the spent fuel from the IP2 SFP, there are no remaining spent fuel assemblies to be monitored in the IP2 SFP and there are no credible accidents at IP2 that require the actions of a Certified Fuel Handler, Shift Manager, or a Non-certified Operator to prevent occurrence or mitigate the consequences of an accident.

The proposed changes modify the IP2 staffing commensurate with the hazards associated with a permanently shutdown and defueled facility that has transferred all spent fuel from its SFP to dry storage within an ISFSI. After the removal of the spent fuel from the IP2 SFP and transfer to the ISFSI, no spent fuel assemblies will remain in the IP2 SFP. Coupled with a prohibition against storage of fuel in the IP2 SFP and the elimination of the allowance to transfer IP3 spent fuel to the IP2 SFP, the potential for fuel related accidents is removed.

The proposed changes do not have an adverse impact on the remaining decommissioning activities or any of their postulated consequences. The proposed changes related to the relocation of certain administrative requirements do not affect operating procedures or administrative controls that have the function of preventing or mitigating any accidents applicable to the safe management of spent fuel or decommissioning of the facility.

Therefore, the proposed License Amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

With the removal of the spent fuel from the IP2 SFP, there are no remaining spent fuel assemblies to be monitored in the IP2 SFP and there are no credible accidents at IP2 that require the actions of a Certified Fuel Handler, Shift Manager, or a Non-certified Operator to prevent occurrence or mitigate the consequences of an accident.

The proposed changes modify the IP2 staffing commensurate with the hazards associated with a permanently shutdown and defueled facility that has transferred all spent fuel from its SFP to dry storage within an ISFSI. After the removal of the spent fuel from the IP2 SFP and transfer to the ISFSI, no spent fuel assemblies will remain in the IP2 SFP. Coupled with a prohibition against storage of fuel in the IP2 SFP and the elimination of the allowance to transfer IP3 spent fuel to the IP2 SFP, the potential for fuel related accidents is removed.

The proposed changes do not involve installation of new equipment or modification of existing equipment that could create the possibility of a new or different kind of accident. Hence, the proposed changes do not result in a change to the way the facility or equipment is operated in a manner which could cause a new or different kind of accident initiator to be created.

Therefore, the proposed License Amendment does not create the possibility of

a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes modify the IP2 staffing commensurate with the hazards associated with a permanently shutdown and defueled facility.

The proposed changes modify the IP2 staffing commensurate with the hazards associated with a permanently shutdown and defueled facility that has transferred all spent fuel from its SFP to dry storage within an ISFSI. After the removal of the spent fuel from the IP2 SFP and transfer to the ISFSI, no spent fuel assemblies will remain in the IP2 SFP. Coupled with a prohibition against storage of fuel in the IP2 SFP and the elimination of the allowance to transfer IP3 spent fuel to the IP2 SFP, the potential for fuel related accidents is removed.

The design basis and accident assumptions within the IP2 DSAR, PDTS, and Appendix C Technical Specifications relating to safe management and safety of spent fuel in the IP2 SFP are no longer applicable. The proposed changes do not affect remaining plant operations, systems, or components supporting decommissioning activities.

Therefore, the proposed License Amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and based on this review; it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested and the Commission has not made a final determination on the issue of no significant hazard's consideration, the Commission will make a final determination on the issue of no significant hazard's consideration, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

IV. Electronic Submissions and E-Filing

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's

public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9:00 a.m. and 6:00 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated August 2, 2022 (ADAMS Accession No. ML22214A128).

Attorney for licensee: Erin Connolly, Corporate Counsel—Legal, Holtec International, Krishna P. Singh Technology Campus, 1 Holtec Blvd., Camden, NJ 08104.

NRC Branch Chief: Shaun M. Anderson.

Dated: December 1, 2022.

For the Nuclear Regulatory Commission.

Jack D. Parrott,

Acting Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–26511 Filed 12–6–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–003, 50–247, and 50–286; NRC–2022–0203]

Holtec Decommissioning International, LLC, Holtec Indian Point 2, LLC and Holtec Indian Point 3, LLC; Indian Point Nuclear Generating Unit Nos. 1, 2, and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Provisional Operating License No. DPR–5, and Renewed Facility License Nos. DPR–26 and DPR–64, issued to Holtec Decommissioning International, LLC, on behalf of Holtec Indian Point 2, LLC and Holtec Indian Point 3, LLC, for Indian Point Nuclear Generating Unit Nos. 1, 2, and 3, collectively referred to as the Indian Point Energy Center. The proposed amendment would remove the Cyber Security Plan requirements contained in License Condition 3.d of the Indian Point Unit 1 Provisional License, License Condition 2.H of the Indian Point Unit 2 Renewed Facility License, and License Condition 2.G of the Indian Point Unit 3 Renewed Facility License to reflect the cyber security requirements associated with decommissioning power reactors.

DATES: Submit comments by January 6, 2023. Requests for a hearing or petition for leave to intervene must be filed by February 6, 2023.

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–2022–0203. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

FOR FURTHER INFORMATION CONTACT: Karl Sturzebecher, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–8534, email: *Karl.Sturzebecher@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0203 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–2022–0203.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select

''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The license amendment request is available in ADAMS under Accession No. ML22140A126.

- *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.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0203 in your comment submission.

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

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

II. Introduction

The NRC is considering issuance of an amendment to Provisional Operating License No. DPR–5, and Renewed Facility License Nos. DPR–26 and DPR–64 for Indian Point Nuclear Generating Unit Nos. 1, 2, and 3 located in Westchester County, New York. The license amendment request proposes to remove the Cyber Security Plan (CSP) requirements from the licenses for the three reactor units at the Indian Point Energy Center (IPEC) to reflect the NRC guidance associated with cyber security requirements for decommissioning power reactors.

To support the decommissioning of IPEC, the proposed revisions would remove the cyber security requirements from the Indian Point Nuclear Generating Unit Nos. 1, 2, and 3 license conditions prior to the completion of the transfer of spent fuel from the Indian Point Unit 2 (IP2) and Indian Point Unit 3 (IP3) spent fuel pools (SFPs) to dry storage within the onsite independent spent fuel storage installation (ISFSI). The licensee's request considers the cooling period for spent fuel stored in the SFPs after the IP2 and IP3 reactors permanently shut down. Removal of the CSP requirements from the licenses for the three reactor units at IPEC would align with the reduced risks for a nuclear power facility that has permanently ceased operations and removed all fuel from the reactor vessel, and where the spent fuel has had sufficient time to cool down such that the spent fuel stored in the SFPs cannot reasonably heat-up to clad ignition temperature within 10 hours.

Before issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented as follows:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

All power operations at IPEC have ceased and all spent fuel has been removed from the IP1, IP2, and IP3 reactor vessels. All fuel has been removed from the IP1 SFP, and the IP1 SFP is no longer used to store fuel. Spent fuel at IPEC will be stored either in the IP2 SFP, the IP3 SFP, or ISFSI. Therefore, the spectrum of possible transients and accidents at IP1, IP2, and IP3 is significantly reduced compared to an operating nuclear power reactor.

The only design basis accident (DBA) that could potentially result in an offsite radiological release at IPEC is a fuel handling accident (FHA) involving spent fuel stored in the IP2 SFP or IP3 SFP. An analysis indicates that after a decay time of 15 months following permanent cessation of power operations of each unit, there is no longer any possibility of an offsite radiological release from a DBA that could exceed the U.S. Environmental Protection Agency's (EPA's) Protection Action Guides (PAGs). With this significant reduction in radiological risk based on the IP1, IP2, and IP3 reactors being shut down for more than 15 months, the consequences of a cyber-attack are also significantly reduced.

Additionally, per an NRC Memorandum dated December 5, 2016, (ADAMS No. ML16172A285) ''Cyber Security Requirements for Decommissioning Nuclear Power Plants,'' the NRC staff determined that 10 CFR 73.54, ''Protection of digital computer and communication systems and networks,'' does not apply to reactor licensees that have submitted certifications of permanent cessation of power operations and permanent removal of fuel under 10 CFR 50.82(a)(1), and whose certifications have been docketed by the NRC as required by 10 CFR 50.82(a)(2). The IP1 reactor has transferred all spent fuel to the ISFSI and drained the SFP. The IP2 and IP3 certifications were submitted and docketed in accordance with 10 CFR 50.82(a)(1) and 10 CFR 50.82(a)(2), respectively, after all fuel was moved to the IP2 SFP and IP3 SFP, respectively.

The bounding analyses for the IP2 and IP3 SFPs for beyond design basis events demonstrate that 15 months after shutdown of IP3 a minimum of 10 hours is available before the fuel cladding temperature of the hottest fuel assembly in SFP reaches 900°C with a complete loss of SFP water inventory. The site-specific analysis determined that sufficient time will have passed prior to the requested implementation date for these license amendments such that the spent fuel stored in the IP2 SFP or IP3 SFP cannot reasonably heat-up to clad ignition temperature within 10 hours.

This proposed change does not alter previously evaluated accident analysis assumptions, introduce or alter any initiators, or affect the function of facility structures, systems, and components (SSCs) relied upon to prevent or mitigate any previously evaluated accident or the manner in which these SSCs are operated, maintained, modified, tested, or inspected. The proposed change does not involve any facility modifications which affect the performance capability of any SSCs relied upon to prevent or mitigate the consequences of any previously evaluated accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed change does not alter accident analysis assumptions, introduce or

alter any initiators, or affect the function of facility SSCs relied upon to prevent or mitigate any previously evaluated accident, or the manner in which these SSCs are operated, maintained, modified, tested, or inspected. The proposed change does not involve any facility modifications which affect the performance capability of any SSCs relied upon to mitigate the consequences of previously evaluated accidents and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation and design features specified in the IP1, IP2, and IP3 Permanently Defueled Technical Specifications that were approved for IP1 on April 14, 2021, IP2 on April 28, 2020, and IP3 on April 22, 2021, and amended on May 28, 2021. The proposed change does not involve any changes to the initial conditions that establish safety margins and does not involve modifications to any SSCs which are relied upon to provide a margin of safety. Because there is no change to established safety margins as a result of this proposed change, no significant reduction in a margin of safety is involved.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested and the Commission has not made a final determination on the issue of no significant hazards' consideration, the Commission will make a final determination on the issue of no significant hazards consideration, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

IV. Electronic Submissions and E-Filing

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system timestamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9:00 a.m. and 6:00 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated May 20, 2022 (ADAMS Accession No. ML22140A126).

Attorney for Licensee: Erin Connolly, Corporate Counsel—Legal, Holtec International, Krishna P. Singh Technology Campus, 1 Holtec Blvd., Camden, NJ 08104.

NRC Branch Chief: Shaun M. Anderson.

Dated: December 1, 2022.

For the Nuclear Regulatory Commission.

Jack D. Parrott,

Acting Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–26510 Filed 12–6–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards: Charter Renewal

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of renewal of the charter of the Advisory Committee on Reactor Safeguards.

SUMMARY: The Advisory Committee on Reactor Safeguards (ACRS) was established by section 29 of the Atomic Energy Act (AEA) of 1954, as amended. Its purpose is to provide advice to the Commission with regard to the hazards of proposed or existing reactor facilities, to review each application for a construction permit or operating license for certain facilities specified in the AEA, and such other duties as the Commission may request.

FOR FURTHER INFORMATION CONTACT: Russell E. Chazell, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone: (301) 415–7469 or at *Russell.Chazell@nrc.gov.*

SUPPLEMENTARY INFORMATION: The AEA, as amended by Public Law 100–456, also specifies that the Defense Nuclear Safety Board may obtain the advice and recommendations of the ACRS. Membership on the Committee includes individuals experienced in reactor operations and management; probabilistic risk assessment; analysis of reactor accident phenomena; design of nuclear power plant structures, systems and components; materials science; and mechanical, civil, and electrical engineering. The Nuclear Regulatory Commission has determined that renewal of the charter for the ACRS until December 2, 2024, is in the public interest in connection with the statutory responsibilities assigned to the ACRS. This action is being taken in accordance with the Federal Advisory Committee Act.

Dated at Rockville, Maryland, this 2nd day of December, 2022.

For the U.S. Nuclear Regulatory Commission.

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2022–26566 Filed 12–6–22; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: RI 30–2, Annuitant's Report of Earned Income, 3206–0034

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The 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) with change, Annuitant's Report of Earned Income, RI 30–2. Non-substantive changes have

been made to this ICR, which are limited to an update of the report year and edition date and change of the term ''survey'' to ''report.''

DATES: Comments are encouraged and will be accepted until January 6, 2023.

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,* via fax 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. 3206–0034) was previously published in the **Federal Register** on August 1, 2022, at 87 FR 47015, 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 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 30–2, Annuitant's Report of Earned Income, is used annually to determine if disability retirees under age 60 have earned income which will result in the termination of their annuity benefits under chapters 8337 and 8455, of title 5, United States Code. It also specifies the conditions to be met and the documentation required for a person to request reinstatement of a disability annuity benefit after termination.

Analysis

Agency: Retirement Services, Office of Personnel Management.

Title: Annuitant's Report of Earned Income *(Paper Form).*

OMB Number: 3206–0034.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 21,000.

Estimated Time per Respondent: 35 minutes.

Total Burden Hours: 12,250.

Title: Annuitant's Report of Earned Income *(Services Online (SOL)).*

Number of Respondents: 24,040.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 1,995.

Title: Annuitant's Report of Earned Income *(Electronic Form).*

Number of Respondents: 14,041.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 2,340.

U.S. Office of Personnel Management.

Kellie Cosgrove Riley,

Director, Office of Privacy and Information Management.

[FR Doc. 2022–26600 Filed 12–6–22; 8:45 am]

BILLING CODE 6325–38–P

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International 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 Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* December 7, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 30, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 12 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–67 and CP2023–67.

Ruth B. Stevenson,

Chief Counsel, Ethics and Legal Compliance.

[FR Doc. 2022–26527 Filed 12–6–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International 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 Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* December 7, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 8, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 11 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–36 and CP2023–35.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–26586 Filed 12–6–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96427; File No. SR–DTC–2022–012]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Distributions Guide

December 1, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 22, 2022, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend the Distributions Guide to accommodate Participants' tax reporting and withholding obligations by enhancing DTC's Procedure for the Tax Event Announcements feature (''Tax Event Announcements'') of DTC's Distributions Service as set forth in the Distributions Guide to (i) add two new ''Sub-Event Types'' and one ''Event Type'' under Tax Event Announcements, (ii) eliminate a ''CUSIP Limit'' for an existing Sub-Event Type known as ''1042–S Classifications'' and (iii) make clarifying changes to the Tax Event Announcements section of the Distributions Guide, as described in greater detail below.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(_).

[5] Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of The Depository Trust Company (''DTC Rules''), available at *http://www.dtcc.com/legal/rules-and-procedures.aspx,* or the DTC Corporate Actions Distributions Service Guide (''Distributions Guide''), available at *https://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Service-Guide-Distributions.pdf.*

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend the Distributions Guide [6] to accommodate Participants' tax reporting and withholding obligations by enhancing DTC's Procedure for the Tax Event Announcements feature (''Tax Event Announcements'') of DTC's Distributions Service [7] as set forth in the Distributions Guide to (i) add two new ''Sub-Event Types'' and one ''Event Type'' under Tax Event Announcements, (ii) eliminate a ''CUSIP Limit'' for an existing Sub-Event Type known as ''1042–S Classifications'' and (iii) make clarifying changes to the Tax Event Announcements section of the Distributions Guide, as described below.

(a) Announcements

The Distributions Service includes the announcement (''Announcements''), collection, allocation, and reporting by DTC, on behalf of its Participants, of dividend, interest and principal payments for Eligible Securities held by Participants at DTC. This centralized processing provides efficiency for Participants for their receipt of (i) payment information and (ii) payments on distributions covered by Announcements (''Distribution Event'') [8] from multiple issuers and agents.

[6] The Distributions Guide is a Procedure of DTC. Pursuant to the DTC Rules, the term ''Procedures'' means the Procedures, service guides, and regulations of DTC adopted pursuant to Rule 27, as amended from time to time. *See* Rule 1, Section 1, *supra* note 5. They are binding on DTC and each Participant in the same manner that they are bound by the DTC Rules. *See* Rule 27, *supra* note 5.

[7] Tax Event Announcements provide Participants with information-only announcements regarding taxable events that may give rise to information and/or withholding obligations that occur even in the absence of an actual distribution of dividend and interest payments (''Tax Events''). *See* Distributions Guide, *supra* note 5, at 14.

[8] Distribution Events covered by Announcements include cash dividends, interest, principal, capital gains, sale of rights on American depositary receipts, return of capital, dividend with option, stock splits, stock dividends, automatic dividend reinvestments, spinoffs, rights distributions, pay in kind, and liquidation. *See* Distributions Guide, *supra* note 5, at 12.

DTC also provides a Participant holding a Security in its DTC account with Tax Event Announcements (''Tax Event Announcements Feature'') for distributions subject to Sections 305(c) (''305(c) Deemed Distributions'') and 871(m) (''871 Dividend Equivalent Amount'') of the Internal Revenue Code of 1986, as amended [9] (''Code''),[10] as well as classification information for Form 1042–S reporting purposes (''1042–S Classifications'').[11]

The proposed rule change would enhance Tax Event Announcements by adding two new Tax Event Announcements as ''Sub-Event Types'':[12] (i) ''1446(f) Excess of Cumulative Net Income'' [13] and (ii) ''92-Day Exemption Qualified Notice,'' as more fully described below.

Although all existing Tax Event Announcements are classified as a ''Tax Event'' Event Type, the ''General Information'' Event Type would be added to the Tax Event Announcements Feature in the Distributions Guide and used for the 92-Day Exemption Qualified Notice Sub-Event Type. However, the Event Type for the 1446(f) Excess of Cumulative Net Income Sub-Event Type would be a Tax Event.

Internal Revenue Code Section 1446(f)

Section 1446(f) of the Internal Revenue Code was enacted on December 22, 2017, as part of the Tax Cuts and Jobs Act of 2017 (''Jobs Act'').[14] The U.S. Treasury Department (''Treasury Department'') finalized corresponding regulations on October 7, 2020,[15] including the tax withholding required pursuant to Treasury Regulation Section 1.1446(f)–4(a) [16]

[9] 26 U.S.C 305(c) and 26 U.S.C. 871(m).

[10] *See* Distributions Guide, *supra* note 5, at 14–15. *See also* Securities Exchange Act Release No. 81871 (October 13, 2017), 82 FR 48734 (October 19, 2017) (SR–DTC–2017–018) and Securities Exchange Act Release No. 87729 (December 12, 2019), 84 FR 69424 (December 18, 2019) (SR–DTC–2019–011).

[11] *See* Distributions Guide, *supra* note 5, at 14–15. *See also* Securities Exchange Act Release No. 95231 (July 8, 2022), 87 FR 42243 (July 14, 2022) (SR–DTC–2022–008).

[12] Tax Event Announcements are classified by ''Event Type'' and Sub-Event Type. *See* Distributions Guide, *supra* note 5, at 14.

[13] The cumulative net income is the net income earned by the partnership since the formation of the partnership that has not been previously distributed by the partnership 1.1446(f)–4(c)(2)(iii)

[14] Public Law 115–97 (2017), Section 864(c)(8).

[15] Withholding of Tax and Information Reporting With Respect to Interests in Partnerships Engaged in a U.S. Trade or Business, 85 FR 76910 (November 30, 2020).

[16] 26 CFR 1.1446(f)–4(a).

upon the transfer of an interest in a publicly traded partnership by a foreign partner, or pursuant to 1.1446(f)–4(c)(2)(iii) with respect to an amount realized on a distribution from a publicly traded partnership to a foreign partner (a ''Section 1446(f) Withholding'').

It is DTC's understanding that a Section 1446(f) Withholding is designed to ensure foreign partners file U.S. federal income tax returns to report their effectively connected income.

The Final Regulations require a Section 1446(f) Withholding on partnerships that are publicly traded on exchanges (''PTPs'') in respect of transfers that occur on or after January 1, 2022. The Treasury Department and the IRS published Notice 2021–51 to defer the applicability date to transfers and distributions that occur on or after January 1, 2023.[17]

Proposed 1446(f) Excess of Cumulative Net Income Sub-Event Type

The proposed 1446(f) Excess of Cumulative Net Income Event Sub-Type is intended to facilitate Participants' and their customers' compliance with tax withholding obligations in connection with the implementation of section 1446(f) of the Code that was enacted as part of the Jobs Act,[18] and the Treasury Regulations or other official interpretations thereunder, as in effect from time to time (collectively, ''Section 1446(f)'').

Section 1446(f) requires tax withholding in accordance with Treasury Regulation Section 1.1446(f)–4(c)(2)(iii) with respect to an amount realized on a distribution from a PTP (a ''Section 1446(f) Withholding''). The amount realized on a distribution from a PTP is the amount of the distribution reduced by the portion of the distribution that is attributable to the cumulative net income. The cumulative net income is the net income earned by the PTP since its formation that has not been previously distributed by the partnership. If a portion of a distribution made by a PTP is attributable to an amount in excess of cumulative net income, a broker is required to withhold only on this portion for purposes of Section 1446(f)

The Final Regulations include a requirement for a PTP to identify such excess portion of the distribution as an amount in excess of cumulative net income on a qualified notice and to deliver the notice to any registered holder that is a nominee.[19] It was noted in the release for the Final Regulations that PTP interests are generally immobilized at a central depository and registered in the name of the depository's nominee and that furnishing the qualified notice to the PTP's registered holders that are nominees would facilitate the dissemination of information provided on the qualified notice to relevant market participants.[20]

To facilitate the distribution of the qualified notices that DTC, as holder of record through its nominee, Cede & Co., would receive from PTPs in this regard, DTC proposes to add the new 1446(f) Excess of Cumulative Net Income Sub-Event Type to the Distributions Guide, as more fully described below. Subject to requirements described below, DTC would (i) receive the qualified notices that PTPs provide to DTC for this purpose and (ii) distribute the information to Participants that hold the applicable securities through the Tax Event Announcements Feature.

Proposed 92-Day Exemption Qualified Notice Sub-Event Type

The proposed 92-Day Exemption Qualified Notice Sub-Event Type is intended to facilitate Participants' ability to receive general information relating to an exception from the Section 1446(f) Withholding requirement. The Final Regulations provide exceptions to the withholding requirement. One exception provides that under certain circumstances as specified in the Final Regulations, brokers may rely on a qualified notice from the PTP providing for an exception from Section 1446(f) Withholding requirement for a transfer of an interest in a PTP, if the PTP posts the qualified notice within 92 days ending on the date of the transfer.[21]

To facilitate the distribution of the qualified notices that DTC, may receive from PTPs in this regard, DTC proposes to add the new 92-Day Exemption Qualified Notice Sub-Event Type to the Distributions Guide, as more fully described below. Subject to requirements described below, DTC would (i) receive the qualified notices that PTPs provide to DTC for this purpose and (ii) distribute the information to Participants that hold the applicable securities through the Tax Event Announcements Feature.

Proposed Rule Change

New Event Sub-Types

Pursuant to the proposed rule change, the Distributions Guide would be revised to reflect the addition of the 1446(f) Excess of Cumulative Net Income and 92-Day Exemption Qualified Notice Event Sub-Types under The Tax Event Announcement Feature subsection.

As stated above, while existing Event Sub-Types are classified under the Event Type ''Tax Event,'' the proposed rule change would add a Tax Event to the Tax Event Announcement Feature referred to as ''General Information'' that would include the 92-Day Exemption Qualified Notice Event Sub-Type. The 1446(f) Excess of Cumulative Net Income Event Sub-Type would be categorized under the ''Tax Event'' Event Type.

The proposed text to be added to the Distributions Guide relating to the 1446(f) Excess of Cumulative Net Income Event Sub-Type would include that these announcements are ''linked'' to distribution announcements from a PTP and provide the amount of the distribution that is in excess of cumulative net income. The text would also note that the announcement for this Event Sub-Type would include a ''Cash Rate'' field that is used to provide the amount of a distribution that is in excess of cumulative net income, or if the Qualified Notice states that none of the distribution is in excess of cumulative net income, then the Cash Rate field would reflect zero.

The proposed text to be added to the Distributions Guide relating to the 92-Day Exemption Qualified Notice Event Sub-Type would indicate that the announcement for this Event Sub-Type would include a ''Declared Publication Date'' field used to provide the posting date of a qualified notice issued by a PTP.

Similarly, text in the Distributions Guide that describes Tax Event Announcements generally as ''information only announcements regarding taxable events that may give rise to information and/or withholding obligations which occur even in the absence of an actual distribution of dividend and interest payments'' would be expanded to state that these announcements also include ''information only announcements regarding the taxability of a corresponding distribution'' and/or ''other relevant tax data that DTC receives from an issuer.''

[17] IRS Notice 2021–15 (August 24, 2021), *available at https://www.irs.gov/pub/irs-drop/n-21-51.pdf.*

[18] Public Law 115–97 (2017), section 864(c)(8).

[19] *See supra* note 15, at 76928.

[20] *Id.*

[21] *See supra* note 15, at 76925.

Other Changes

1042–S Classifications

In July 2022, DTC amended the Distributions Guide to add a new Tax Event ''Sub Event Type'' (*i.e.,* the ''1042–S Classification'') to facilitate the distribution of certain tax classification information in a centralized format to Participants holding certain Securities at DTC.[22] For 1042–S Classifications, DTC accepts templates from issuers that delineate various tax components that make up a distribution. Subject to requirements in the Distributions Guide, DTC (i) receives 1042–S Classification information that issuers voluntarily provide to DTC for this purpose and (ii) distributes the information to Participants that hold the applicable securities. Information that Issuers are required to provide to DTC pursuant to Rule 1.1446–4(b)(4) may also be included in the 1042–S Classification Sub Event Type.

The Distributions Guide states that each issuer and its affiliates, in the aggregate, may provide templates for up to, but no more than, 12 CUSIP numbers per month (''CUSIP Limit'').[23] The rule change that implemented the 1042–S Classification Event Sub-Type and the CUSIP Limit [24] stated that depending on demand for the transmittal of 1042–S Classifications through the facilities of DTC, and general availability of processing resources at DTC, DTC may submit a future proposed rule change to amend the Distributions Guide to increase the CUSIP Limit.

Since the implementation of the 1042–S Classification Event Sub-Type, DTC has observed increased demand from issuers to submit templates for greater than the CUSIP Limit and DTC has determined, based on its administration of this process, that it maintains the processing resources necessary to accommodate such demand. In this regard, pursuant to the proposed rule change issuers and their affiliates would no longer be subject to the CUSIP Limit and the text that imposes the CUSIP Limit would be removed from the Distributions Guide.

Clarifying Changes

The subsection titled ''The Tax Event Announcement Feature'' under the ''Tax Event Announcements'' section of the Distributions Guide would be reformatted for readability and ease of reference. This subsection contains details on the Event Sub-Types and related fields that are reported through the Tax Event Announcements feature. Currently, the Tax Events and fields described in this subsection are the 305(c) Deemed Distributions, 871(m) Dividend Equivalent Amount and 1042–S Classifications. The revised text would include the newly proposed Event Sub-Types and related information, including fields and respective Event Type classifications to this subsection, as described above.

Pursuant to the proposed rule change, this subsection would be reformatted to consolidate all information relating to the respective Event Sub-Types into a table that includes the corresponding Event Type and Fields next to each of the five Event Sub-Types mentioned above. An introductory paragraph would be added to the beginning of the section to summarize the types of Tax Event Announcements that DTC processes. Certain existing ''Important Notes'' would continue to be included in the text. These Important Notes relate to 1042–S Classifications, including the use of templates and submission of qualified notices, and a disclaimer relating to Participants' responsibility to ensure the accuracy and completeness of Tax Event Announcement information. As mentioned above, a note relating to the CUSIP Limit would be deleted.

Applicability of Tax Event Fee

As with DTC's distribution of other Tax Event information to Participants, the distribution of information for the 1446(f) Excess of Cumulative Net Income and 92-Day Exemption Qualified Notice Event Sub-Types would be subject to the existing ''Tax Event Announcement Fee'' of $12 per Announcement, as set forth in the Fee Guide.[25]

2. Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 (''Act''), and the rules and regulations thereunder applicable to DTC, in particular Section 17A(b)(3)(F) [26] of the Act.

Section 17A(b)(3)(F) of the Act requires, *inter alia,* that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[27] As described above, the proposed rule change would update the Distributions Guide to (i) include the distribution of Announcements for two new Event Sub-Types, (ii) eliminate the CUSIP Limit for the1042–S [sic] Classification Event Sub-Type, and (iii) make certain related clarifying changes, as described above. By enhancing the Tax Event Announcement Feature in this regard, the proposed rule change would enhance the Tax Events to help facilitate Participants' compliance with U.S. federal tax withholding obligations for Eligible Securities subject to Tax Events categorized within Event Sub-Types that are on Deposit at DTC and making use of DTC's book-entry transfer and settlement services. This would further facilitate Participants' ability to continue to maintain Eligible Securities on Deposit at DTC and make use of DTC's book-entry transfer and settlement services with respect to those Securities, in accordance with DTC Rules requirements relating to the use of DTC services by Participants.[28] Therefore, by facilitating Participant's ability to continue to use DTC's book-entry transfer and settlement services at DTC with respect to Eligible Securities that are subject to such Event Sub-Types, the proposed rule change would help promote the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F) of the Act, cited above.

(B) Clearing Agency's Statement on Burden on Competition

DTC believes that the proposed rule change to amend the Distributions Guide to (i) include the distribution of Announcements for two new Event Sub-Types, (ii) eliminate the CUSIP Limit for the 1042–S Classification Event Sub-Type, and (iii) make certain related clarifying changes, as described above, could impose a burden on competition by subjecting Participants to additional costs. More specifically, Participants that hold Eligible Securities that may be subject to categorization under the proposed 1446(f) Excess of Cumulative Net Income or 92-Day Exemption Qualified Notice Event Sub-Types, as well as the 1042–S Classification (to the extent an issuer or its affiliates submit 1042–S Classification information that exceeds the current CUSIP Limit), to additional fees, which may negatively affect such Participant's operating costs.

DTC believes any burden on competition imposed by the proposed rule changes would not be significant, and to the extent the proposed rule

[22] *Supra* note 11.

[23] Distributions Guide, *supra* note 5, at 15.

[24] *Supra* note 11.

[25] *See* DTC Fee Guide, *available at https://www.dtcc.com/~/media/Files/Downloads/legal/fee-guides/2022-DTC-Fee-Schedule-FINAL,* at 15.

[26] 15 U.S.C. 78q–1(b)(3)(F).

[27] *Id.*

[28] In connection with their use of DTC's services, Participants must comply with all applicable laws, including, but not limited to, all applicable laws relating to taxation. *See* DTC Rule 2, Section 8, *supra* note 5.

change may impose a burden on competition, DTC believes it would be necessary and appropriate in furtherance of the purposes of the Act.[29]

DTC has discussed the proposal with Participants that hold Eligible Securities that may be subject to categorization under the 1446(f) Excess of Cumulative Net Income, 92-Day Exemption Qualified Notice Event and 1042–S Classification Sub-Types, and issuers of those Securities, and DTC understands that Participants and their customers would otherwise need to obtain the necessary information directly from the respective individual issuers or from third-party vendors. DTC understands that having to obtain this information on an individual CUSIP-by-CUSIP basis from issuers or getting this information after the distribution from a vendor, creates inefficiencies and timing issues for Participants and their customers relating to the piecemeal nature of the retrieval of such information, that would be mitigated if such information were made available in a more centralized format through DTC.

DTC believes that any burden on competition imposed by the proposal would be necessary because the proposed rule change would provide Participants with a centralized means to receive announcement information needed to facilitate their compliance with tax withholding and reporting obligations relating to payments on Eligible Securities for which issuers provide information to DTC relating to Eligible Securities categorized under the various Event Sub-Types, as described above.

DTC believes that any burden on competition imposed by the proposal would be appropriate because the fees are intended to provide revenue that is close to the costs to DTC of building and providing the services described above. DTC believes the Tax Event Announcements feature has a positive effect on competition among Participants because the service allows Participants to receive applicable tax information in a more efficient manner, thereby reducing the resources they would need to allocate to obtain the applicable tax-related information on a CUSIP-by-CUSIP basis through issuers and third-party vendors. The service also provides issuers with a more efficient method of providing Tax Event information to parties that need to see such information in order to facilitate timely tax withholding and reporting. DTC believes this enhances competition among Participants by allowing parties to receive such information more quickly and in a more streamlined manner.

Based on experiences with existing services provided through the Tax Event Announcements feature and discussions with Participants, DTC believes that despite the Tax Event Fee that would be charged to Participants holding affected Securities for the distribution of 1446(f) Excess of Cumulative Net Income and 92-Day Exemption Qualified Notice-related information, the distribution of such information through the facilities of DTC would provide benefits to Participants in terms of processing and timing efficiencies that should mitigate the impact of any such fees charged. As such, DTC believes these proposed rule changes would be appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.[30]

DTC does not believe that the aspect of the proposed rule change to make certain clarifying changes to the Distributions Guide, as described above, would have an impact on competition.[31] Having a clearer Distributions Guide facilitates Participants' understanding of the Distributions Guide and provide Participants with increased predictability and certainty regarding their obligations about DTC Tax Event Announcement feature. Therefore, DTC believes that the proposed rule change to make clarifying changes to the Rules and the Settlement Guide would not have an impact on competition.[32]

DTC believes that the aspect of the proposed rule change to eliminate the CUSIP Limit for an issuer and its affiliates to be able to submit up to 12 templates per month, as described above, could promote competition for issuers and their affiliates, because issuers and their affiliates would no longer be subject to the CUSIP Limit for submission of templates per month, and all Participants holding the applicable issues would be able to receive the aggregate amount of notices for any issuer and its affiliates as all other Participants holding the same issues.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. If any written comments are received, they would be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Securities and Exchange Commission (''Commission'') does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at https://www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

DTC reserves the right to not respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [33] of the Act and paragraph (f) [34] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2022–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

[29] 15 U.S.C. 78q–1(b)(3)(I).

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] 15 U.S.C. 78s(b)(3)(A).

[34] 17 CFR 240.19b–4(f).

All submissions should refer to File Number SR–DTC–2022–012. 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 DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–DTC–2022–012 and should be submitted on or before December 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–26536 Filed 12–6–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96430; File No. SR–MEMX–2022–32]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule To Adopt Market Data Fees

December 1, 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 November 18, 2022, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members [3] and non-Members (the ''Fee Schedule'') pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately.

The text of the proposed rule change is provided in Exhibit 5.

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

Background

The purpose of the proposed rule change is to amend the Fee Schedule to adopt fees the Exchange will charge to Members and non-Members for each of its three proprietary market data feeds, namely MEMOIR Depth, MEMOIR Top, and MEMOIR Last Sale (collectively, the ''Exchange Data Feeds''). The Exchange is proposing to implement the proposed fees immediately.

The Exchange previously filed the proposal on March 24, 2022 (SR–MEMX–2022–03) (the ''Initial Proposal''). The Exchange withdrew the Initial Proposal and replaced the proposal with SR–MEMX–2022–14 (the ''Second Proposal''). The Exchange withdrew the Second Proposal and replaced the proposal with SR–MEMX–2022–19 (the ''Third Proposal''). The Exchange withdrew the Third Proposal and replaced the proposal with SR–MEMX–2022–28 (the ''Fourth Proposal''). The Exchange recently withdrew the Fourth Proposal and is replacing it with the current proposal (SR–MEMX–2022–32).

The Exchange notes that it has previously included a cost analysis in connection with the proposed fees for the Exchange Data Feeds, however, the prior cost analysis coupled costs related to operating its trading system, or transaction services, with costs of producing market data. As described more fully below, this filing provides an updated cost analysis that focuses solely on costs related to the provision of the Exchange Data Feeds (the ''Cost Analysis''). Although the baseline Cost Analysis used to justify the fees has been updated, the fees themselves have not changed since the Initial Proposal and the Exchange still proposes fees that are intended to cover the Exchange's cost of producing the Exchange Data Feeds with a reasonable mark-up over those costs. Before setting forth the additional details regarding the proposal as well as the updated Cost Analysis conducted by the Exchange, immediately below is a description of the proposed fees.

Proposed Market Data Pricing

The Exchange offers three separate data feeds to subscribers—MEMOIR Depth, MEMOIR Top and MEMOIR Last Sale. The Exchange notes that there is no requirement that any Firm subscribe to a particular Exchange Data Feed or any Exchange Data Feed whatsoever, but instead, a Firm may choose to maintain subscriptions to those Exchange Data Feeds they deem appropriate based on their business model. The proposed fee will not apply differently based upon the size or type of Firm, but rather based upon the subscriptions a Firm has to Exchange Data Feeds and their use thereof, which are in turn based upon factors deemed relevant by each Firm. The proposed pricing for each of the Exchange Data Feeds is set forth below.

MEMOIR Depth

The MEMOIR Depth feed is a MEMX-only market data feed that contains all displayed orders for securities trading on the Exchange (*i.e.,* top and depth-of-book order data), order executions (*i.e.,*

[35] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1.5(p).

last sale data), order cancellations, order modifications, order identification numbers, and administrative messages.[4] The Exchange proposes to charge each of the fees set forth below for MEMOIR Depth.

1. *Internal Distribution Fee.* For the receipt of access to the MEMOIR Depth feed, the Exchange proposes to charge $1,500 per month. This proposed access fee would be charged to any data recipient that receives a data feed of the MEMOIR Depth feed for purposes of internal distribution (*i.e.,* an ''Internal Distributor''). The Exchange proposes to define an Internal Distributor as ''a Distributor that receives an Exchange Data product and then distributes that data to one or more data recipients within the Distributor's own organization.'' [5] The proposed access fee for internal distribution will be charged only once per month per subscribing entity (''Firm''). The Exchange notes that it has proposed to use the phrase ''own organization'' in the definition of Internal Distributor and External Distributor because a Firm will be permitted to share data received from an Exchange Data product to other legal entities affiliated with the Firm that have been disclosed to the Exchange without such distribution being considered external to a third party. For instance, if a company has multiple affiliated broker-dealers under the same holding company, that company could have one of the broker-dealers or a non-broker-dealer affiliate subscribe to an Exchange Data product and then share the data with other affiliates that have a need for the data. This sharing with affiliates would not be considered external distribution to a third party but instead would be considered internal distribution to data recipients within the Distributor's own organization.

2. *External Distribution Fee.* For redistribution of the MEMOIR Depth feed, the Exchange proposes to establish an access fee of $2,500 per month. The proposed redistribution fee would be charged to any External Distributor of the MEMOIR Depth feed, which would be defined to mean ''a Distributor that receives an Exchange Data product and then distributes that data to a third party or one or more data recipients outside the Distributor's own organization.'' [6] The proposed access fee for external distribution will be charged only once per month per Firm. As noted above, while a Firm will be permitted to share data received from an Exchange Data product to other legal entities affiliated with the Firm that have been disclosed to the Exchange without such distribution being considered external to a third party, if a Firm distributes data received from an Exchange Data product to an unaffiliated third party that would be considered distribution to data recipients outside the Distributor's own organization and the access fee for external distribution would apply.

3. *Non-Display Use Fees.* The Exchange proposes to establish separate non-display fees for usage by Trading Platforms and other Users (*i.e.,* not by Trading Platforms).[7] Non-Display Usage would be defined to mean ''any method of accessing an Exchange Data product that involves access or use by a machine or automated device without access or use of a display by a natural person or persons.'' [8] For Non-Display Usage of the MEMOIR Depth feed not by Trading Platforms, the Exchange proposes to establish a fee of $1,500 per month.[9] For Non-Display Usage of the MEMOIR Depth feed by Trading Platforms, the Exchange proposes to establish a fee of $4,000 per month. The proposed fees for Non-Display Usage will be charged only once per category per Firm.[10] In other words, with respect to Non-Display Usage Fees, a Firm that uses MEMOIR Depth for non-display purposes but does not operate a Trading Platform would pay $1,500 per month, a Firm that uses MEMOIR Depth in connection with the operation of one or more Trading Platforms (but not for other purposes) would pay $4,000 per month, and a Firm that uses MEMOIR Depth for non-display purposes other than operating a Trading Platform and for the operation of one or more Trading Platforms would pay $5,500 per month.

4. *User Fees.* The Exchange proposes to charge a Professional User [11] Fee (per User) of $30 per month and a Non-Professional User [12] Fee (per User) of $3 per month. The proposed User fees would apply to each person that has access to the MEMOIR Depth feed for displayed usage. Thus, each Distributor's count will include every individual that accesses the data regardless of the purpose for which the individual uses the data. Internal Distributors and External Distributors of the MEMX Depth feed must report all Professional and Non-Professional Users in accordance with the following:

- In connection with a Distributor's distribution of the MEMOIR Depth feed, the Distributor must count as one User each unique User that the Distributor has entitled to have access to the MEMOIR Depth feed.
- Distributors must report each unique individual person who receives access through multiple devices or multiple methods (*e.g.,* a single User has multiple passwords and user identifications) as one User.
- If a Distributor entitles one or more individuals to use the same device, the Distributor must include only the individuals, and not the device, in the count. Thus, Distributors would not be required to report User device counts associated with a User's display use of the data feed.

[4] *See* MEMX Rule 13.8(a).

[5] *See* Market Data Definitions under the proposed MEMX Fee Schedule. The Exchange also proposes to adopt a definition for ''Distributor'', which would mean any entity that receives an Exchange Data product directly from the Exchange or indirectly through another entity and then distributes internally or externally to a third party.

[6] *See* Market Data Definitions under the proposed MEMX Fee Schedule.

[7] The Exchange proposes to define a Trading Platform as ''any execution platform operated as or by a registered National Securities Exchange (as defined in Section 3(a)(1) of the Exchange Act), an Alternative Trading System (as defined in Rule 300(a) of Regulation ATS), or an Electronic Communications Network (as defined in Rule 600(b)(23) of Regulation NMS).'' *See* Market Data Definitions under the proposed MEMX Fee Schedule.

[8] *See* Market Data Definitions under the proposed MEMX Fee Schedule.

[9] Non-Display Usage not by Trading Platforms would include trading uses such as high frequency or algorithmic trading as well as any trading in any asset class, automated order or quote generation and/or order pegging, price referencing for smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management.

[10] The Exchange proposes to adopt note 1 to the proposed Market Data fees table, which would make clear to subscribers that use of the data for multiple non-display purposes or operate more than one Trading Platform would only be charged once per category per month. Thus, the footnote makes clear that each fee applicable to Non-Display Usage is charged per subscriber (*e.g.,* a Firm) and that each of the fees represents the maximum charge per month per subscriber regardless of the number of non-display uses and/or Trading Platforms operated by the subscriber, as applicable.

[11] As proposed, a Professional User is any User other than a Non-Professional User. *See infra* note 12.

[12] As proposed, a Non-Professional User is a natural person or qualifying trust that uses Exchange Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

5. *Enterprise Fee.* Other than the Digital Media Enterprise Fee described below, the Exchange is not proposing to adopt an Enterprise Fee for the MEMOIR Depth feed at this time.

6. *Digital Media Enterprise Fee.* As an alternative to User fees, a recipient Firm may purchase a monthly Digital Media Enterprise license to receive MEMOIR Depth for distribution to an unlimited number of Users for viewing via television, websites, and mobile devices for informational and non-trading purposes only. The Exchange proposes to establish a fee of $5,000 per month for a Digital Media Enterprise license to the MEMOIR Depth feed.

MEMOIR Top

The MEMOIR Top feed is a MEMX-only market data feed that contains top of book quotations based on equity orders entered into the System as well as administrative messages.[13] The Exchange proposes to charge each of the fees set forth below for MEMOIR Top.

1. *Internal Distribution Fee.* For the receipt of access to the MEMOIR Top feed, the Exchange proposes to charge $750 per month. This proposed access fee would be charged to any data recipient that receives a data feed of the MEMOIR Top feed for purposes of internal distribution (*i.e.,* an Internal Distributor). The proposed access fee for internal distribution will be charged only once per month per Firm.

2. *External Distribution Fee.* For redistribution of the MEMOIR Top feed, the Exchange proposes to establish an access fee of $2,000 per month. The proposed redistribution fee would be charged to any External Distributor of the MEMOIR Top feed. The proposed access fee for external distribution will be charged only once per month per Firm.

3. *Non-Display Use Fees.* The Exchange does not propose to establish non-display fees for usage by Trading Platforms or other Users with respect to MEMOIR Top.

4. *User Fees.* The Exchange proposes to charge a Professional User Fee (per User) of $0.01 per month and a Non-Professional User Fee (per User) of $0.01 per month. The proposed User fees would apply to each person that has access to the MEMOIR Top feed that is provided by an External Distributor for displayed usage. The Exchange does not propose any per User fees for internal distribution of the MEMOIR Top feed. Each External Distributor's count will include every individual that accesses the data regardless of the purpose for which the individual uses the data. External Distributors of the MEMOIR Top feed must report all Professional and Non-Professional Users [14] in accordance with the following:

- In connection with an External Distributor's distribution of the MEMOIR Top feed, the Distributor must count as one User each unique User that the Distributor has entitled to have access to the MEMOIR Top feed.
- External Distributors must report each unique individual person who receives access through multiple devices or multiple methods (*e.g.,* a single User has multiple passwords and user identifications) as one User.
- If an External Distributor entitles one or more individuals to use the same device, the Distributor must include only the individuals, and not the device, in the count. Thus, Distributors would not be required to report User device counts associated with a User's display use of the data feed.

5. *Enterprise Fee.* As an alternative to User fees, a recipient Firm may purchase a monthly Enterprise license to receive MEMOIR Top for distribution to an unlimited number of Professional and Non-Professional Users. The Exchange proposes to establish a fee of $10,000 per month for an Enterprise license to the MEMOIR Top feed.

6. *Digital Media Enterprise Fee.* As an alternative to User fees, a recipient Firm may purchase a monthly Digital Media Enterprise license to receive MEMOIR Top for distribution to an unlimited number of Users for viewing via television, websites, and mobile devices for informational and non-trading purposes only. The Exchange proposes to establish a fee of $2,000 per month for a Digital Media Enterprise license to the MEMOIR Top feed.

MEMOIR Last Sale

The MEMOIR Last Sale feed is a MEMX-only market data feed that contains only execution information based on equity orders entered into the System as well as administrative messages.[15] The Exchange proposes to charge each of the fees set forth below for MEMOIR Last Sale.

1. *Internal Distribution Fee.* For the receipt of access to the MEMOIR Last Sale feed, the Exchange proposes to charge $500 per month. This proposed access fee would be charged to any data recipient that receives a data feed of the MEMOIR Last Sale feed for purposes of internal distribution (*i.e.,* an Internal Distributor). The proposed access fee for internal distribution will be charged only once per month per Firm.

2. *External Distribution Fee.* For redistribution of the MEMOIR Last Sale feed, the Exchange proposes to establish an access fee of $2,000 per month. The proposed redistribution fee would be charged to any External Distributor of the MEMOIR Last Sale feed. The proposed access fee for external distribution will be charged only once per month per Firm.

3. *Non-Display Use Fees.* The Exchange does not propose to establish separate non-display fees for usage by Trading Platforms or other Users with respect to MEMOIR Last Sale.

4. *User Fees.* The Exchange proposes to charge a Professional User Fee (per User) of $0.01 per month and a Non-Professional User Fee (per User) of $0.01 per month. The proposed User fees would apply to each person that has access to the MEMOIR Last Sale feed that is provided by an External Distributor for displayed usage. The Exchange does not propose any per User fees for internal distribution of the MEMOIR Last Sale feed. Each External Distributor's count will include every individual that accesses the data regardless of the purpose for which the individual uses the data. External Distributors of the MEMOIR Last Sale feed must report all Professional and Non-Professional Users [16] in accordance with the following:

- In connection with an External Distributor's distribution of the MEMOIR Last Sale feed, the Distributor must count as one User each unique User that the Distributor has entitled to have access to the MEMOIR Last Sale feed.
- External Distributors must report each unique individual person who receives access through multiple devices or multiple methods (*e.g.,* a single User has multiple passwords and user identifications) as one User.
- If an External Distributor entitles one or more individuals to use the same device, the Distributor must include only the individuals, and not the device, in the count. Thus, Distributors would not be required to report User device counts associated with a User's display use of the data feed.

5. *Enterprise Fee.* As an alternative to User fees, a recipient Firm may purchase a monthly Enterprise license to receive MEMOIR Last Sale for distribution to an unlimited number of Professional and Non-Professional

[13] *See* MEMX Rule 13.8(b).

[14] The Exchange notes that while it is not differentiating Professional and Non-Professional Users based on fees (in that it is proposing the same fee for such Users) for this data feed, and thus will not audit Firms based on this distinction, it will request reporting of each distinct category for informational purposes.

[15] *See* MEMX Rule 13.8(c).

[16] *See supra* note 14.

Users. The Exchange proposes to establish a fee of $10,000 per month per Firm for an Enterprise license to the MEMOIR Last Sale feed.

6. *Digital Media Enterprise Fee.* As an alternative to User fees, a recipient Firm may purchase a monthly Digital Media Enterprise license to receive MEMOIR Last Sale for distribution to an unlimited number of Users for viewing via television, websites, and mobile devices for informational and non-trading purposes only. The Exchange proposes to establish a fee of $2,000 per month per Firm for a Digital Media Enterprise license to the MEMOIR Last Sale feed.

Additional Discussion—Background

In two years, MEMX has grown from 0% to monthly market share ranging between 3–4% of consolidated trading volume. During that same period, the Exchange has had a steady increase in the number of subscribers to Exchange Data Feeds. Until April of this year, MEMX did not charge fees for market data provided by the Exchange. The objective of this approach was to eliminate any fee-based barriers for Members when MEMX launched as a national securities exchange in 2020, which the Exchange believes has been helpful in its ability to attract order flow as a new exchange. The Exchange also did not initially charge for market data because MEMX believes that any exchange should first deliver meaningful value to Members and other market participants before charging fees for its products and services. As discussed more fully below, the Exchange recently calculated its annual aggregate costs for providing the Exchange Data Feeds at approximately $3 million. In order to establish fees that are designed to recover the aggregate costs of providing the Exchange Data Feeds plus a reasonable mark-up, the Exchange is proposing to modify its Fee Schedule, as described above. In addition to the Cost Analysis, described below, the Exchange believes that its proposed approach to market data fees is reasonable based on a comparison to competitors.

Additional Discussion—Comparison With Other Exchanges

The proposed fee structure is not novel but is instead comparable to the fee structure currently in place for the equities exchanges operated by Cboe Global Markets, Inc., in particular BZX.[17] As noted above, in January 2022, MEMX had 4.2% market share; for that same month, BZX had 5.5% market share.[18] The Exchange is proposing fees for its Exchange Data Feeds that are similar in structure to BZX and rates that are equal to, or in most cases lower, than the rates data recipients pay for comparable data feeds from BZX.[19] The Exchange notes that other competitors maintain fees applicable to market data that are considerably higher than those proposed by the Exchange, including NYSE Arca[20] and Nasdaq.[21] However, the Exchange has focused its comparison on BZX because it is the closest market in terms of market share and offers market data at prices lower than several other incumbent exchanges.[22]

The fees for the BZX Depth feed—which like the MEMOIR Depth feed, includes top of book, depth of book, trades, and security status messages—consist of an internal distributor access fee of $1,500 per month (the same as the Exchange's proposed rate), an external distributor access fee of $5,000 per month (two times the Exchange's proposed rate), a non-display usage fee for non-Trading Platforms of $2,000 per month ($500 more than the Exchange's proposed rate), a non-display usage fee for Trading Platforms of $5,000 per month ($1,000 more than the Exchange's proposed rate), a Professional User fee (per User) of $40 per month ($10 more than the Exchange's proposed rate), and a Non-Professional User fee (per User) of $5 per month ($2 more than the Exchange's proposed rate).[23]

The comparisons of the MEMOIR Last Sale feed and MEMOIR Top feed to the BZX Last Sale feed and BZX Top feed, respectively, are similar in that BZX generally maintains the same fee structure proposed by the Exchange and BZX charges fees that are comparable to, but in most cases higher than, the Exchange's proposed fees. Notably, the User fees proposed by the Exchange for External Distributors of MEMOIR Last Sale and MEMOIR Top ($0.01 for both Professional Users and Non-Professional Users) are considerably lower than those charged by BZX for BZX Top and BZX Last Sale ($4 for Professional Users and $0.10 for Non-Professional Users).

By charging the same low rate for all Users of MEMOIR Top and MEMOIR

[17] *See* BZX Fee Schedule, available at: *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/* (the ''BZX Fee Schedule'').

[18] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[19] The Exchange notes that although no fee proposed by the Exchange is higher than the fee charged for BZX for a comparable data product, under certain fact patterns a BZX data recipient could pay a lower rate than that charged by the Exchange. For instance, while the Exchange has proposed to adopt identical fees to those charged for internal distribution of MEMOIR Top as compared to BZX Top ($750 per month) and for internal distribution of MEMOIR Last Sale as compared to BZX Last Sale ($500 per month), BZX permits a data recipient who takes both feeds to pay only one fee and, upon request, to receive the other data feed free of charge. *See* BZX Fee Schedule, supra note 17. Because the Exchange has not proposed such a discount, a data recipient taking both MEMOIR TOP and MEMOIR Last Sale would pay more ($1,250 per month) than they would to take comparable data feeds from BZX ($750 per month).

[20] Fees for the NYSE Arca Integrated Feed, which is the comparable product to MEMOIR Depth, are $3,000 for access (internal use) and $3,750 for redistribution (external distribution), compared to the Exchange's proposed fees of $1,500 and $2,500, respectively. In addition, for its Integrated Feed, NYSE Arca charges for three different categories of non-display usage, each of which is $10,500 and each of which can be charged to the same firm more than one time (*e.g.,* a customer operating a Trading Platform would pay $10,500 compared to the Exchange's proposed fee of $4,000 but would also pay for each Trading Platform, up to three, if they operate more than one, instead of the single fee proposed by the Exchange; if that customer also uses the data for the other categories of non-display usage they would also pay $10,500 for each other category of usage, whereas the Exchange would only charge $1,500 for any non-display usage other than operating a Trading Platform). Finally, the NYSE Arca Integrated Feed user fee for pro devices is $60 compared to the proposed Professional User fee of $30 for MEMOIR Depth and the NYSE Arca Integrated user fee for non-pro devices is $20 compared to the proposed Non-Professional User fee of $3 for MEMOIR Depth. *See* NYSE Proprietary Market Data Pricing list, available at: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf.*

[21] Fees for the Nasdaq TotalView data feed, which is the comparable product to MEMOIR Depth, are $1,500 for access (internal use) and $3,750 for redistribution (external distribution), compared to the Exchange's proposed fees of $1,500 and $2,500, respectively. In addition, for TotalView, Nasdaq charges Trading Platforms $5,000 compared to the Exchange's proposal of $4,000, and, like NYSE Arca, charges customers per Trading Platform, up to three, if they operate more than one, instead of the single fee proposed by the Exchange. Nasdaq also requires users to report and pay usage fees for non-display access at levels of from $375 per subscriber for smaller firms with 39 or fewer subscribers to $75,000 per firm for a larger firm with over 250 subscribers. The Exchange does not require counting of devices or users for non-display purposes and instead has proposed flat fee of $1,500 for non-display usage not by Trading Platforms. Finally, the Nasdaq TotalView user fee for professional subscribers is $76 compared to the proposed Professional User fee of $30 for MEMOIR Depth and the Nasdaq TotalView user fee for non-professional subscribers is $15 compared to the proposed Non-Professional User fee of $3 for MEMOIR Depth. *See* Nasdaq Global Data Products pricing list, available at: *http://www.nasdaqtrader.com/TraderB.aspx?id=MDDPricingALLN.*

[22] *See supra* notes 20–21.

[23] *See* BZX Fee Schedule, supra note 17. The Exchange notes that there are differences between the structure of BZX Depth fees and the proposed fees for MEMOIR Depth, including that the Exchange has proposed a Digital Media Enterprise License for MEMOIR Depth but a comparable license is not available from BZX. Additionally, BZX maintains a general enterprise license for User fees, similar to that proposed by the Exchange for MEMOIR Top and MEMOIR Last Sale, but the Exchange has not proposed adding a general Enterprise license at this time.

Last Sale the Exchange believes it is proposing a structure that is not only lower cost but that will also simplify reporting for subscribers who externally distribute these data feeds to Users, as the Exchange believes that categorization of Users as Professional and Non-Professional is not meaningful for these products and requiring such categorization would expose Firms to unnecessary audit risk of paying more for mis-categorization. However, the Exchange does not believe this is equally true for MEMOIR Depth, as most individual Users of MEMOIR Depth are likely to be Professional Users and the Exchange has proposed pricing for such Users that the Exchange believes is reasonable given the value to Professional Users (*i.e.,* since Professional Users use data to participate in the markets as part of their full-time profession and earn compensation based on their employment). While the Exchange would prefer the simplicity of a single fee, similar to that imposed for Professional Users and Non-Professional Users of the MEMOIR Top and MEMOIR Last Sale feeds, as that would reduce audit risk and simplify reporting, the proposed fee for Professional Users of the MEMOIR Depth feed if also applied to Non-Professional Users of such feed would be significantly higher than other exchanges charge. The Exchange reiterates that it does not anticipate many Non-Professional Users to subscribe to MEMOIR Depth. In fact, the Exchange is only aware of a single Non-Professional User (*i.e.,* one User) that is reported to receive MEMOIR Depth.

Additional Discussion—Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs. Accordingly, in proposing to charge fees for market data, the Exchange has sought to be especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and also carefully and transparently assessing the impact on Members—both generally and in relation to other Members, *i.e.,* to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange does not believe it needs to otherwise address questions about market competition in the context of this filing because the proposed fees are so clearly consistent with the Act based on its Cost Analysis. The Exchange also believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,[24] and Rule 19b–4 thereunder,[25] with respect to the types of information self-regulatory organizations (''SROs'') should provide when filing fee changes, and Section 6(b) of the Act,[26] which requires, among other things, that exchange fees be reasonable and equitably allocated,[27] not designed to permit unfair discrimination,[28] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[29] This rule change proposal addresses those requirements, and the analysis and data in this section are designed to clearly and comprehensively show how they are met.[30]

As noted above, MEMX has conducted and recently updated a study of its aggregate costs to produce the Exchange Data Feeds—the Cost Analysis. The Cost Analysis required a detailed analysis of MEMX's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transactions, market data, membership services, physical connectivity, and application sessions (which provide order entry, cancellation and modification functionality, risk functionality, ability to receive drop copies, and other functionality). MEMX separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses (''cost drivers''). Next, MEMX adopted an allocation methodology with various principles to guide how much of a particular cost should be allocated to each core service. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (75%), with smaller allocations to logical ports (2.6%), and the remainder to the provision of transaction execution and market data services (22.4%). The allocation methodology was decided through conversations with senior management familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an estimated allocation of each cost driver to each core service, resulting in the cost allocations described below.

By allocating segmented costs to each core service, MEMX was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has four primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange generally must cover its expenses from these four primary sources of revenue.

Through the Exchange's extensive Cost Analysis, which was again recently updated to focus solely on the provision of the Exchange Data Feeds, the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of the Exchange Data Feeds, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of the Exchange Data Feeds, and thus bears a relationship that is, ''in nature and closeness,'' directly related to the Exchange Data Feeds. Based on its analysis, MEMX calculated its aggregate annual costs for providing the Exchange Data Feeds, at $3,014,348. This results in an estimated monthly cost for providing Exchange Data Feeds of $251,196. In order to cover operating costs and earn a reasonable profit on its market data, the Exchange has determined it necessary to charge fees for its proprietary data products, and, as such, the Exchange is proposing to modify its Fee Schedule, pursuant to MEMX Rules 15.1(a) and (c), as set forth above.

[24] 15 U.S.C. 78s(b)(1).

[25] 17 CFR 240.19b–4.

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(4).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78f(b)(8).

[30] In 2019, Commission staff published guidance suggesting the types of information that SROs may use to demonstrate that their fee filings comply with the standards of the Exchange Act (''Fee Guidance''). While MEMX understands that the Fee Guidance does not create new legal obligations on SROs, the Fee Guidance is consistent with MEMX's view about the type and level of transparency that exchanges should meet to demonstrate compliance with their existing obligations when they seek to charge new fees. *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019) available at *https://www.sec.gov/tm/staff-guidancesro-rule-filings-fees.*

Costs Related to Offering Exchange Data Feeds

The following chart details the individual line-item (annual) costs considered by MEMX to be related to offering the Exchange Data Feeds to its Members and other customers as well as the percentage of the Exchange's overall costs that such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 6.9% of its overall Human Resources cost to offering Exchange Data Feeds).

Costs drivers	Costs	Percent of all
Human Resources	$1,729,856	6.9
Network Infrastructure (*e.g.*, servers, switches)	232,452	8.8
Data Center	318,456	9.8
Hardware and Software Licenses	246,864	9.8
Depreciation	399,911	18.0
Allocated Shared Expenses	86,809	1.8
Total	3,014,348	6.5

Human Resources

For personnel costs (Human Resources), MEMX calculated an allocation of employee time for employees whose functions include directly providing services necessary to offer the Exchange Data Feeds, including performance thereof, as well as personnel with ancillary functions related to establishing and providing such services (such as information security and finance personnel). The Exchange notes that it has fewer than eighty (80) employees and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange. The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing the Exchange Data Feeds, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing the Exchange Data Feeds. The Exchange notes that senior level executives were allocated Human Resources costs to the extent the Exchange believed they are involved in overseeing tasks related to providing the Exchange Data Feeds. The Exchange's cost allocation for employees who perform work in support of generating and disseminating the Exchange Data Feeds arrive at a full time equivalent (''FTE'') of 5.2 FTEs. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Network Infrastructure

The Network Infrastructure cost includes cabling and switches required to generate and disseminate the Exchange Data Feeds. The Network Infrastructure cost was narrowly estimated by focusing on the servers used at the Exchange's primary and back-up data centers specifically for the Exchange Data Feeds. Further, as certain servers are only partially utilized to generate and disseminate the Exchange Data Feeds, only the percentage of such servers devoted to generating and disseminating the Exchange Data Feeds was included (*i.e.,* the capacity of such servers allocated to the Exchange Data Feeds). From this analysis, the Exchange determined that 9.8% of its servers are used to generate and disseminate the Exchange Data Feeds. When combined with the applicable switches used for Exchange Data Feeds, the Exchange has determined that approximately 8.8% of its overall Network Infrastructure costs are attributable to the Exchange Data Feeds.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide the Exchange Data Feeds in the third-party data centers where the Exchange maintains its equipment as well as related costs (the Exchange does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties). As the Data Center costs are primarily for space, power, and cooling of servers, the Exchange applied the same percentage calculated above with respect to servers, *i.e.* 9.8%, to allocate the applicable Data Center costs for the Exchange Data Feeds. The Exchange believes it is reasonable to apply the same proportionate percentage of Data Center costs to that of Network Infrastructure.

Hardware and Software Licenses

Hardware and Software Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer the Exchange Data Feeds. Because the hardware and software license fees are correlated to the servers used by the Exchange, the Exchange again applied an allocation of 9.8% of its costs for Hardware and Software Licenses to the Exchange Data Feeds.

Depreciation

The vast majority of the software the Exchange uses with respect to its operations, including the software used to generate and disseminate the Exchange Data Feeds has been developed in-house and the cost of such development is depreciated over time. Accordingly, the Exchange included Depreciation cost related to depreciated software used to generate and disseminate the Exchange Data Feeds. The Exchange also included in the Depreciation costs certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to the Exchange Data Feeds in the near-term. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost was therefore narrowly tailored to depreciation related to the Exchange Data Feeds.

Allocated Shared Expenses

Finally, certain general shared expenses were allocated to the Exchange Data Feeds. However, contrary to its prior cost analysis, rather than taking the whole amount of general shared expenses and applying an allocated percentage, the Exchange has narrowly selected specific general shared expenses relevant to the Exchange Data Feeds. The costs included in general shared expenses allocated to the Exchange Data Feeds include office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The cost of

paying individuals to serve on the Exchange's Board of Directors or any committee was not allocated to providing Exchange Data Feeds.

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core service and did not double-count any expenses. Instead, as described above, the Exchange identified and allocated applicable cost drivers across its core services and used the same approach to analyzing costs to form the basis of a separate proposal to adopt fees for connectivity services (the ''Connectivity Filing'') [31] and this filing proposing fees for Exchange Data Feeds. Thus, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

The Exchange anticipates that the proposed fees for Exchange Data Feeds will generate approximately $262,500 monthly ($3,150,000 annually) based on billing and reporting that has taken place since the Exchange commenced billing for such data feeds. The proposed fees for Exchange Data Feeds are designed to permit the Exchange to cover the costs allocated to providing Exchange Data Feeds with a mark-up that the Exchange believes is modest (approximately 4%), which the Exchange believes is fair and reasonable after taking into account the costs related to creating, generating, and disseminating the Exchange Data Feeds and the fact that the Exchange will need to fund future expenditures (increased costs, improvements, etc.). The Exchange also reiterates that prior to April of this year the Exchange has not previously charged any fees for Exchange Data Feeds and its allocation of costs to Exchange Data Feeds was part of a holistic allocation that also allocated costs to other core services without double-counting any expenses.

The Exchange like other exchanges is, after all, a for-profit business. Accordingly, while the Exchange believes in transparency around costs and potential margins, as well as periodic review of revenues and applicable costs (as discussed below), the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes its Cost Analysis and related projections demonstrate this fact.

As a general matter, the Exchange believes that its costs will remain relatively similar in future years. It is possible however that such costs will either decrease or increase. To the extent the Exchange sees growth in use of Exchange Data Feeds it will receive additional revenue to offset future cost increases. However, if use of Exchange Data Feeds is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs.[32] Similarly, the Exchange expects that it would propose to decrease fees in the event that revenue materially exceeds current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and expects that it would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) [33] of the Act in general, and furthers the objectives of Section 6(b)(4) [34] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Additionally, the Exchange believes that the proposed fees are consistent with the objectives of Section 6(b)(5) [35] of the Act in that they are designed 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 a free and open market and national market system, and, in general, to protect investors and the public interest, and, particularly, are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange notes prior to addressing the specific reasons the Exchange believes the proposed fees and fee structure are reasonable, equitably allocated and not unreasonably discriminatory, that the proposed definitions and fee structure described above are consistent with the definitions and fee structure used by most U.S. securities exchanges, and Cboe BZX in particular. As such, the Exchange believes it is adopting a model that is easily understood by Members and non-Members, most of which also subscribe to market data products from other exchanges. For this reason, the Exchange believes that the proposed definitions and fee structure described above are consistent with the Act generally, and Section 6(b)(5) [36] of the Act in particular.

As noted above, the Exchange's executed trading volume has grown from 0% market share to approximately 3–4% market share in less than two years and the Exchange believes that it is reasonable to begin charging fees for the Exchange Data Feeds. One of the primary objectives of MEMX is to provide competition and to reduce fixed costs imposed upon the industry. Consistent with this objective, the Exchange believes that this proposal reflects a simple, competitive, reasonable, and equitable pricing structure, with fees that are discounted when compared to comparable data products and services offered by competitors.[37]

Reasonableness

Overall. With regard to reasonableness, the Exchange

[31] *See* SR–MEMX–2022–26, filed September 15, 2022, available at: *https://info.memxtrading.com/rules-and-filings/.*

[32] The Exchange notes that it does not believe that a 4% mark-up is necessarily competitive, and instead that this is likely significantly below the mark-up many businesses place on their products and services.

[33] 15 U.S.C. 78f.

[34] 15 U.S.C. 78f(b)(4).

[35] 15 U.S.C. 78f(b)(5).

[36] 15 U.S.C. 78f(b)(5).

[37] *See supra* notes 20–21; *see supra* note 23 and accompanying text.

understands that the Commission has traditionally taken a market-based approach to examine whether the SRO making the fee proposal was subject to significant competitive forces in setting the terms of the proposal. The Exchange understands that in general the analysis considers whether the SRO has demonstrated in its filing that (i) there are reasonable substitutes for the product or service; (ii) ''platform'' competition constrains the ability to set the fee; and/or (iii) revenue and cost analysis shows the fee would not result in the SRO taking supracompetitive profits. If the SRO demonstrates that the fee is subject to significant competitive forces, the Exchange understands that in general the analysis will next consider whether there is any substantial countervailing basis to suggest the fee's terms fail to meet one or more standards under the Exchange Act. The Exchange further understands that if the filing fails to demonstrate that the fee is constrained by competitive forces, the SRO must provide a substantial basis, other than competition, to show that it is consistent with the Exchange Act, which may include production of relevant revenue and cost data pertaining to the product or service.

The Exchange has not determined its proposed overall market data fees based on assumptions about market competition, instead relying upon a cost-plus model to determine a reasonable fee structure that is informed by the Exchange's understanding of different uses of the products by different types of participants. In this context, the Exchange believes the proposed fees overall are fair and reasonable as a form of cost recovery plus the possibility of a reasonable return for Exchange's aggregate costs of offering the Exchange Data Feeds. The Exchange believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup some or all of Exchange's annual costs of providing market data with a reasonable mark-up. As discussed in the Purpose section, the Exchange estimates this fee filing will result in annual revenue of approximately $3.15 million, representing a potential mark-up of just 4% over the cost of providing market data. Accordingly, the Exchange believes that this fee methodology is reasonable because it allows the Exchange to recoup some or all of its expenses for providing market data products (with any additional revenue representing no more than what the Exchange believes to be a reasonable rate of return). The Exchange also believes that the proposed fees are reasonable because they are generally less than the fees charged by competing equities exchanges for comparable market data products, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of market data.

The Exchange believes the proposed fees for the Exchange Data Feeds are reasonable when compared to fees for comparable products, such as the BZX Depth feed, BZX Top feed, and BZX Last Sale feed, compared to which the Exchange's proposed fees are generally lower, as well as other comparable data feeds priced significantly higher than the Exchange's proposed fees for the Exchange Data Feeds.[38] Specifically with respect to the MEMOIR Depth feed, the Exchange believes that the proposed fees for such feed are reasonable because they represent not only the value of the data available from the MEMOIR Top and MEMOIR Last Sale data feeds, which have lower proposed fees, but also the value of receiving the depth-of-book data on an order-by-order basis. The Exchange believes it is reasonable to have pricing based, in part, upon the amount of information contained in each data feed and the value of that information to market participants. The MEMOIR Top and Last Sale data feeds, as described above, can be utilized to trade on the Exchange but contain less information than that is available on the MEMOIR Depth feed (*i.e.,* even for a subscriber who takes both feeds, such feeds do not contain depth-of-book information). Thus, the Exchange believes it reasonable for the products to be priced as proposed, with MEMOIR Last Sale having the lowest price, MEMOIR Top the next lowest price, and MEMOIR Depth the highest price (and more than MEMOIR Last Sale and MEMOIR Top combined).

Internal Distribution Fees. The Exchange believes that it is reasonable to charge

Fees to access the Exchange Data Feeds for Internal Distribution because of the value of such data to subscribers in their profit-generating activities. The Exchange also believes that the proposed monthly Internal Distribution fees for MEMOIR Depth, MEMOIR Top, and MEMOIR Last Sale are reasonable as they are the same amounts charged by at least one other exchange of comparable size for comparable data products,[39] and are lower than the fees charged by several other exchanges for comparable data products.[40]

External Distribution Fees. The Exchange believes that it is reasonable to charge External Distribution fees for the Exchange Data Feeds because vendors receive value from redistributing the data in their business products provided to their customers. The Exchange believes that charging External Distribution fees is reasonable because the vendors that would be charged such fees profit by re-transmitting the Exchange's market data to their customers. These fees would be charged only once per month to each vendor account that redistributes any Exchange Data Feed, regardless of the number of customers to which that vendor redistributes the data. The Exchange also believes the proposed monthly External Distribution fee for the MEMOIR Depth Feed is reasonable because it is half the amount of the fee charged by at least one other exchange of comparable size for a comparable data product,[41] and significantly less than the amount charged by several other exchanges for comparable data products.[42] Similarly, the Exchange believes the proposed monthly External Distribution fees for the MEMOIR TOP and MEMOIR Last Sale feeds are reasonable because they are discounted compared to same amounts charged by at least one other exchange of comparable size for comparable data products,[43] and significantly less than the amount charged by several other exchanges for comparable data products.[44]

User Fees. The Exchange believes that having separate Professional and Non-Professional User fees for the MEMOIR Depth feed is reasonable because it will make the product more affordable and result in greater availability to Professional and Non-Professional Users. Setting a modest Non-Professional User fee is reasonable because it provides an additional method for Non-Professional Users to access the Exchange Data Feeds by providing the same data that is available to Professional Users. The proposed monthly Professional User fee and monthly Non-Professional User fee are

[38] *See supra* notes 20–21; *see supra* note 23 and accompanying text.

[39] *See* BZX Fee Schedule, supra note 17.

[40] *See, e.g.,* NYSE Proprietary Market Data Pricing list, available at: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf* (''NYSE Fee Schedule''); Nasdaq Global Data Products pricing list, available at: *http://www.nasdaqtrader.com/TraderB.aspx?id=MDDPricingALLN* (''Nasdaq Fee Schedule'').

[41] *See* BZX Fee Schedule, supra note 17.

[42] *See, e.g.,* NYSE Fee Schedule, supra note 40; Nasdaq Fee Schedule, supra note 40.

[43] *See* BZX Fee Schedule, supra note 17.

[44] *See, e.g.,* NYSE Fee Schedule, supra note 40; Nasdaq Fee Schedule, supra note 40.

reasonable because they are lower than the fees charged by at least one other exchange of comparable size for comparable data products,[45] and significantly less than the amounts charged by several other exchanges for comparable data products.[46]

The Exchange also believes it is reasonable to charge the same low per User fee of $0.01 for both Professional Users and Non-Professional Users receiving the MEMOIR Top and MEMOIR Last Sale feeds, as this is not only pricing such data at a much lower cost than other exchanges charge for comparable data feeds[47] but doing so will also simplify reporting for subscribers who externally distribute these data feeds to Users, as the Exchange believes that categorization of Users as Professional and Non-Professional is not meaningful for these products and that requiring such categorization would expose Firms to unnecessary audit risk of paying more for mis-categorization. The Exchange also believes that the proposal to require reporting of individual Users, but not devices, is reasonable as this too will eliminate unnecessary audit risk that can arise when recipients are required to apply complex counting rules such as whether or not to count devices or whether an individual accessing the same data through multiple devices should be counted once or multiple times. In addition, the Exchange believes it is reasonable to charge User fees only for External Distribution of the MEMOIR Top and MEMOIR Last Sale feeds, and not charge User fees for Internal Distribution of such market data feeds, because vendors receive additional value from being able to redistribute such data to their customers and can recoup associated expenses by passing on such fees either directly to those customers or indirectly by using the data to facilitate other revenue-generating activity.

The Exchange further believes that its proposal to adopt a Digital Media Enterprise Fee for each of the Exchange Data Feeds is reasonable because it would allow a market participant that wishes to disseminate information from the Exchange Data Feeds through a digital media platform such as a public website without determining the number of Users, which would be practically impossible. The Exchange further believes it is reasonable for the Digital Media Enterprise Fee to be higher for MEMOIR Depth than MEMOIR Top or MEMOIR Last Sale because of the additional information that is contained in MEMOIR Depth, and in turn, the potential additional value to data recipients.

The Exchange also believes it is reasonable to adopt an Enterprise Fee for MEMOIR Top and MEMOIR Last Sale because this would allow a market participant to disseminate such data feeds to an unlimited number of Users without the necessity of counting such Users. As this is an optional subscription, a data recipient is able to determine whether it prefers to count Users and report such Users to the Exchange or not, and also whether it is more economically advantageous to count and pay for specific Users or to subscribe to the Enterprise Fee. The Exchange also notes that given the low cost proposed per User, only a market participant with a substantial number of Users would likely choose to subscribe for and pay the Enterprise Fee. The Exchange also believes it is reasonable not to adopt an Enterprise Fee for MEMOIR Depth at this time as the Exchange does not believe there is sufficient demand for an Enterprise Fee given relatively low User counts for subscribers of MEMOIR Depth. While MEMOIR Top and MEMOIR Last Sale also currently have relatively low User counts, the Exchange does believe that there is potential demand for a market data recipient that wishes to disseminate top of book and last sale information to a large subscriber base, and thus again believes it is reasonable to offer an Enterprise Fee option for such a market data recipient.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Usage fees for the MEMOIR Depth feed are reasonable, because they reflect the value of the data to the data recipients in their profit-generating activities and do not impose the burden of counting non-display devices.

The Exchange believes that the proposed Non-Display Usage fees for the MEMOIR Depth feed reflect the significant value of the non-display data use to data recipients, most of whom purchase such data on a voluntary basis. Non-display data can be used by data recipients for a wide variety of profit-generating purposes, including proprietary and agency trading and smart order routing, as well as by data recipients that operate Trading Platforms that compete directly with the Exchange for order flow. The data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. Although some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce a recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting recipients. The Exchange believes that charging for non-trading uses is reasonable because data recipients can derive substantial value from such uses, for example, by automating tasks so that can be performed more quickly and accurately and less expensively than if they were performed manually.

Previously, the non-display use data pricing policies of many exchanges required customers to count, and the exchanges to audit the count of, the number of non-display devices used by a customer. As non-display use grew more prevalent and varied, however, exchanges received an increasing number of complaints about the impracticality and administrative burden associated with that approach. In response, several exchanges developed a non-display use pricing structure that does not require non-display devices to be counted or those counts to be audited, and instead categorizes different types of use. The Exchange proposes to distinguish between non-display use for the operation of a Trading Platform and other non-display use, which is similar to exchanges such as BZX and EDGX,[48] while other exchanges maintain additional categories and in many cases charge multiple times for different types of non-display use or the operation of multiple Trading Platforms.[49]

The Exchange believes that it is reasonable to segment the fee for non-display use into these two categories. As noted above, the uses to which customers can put the MEMOIR Depth feed are numerous and varied, and the Exchange believes that charging separate fees for these separate categories of use is reasonable because it reflects the actual value the customer derives from the data, based upon how the customer makes use of the data.

The Exchange believes that the proposed fees for non-display use other than operation of a Trading Platform is reasonable. These fees are comparable to, and lower than, the fees charged by at least one other exchange of comparable size for a comparable data product,[50] and significantly less than the amounts charged by several other

[45] *See* BZX Fee Schedule, supra note 17.

[46] *See, e.g.,* NYSE Fee Schedule, supra note 40; Nasdaq Fee Schedule, supra note 40.

[47] *See id.*

[48] *See* BZX Fee Schedule, supra note 17; EDGX Fee Schedule, available at: *https://www.cboe.com/us/equities/membership/fee_schedule/edgx/.*

[49] *See supra* notes 20–21.

[50] *See* BZX Fee Schedule, supra note 17.

exchanges for comparable data products.[51] The Exchange believes that the proposed fees directly and appropriately reflect the significant value of using data on a non-display basis in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments. Further, in contrast to non-display use for operation of a Trading Platform, discussed below, the Exchange benefits from other non-display use by market participants (including the fact that the Exchange receives orders resulting from algorithms and routers as well as more broadly beneficial uses such as risk management and compliance). Based on the Exchange's desire to encourage other non-display use by market participants, the Exchange believes it is reasonable to provide data for non-display use other than operation of a Trading Platform at a price that is discounted when compared to that for non-display use for operation of a Trading Platform.

The Exchange also believes, regarding non-display use for operation of a Trading Platform, it is reasonable to charge a higher monthly fee than for other non-display use because such use of the Exchange's data is directly in competition with the Exchange and the Exchange should be permitted to recoup some of its lost trading revenue by charging for the data that makes such competition possible. For example, alternative trading systems or ''ATSs'' often utilize exchange market data such as the Exchange Data Feeds to form prices for trading on such platforms and thus benefit from such data feeds without any direct benefit to the Exchange (other than payment of the applicable market data fee). With respect to other exchanges, which may choose to use the Exchange Data Feeds for Regulation NMS compliance and order routing, the Exchange notes that several exchange competitors of the Exchange have not subscribed to any Exchange Data Feeds and instead utilize SIP data for such purposes.[52] Accordingly, other exchanges clearly have a choice whether to subscribe to the Exchange Data Feeds. The Exchange also believes that it is reasonable to charge the proposed fees for non-display use for operation of a Trading Platform because the proposed fees are comparable to, and lower than, the fees charged at least one other exchange of comparable size for a comparable data product,[53] and significantly less than the amounts charged by several other exchanges for comparable data products, which also charge per Trading Platform operated by a data subscriber subject to a cap in most cases, rather than charging per Firm, as proposed by the Exchange.[54]

The proposed Non-Display Usage fees for the MEMOIR Depth feed are also reasonable because they take into account the extra value of receiving the data for Non-Display Usage that includes a rich set of information including top of book quotations, depth-of-book quotations, executions and other information. The Exchange believes that the proposed fees directly and appropriately reflect the significant value of using the MEMOIR Depth feed on a non-display basis in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.[55] For the same reasons, the Exchange believes it is reasonable to provide other data feeds, namely MEMOIR Top and MEMOIR Last Sale, free of charge for Non-Display Usage. The Exchange does not believe that either MEMOIR Top or MEMOIR Last Sale has the same value to market participants with respect to non-display usage as MEMOIR Depth, as neither of MEMOIR Top or MEMOIR Last Sale contains the amount of information that the Exchange expects market participants need for typical trading and non-trading non-display applications.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the Exchange Data Feeds are reasonable.

Equitable Allocation

Overall. The Exchange believes that its proposed fees are reasonable, fair, and equitable, and not unfairly discriminatory because they are designed to align fees with services provided. The Exchange believes the proposed fees for the Exchange Data Feeds are allocated fairly and equitably among the various categories of users of the feeds, and any differences among categories of users are justified and appropriate.

The Exchange believes that the proposed fees are equitably allocated because they will apply uniformly to all data recipients that choose to subscribe to the Exchange Data Feeds. Any subscriber or vendor that chooses to subscribe to one or more Exchange Data Feeds is subject to the same Fee Schedule, regardless of what type of business they operate, and the decision to subscribe to one or more Exchange Data Feeds is based on objective differences in usage of Exchange Data Feeds among different Firms, which are still ultimately in the control of any particular Firm. The Exchange believes the proposed pricing between Exchange Data Feeds is equitably allocated because it is based, in part, upon the amount of information contained in each data feed and the value of that information to market participants. The MEMOIR Top and Last Sale data feeds, as described above, can be utilized to trade on the Exchange but contain less information than that is available on the MEMOIR Depth feed (*i.e.,* even for a subscriber who takes both feeds, such feeds do not contain depth-of-book information). Thus, the Exchange believes it is an equitable allocation of fees for the products to be priced as proposed, with MEMOIR Last Sale having the lowest price, MEMOIR Top the next lowest price, and MEMOIR Depth the highest price (and more than MEMOIR Last Sale and MEMOIR Top combined).

Internal Distribution Fee. The Exchange believes the proposed monthly fees for Internal Distribution of the Exchange Data Feeds are equitably allocated because they would be charged on an equal basis to all data recipients that receive the Exchange Data Feeds for internal distribution, regardless of what type of business they operate.

External Distribution Fees. The Exchange believes the proposed monthly fees for External Distribution of the Exchange Data Feeds are equitably allocated because they would be charged on an equal basis to all data recipients that receive the Exchange Data Feeds that choose to redistribute the feeds externally. The Exchange also believes that the proposed monthly fees for External Distribution are equitably allocated when compared to lower proposed fees for Internal Distribution

[51] *See, e.g.,* NYSE Fee Schedule, supra note 40; Nasdaq Fee Schedule, supra note 40.

[52] *See, e.g.,* NYSE Arca Rule 7.37–E.(d), Order Execution and Routing, and BZX Rule 11.21, each of which discloses the data feeds used by each respective exchange and state that SIP products are used with respect to MEMX.

[53] *See* BZX Fee Schedule, supra note 17.

[54] *See supra* notes 20–21.

[55] *See also* Exchange Act Release No. 69157, March 18, 2013, 78 FR 17946, 17949 (March 25, 2013) (SR–CTA/CQ–2013–01) (''[D]ata feeds have become more valuable, as recipients now use them to perform a far larger array of non-display functions. Some firms even base their business models on the incorporation of data feeds into black boxes and application programming interfaces that apply trading algorithms to the data, but that do not require widespread data access by the firm's employees. As a result, these firms pay little for data usage beyond access fees, yet their data access and usage is critical to their businesses.''

because data recipients that are externally distributing Exchange Data Feeds are able to monetize such distribution and spread such costs amongst multiple third party data recipients, whereas the Internal Distribution fee is applicable to use by a single data recipient (and its affiliates).

User Fees. The Exchange believes that the fee structure differentiating Professional User fees from Non-Professional User fees for display use of the MEMOIR Depth feed is equitable. This structure has long been used by other exchanges and the SIPs to reduce the price of data to Non-Professional Users and make it more broadly available.[56] Offering the MEMOIR Depth feed to Non-Professional Users at a lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. While Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets. The Exchange also believes it may be unreasonable to charge a Non-Professional User the same fee that it has proposed for Professional Users, as this fee would be higher than any other U.S. equities exchange charges to Non-Professional Users for receipt of a comparable data product. These User fees would be charged uniformly to all individuals that have access to the MEMOIR Depth feed based on the category of User.

The Exchange also believes the proposed User fees for MEMOIR Top and MEMOIR Last Sale are equitable because the Exchange has proposed to charge Professional Users and Non-Professional Users the same low rate of $0.01 per month. In addition, the Exchange believes it is equitable to charge User fees only for External Distribution of the MEMOIR Top and MEMOIR Last Sale feeds, and not charge User fees for Internal Distribution of such market data feeds, because vendors receive additional value from being able to redistribute such data to their customers and can recoup associated expenses by passing on such fees either directly to those customers or indirectly by using the data to facilitate other revenue-generating activity.

Finally, the Exchange believes it is equitable to adopt User fees for the Memoir Depth feed that are significantly higher than the User fees for the MEMOIR Top and MEMOIR Last Sale feeds because, as described above, MEMOIR Depth contains significantly more data than such data feeds. The Exchange believes it is equitable to have pricing based, in part, upon the amount of information contained in each data feed and the value of that information to market participants.

The Exchange further believes that its proposal to adopt a Digital Media Enterprise Fee for each of the Exchange Data Feeds is equitable because it would allow a market participant that wishes to disseminate information from the Exchange Data Feeds through a digital media platform such as a public website without determining the number of Users, which would be practically impossible. The Exchange further believes it is equitable for the Digital Media Enterprise Fee to be higher for MEMOIR Depth than MEMOIR Top or MEMOIR Last Sale because of the additional information that is contained in MEMOIR Depth, and in turn, the potential additional value to data recipients.

The Exchange also believes it is equitable to adopt an Enterprise Fee for MEMOIR Top and MEMOIR Last Sale because this would allow a market participant to disseminate such data feeds to an unlimited number of Users without the necessity of counting such Users. As this is an optional subscription, a data recipient is able to determine whether it prefers to count Users and report such Users to the Exchange or not, and also whether it is more economically advantageous to count and pay for specific Users or to subscribe to the Enterprise Fee. The Exchange also believes it is equitable not to adopt an Enterprise Fee for MEMOIR Depth at this time as the Exchange does not believe there is sufficient demand for an Enterprise Fee given relatively low User counts for subscribers of MEMOIR Depth, as described above.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Usage fees are equitably allocated because they would require subscribers to pay fees only for the uses they actually make of the data. As noted above, non-display data can be used by data recipients for a wide variety of profit-generating purposes (including trading and order routing) as well as purposes that do not directly generate revenues (such as risk management and compliance) but nonetheless substantially reduce the recipient's costs by automating certain functions. The Exchange believes that it is equitable to charge non-display data subscribers that use MEMOIR Depth data for purposes other than operation of a Trading Platform as proposed because all such subscribers would have the ability to use such data for as many non-display uses as they wish for one low fee. As noted above, this structure is comparable to that in place for the BZX Depth feed but several other exchanges charge multiple non-display fees to the same client to the extent they use a data feed in several different trading platforms or for several types of non-display use.[57]

In contrast to non-display use for operation of a Trading Platform, the Exchange benefits from other non-display use by market participants (including the fact that the Exchange receives orders resulting from algorithms and routers as well as more broadly beneficial uses such as risk management and compliance). Based on the Exchange's desire to encourage other non-display use by market participants, the Exchange believes it is equitable to charge a lower rate for non-display not by Trading Platforms than it does for non-display by Trading Platforms. The Exchange also believes, regarding non-display use for operation of a Trading Platform, it is equitable to charge a higher rate for each Firm operating a Trading Platform (as compared to other Non-Display Usage not by Trading Platforms) because such use of the data is directly in competition with the Exchange and the Exchange should be permitted to recoup some of its lost trading revenue by charging for the data that makes such competition possible. As noted above, ATSs can utilize the Exchange Data Feeds to form prices for trading on such platforms and thus benefit from such data feeds without any direct benefit to the Exchange (other than payment of the applicable market data fee). With respect to other exchanges, the Exchange reiterates that several exchange competitors of the Exchange have not subscribed to any Exchange Data Feeds.[58] Accordingly, other exchanges clearly have a choice whether to subscribe to the Exchange Data Feeds.

The Exchange believes that it is equitable to charge a single fee per Firm rather than multiple fees for a Firm that operates more than one Trading

[56] *See, e.g.,* Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131) (establishing the $15 Non-Professional User Fee (Per User) for NYSE OpenBook); Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983), 48 FR 34552 (July 29, 1983) (establishing Non-Professional fees for CTA data); NASDAQ BX Equity 7 Pricing Schedule, Section 123.

[57] *See supra* notes 20–21.

[58] *See* supra note 52.

Platform because operators of Trading Platforms are many times viewed as a single competing venue or group, even if there are multiple liquidity pools operated by the same competitor.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the Exchange Data Feeds are equitably allocated.

The Proposed Fees Are Not Unfairly Discriminatory

The Exchange believes the proposed fees for the Exchange Data Feeds are not unfairly discriminatory because any differences in the application of the fees are based on meaningful distinctions between customers, and those meaningful distinctions are not unfairly discriminatory between customers.

Overall. The Exchange believes that the proposed fees are not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to the same Exchange Data Feed(s). Any vendor or subscriber that chooses to subscribe to the Exchange Data Feeds is subject to the same Fee Schedule, regardless of what type of business they operate. Because the proposed fees for MEMOIR Depth are higher, vendors and subscribers seeking lower cost options may instead choose to receive data from the SIPs or through the MEMOIR Top and/or MEMOIR Last Sale feed for a lower cost. Alternatively, vendors and subscribers can choose to pay for the MEMOIR Depth feed in order to receive data in a single feed with depth-of-book information if such information is valuable to such vendors or subscribers. The Exchange notes that vendors or subscribers can also choose to subscribe to a combination of data feeds for redundancy purposes or to use different feeds for different purposes. In sum, each vendor or subscriber has the ability to choose the best business solution for itself. The Exchange does not believe it is unfairly discriminatory to base pricing upon the amount of information contained in each data feed and the value of that information to market participants. As described above, the MEMOIR Top and Last Sale data feeds, can be utilized to trade on the Exchange but contain less information than that is available on the MEMOIR Depth feed (*i.e.,* even for a subscriber who takes both feeds, such feeds do not contain depth-of-book information). Thus, the Exchange believes it is not unfairly discriminatory for the products to be priced as proposed, with MEMOIR Last Sale having the lowest price, MEMOIR Top the next lowest price, and MEMOIR Depth the highest price (and more than MEMOIR Last Sale and MEMOIR Top combined).

Internal Distribution Fees. The Exchange believes the proposed monthly fees for Internal Distribution of the Exchange Data Feeds are not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the same Exchange Data Feed(s) for internal distribution, regardless of what type of business they operate.

External Distribution Fees. The Exchange believes the proposed monthly fees for redistributing the Exchange Data Feeds are not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the same Exchange Data Feed(s) that choose to redistribute the feed(s) externally. The Exchange also believes that having higher monthly fees for External Distribution than Internal Distribution is not unfairly discriminatory because data recipients that are externally distributing Exchange Data Feeds are able to monetize such distribution and spread such costs amongst multiple third party data recipients, whereas the Internal Distribution fee is applicable to use by a single data recipient (and its affiliates).

User Fees. The Exchange believes that the fee structure differentiating Professional User fees from Non-Professional User fees for display use of the MEMOIR Depth feed is not unfairly discriminatory. This structure has long been used by other exchanges and the SIPs to reduce the price of data to Non-Professional Users and make it more broadly available.[59] Offering the Exchange Data Feeds to Non-Professional Users with the same data as is available to Professional Users, albeit at a lower cost, results in greater equity among data recipients. These User fees would be charged uniformly to all individuals that have access to the Exchange Data Feeds based on the category of User. The Exchange also believes the proposed User fees for MEMOIR Depth are not unfairly discriminatory, with higher fees for Professional Users than Non-Professional Users, because Non-Professional Users may have less ability to pay for such data than Professional Users as well as less opportunity to profit from their usage of such data. The Exchange also believes the proposed User fees for MEMOIR Depth are not unfairly discriminatory, even though substantially higher than the proposed User fees for MEMOIR Top and MEMOIR Last Sale, because, as described above, MEMOIR Depth has significantly more information than the other Exchange Data Feeds and is thus potentially more valuable to such Users. The Exchange also believes the proposed User fees for MEMOIR Top and MEMOIR Last Sale are not unfairly discriminatory because the Exchange has proposed to charge Professional Users and Non-Professional Users the same low rate of $0.01 per month.

The Exchange further believes that its proposal to adopt a Digital Media Enterprise Fee for each of the Exchange Data Feeds and an Enterprise Fee for MEMOIR Top and MEMOIR Last Sale is not unfairly discriminatory because these optional alternatives to counting and paying for specific Users will provide market participants the ability to provide information from the Exchange Data Feeds to large numbers of Users without counting and paying for such Users. The Exchange also believes it is not unfairly discriminatory not to adopt an Enterprise Fee for MEMOIR Depth at this time as the Exchange does not believe there is sufficient demand for an Enterprise Fee given relatively low User counts for subscribers of MEMOIR Depth, as described above.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Usage fees for the MEMOIR Depth feed are not unfairly discriminatory because they would require subscribers for non-display use to pay fees depending on their use of the data, either for operation of a Trading Platform or not, but would not impose multiple fees to the extent a Firm operates multiple Trading Platforms or has multiple different types of non-display use. As noted above, non-display data can be used by data recipients for a wide variety of profit-generating purposes as well as purposes that do not directly generate revenues but nonetheless substantially reduce the recipient's costs by automating certain functions. This segmented fee structure is not unfairly discriminatory because no subscriber of non-display data would be charged a fee for a category of use in which it did not actually engage.

The Exchange believes that, regarding non-display use other than for operation of a Trading Platform, it is not unreasonably discriminatory to charge a lower rate than that which is charged to a Firm operating a Trading Platform based on the Exchange's desire to encourage other non-display use by market participants. Similarly, the Exchange also believes that, it is not unreasonably discriminatory to charge a higher fee for each Firm operating a Trading Platform (as compared to other Non-Display Usage not by Trading Platforms) because such use of the data is directly in competition with the

[59] *See supra* note 56.

Exchange and the Exchange should be permitted to recoup some of its lost trading revenue by charging for the data that makes such competition possible. As noted above, ATSs can utilize the Exchange Data Feeds to form prices for trading on such platforms and thus benefit from such data feeds without any direct benefit to the Exchange (other than payment of the applicable market data fee). With respect to other exchanges, the Exchange reiterates that several exchange competitors of the Exchange have not subscribed to any Exchange Data Feeds.[60] Accordingly, other exchanges clearly have a choice whether to subscribe to the Exchange Data Feeds.

The Exchange believes that it is not unreasonably discriminatory to charge a single fee for an operator of Trading Platforms that operates more than one Trading Platform because operators of Trading Platforms are many times viewed as a single competing venue or group, even if there a multiple liquidity pools operated by the same competitor. The Exchange again notes that certain competitors to the Exchange charge for non-display usage per Trading Platform,[61] in contrast to the Exchange's proposal. In turn, to the extent they subscribe to Exchange Data Feeds, these same competitors will benefit from the Exchange's pricing model to the extent they operate multiple Trading Platforms (as most do) by paying a single fee rather than paying for each Trading Platform that they operate that consumes Exchange Data Feeds.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the Exchange Data Feeds are not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[62] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed fees for Exchange Data Feeds place certain market participants at a relative disadvantage to other market participants because, as noted above, the proposed fees are associated with usage of Exchange Data Feeds by each market participant based on the type of business they operate, and the decision to subscribe to one or more Exchange Data Feeds is based on objective differences in usage of Exchange Data Feeds among different Firms, which are still ultimately in the control of any particular Firm, and such fees do not impose a barrier to entry to smaller participants. Accordingly, the proposed fees for Exchange Data Feeds do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed fees reflects the types of Exchange Data Feeds consumed by various market participants and their usage thereof.

Inter-Market Competition

The Exchange does not believe the proposed fees place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, market participants are not forced to subscribe to any of the Exchange Data Feeds, as described above. Additionally, other exchanges have similar market data fees in place for their participants, but with comparable and in many cases higher rates for market data feeds.[63] The proposed fees are based on actual costs and are designed to enable the Exchange to recoup its applicable costs with the possibility of a reasonable profit on its investment as described in the Purpose and Statutory Basis sections. Competing equities exchanges are free to adopt comparable fee structures subject to the SEC rule filing process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[64] and Rule 19b–4(f)(2)[65] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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–MEMX–2022–32 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–MEMX–2022–32. 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 submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2022–32 and should be submitted on or before December 28, 2022.

[60] *See* supra note 52.

[61] *See supra* notes 20–21.

[62] 15 U.S.C. 78f(b)(8).

[63] *See supra* notes 20–21; *see supra* note 23 and accompanying text.

[64] 15 U.S.C. 78s(b)(3)(A)(ii).

[65] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[66]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–26537 Filed 12–6–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96432; File No. SR–Phlx–2022–48]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Definition of Short Term Option Series

December 1, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 22, 2022, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain rule text within Equity 2, Market Participants; Options 1, General Provisions; Options 2, Options Market Participants; Options 4A, Options Index Rules; Options 7, Pricing Schedule; and Options 10, Doing Business with the Public.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the description of the term ''Short Term Option Series'' within Options 1, Section 1, Definitions, to conform the term to Nasdaq ISE, LLC's (''ISE'') term of Short Term Option Series which was recently amended.[3]

The Exchange also proposes certain other non-substantive amendments. Each change is described below.

Short Term Option Series

Options 1, Section 1(b)(53) describes the term ''Short Term Option Series'' as follows:

> The term ''Short Term Option Series'' means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Wednesday or Friday of the next business week, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday, respectively. For a series listed pursuant to this Rule for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

ISE's Options 4 rules were recently amended to expand the Short Term Option Series Program to permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program.[4] In conjunction with that change, ISE amended its definition of Short Term Option Series, within Options 1, Section 1(a)(49), to accommodate the listing of options series that expire on Tuesdays and Thursdays.[5] Specifically, the Exchange added Tuesday and Thursday to the permitted expiration days, which currently include Monday, Wednesday, and Friday, that it may open a series for trading.

At this time, the Exchange proposes to amend the term ''Short Term Option Series'' at Options 1, Section 1(b)(53) to provide,

> The term ''Short Term Option Series'' means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Tuesday, Wednesday, Thursday, or Friday of the next business week, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday, respectively. For a series listed pursuant to this Rule for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

Today, Phlx's listing rules permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program.

Other Non-Substantive Amendments

The Exchange proposes to remove and reserve the rules within Equity 2, Section 3 and Options 2, Section 2 which are both titled, ''Member and Member Organization Participation.'' The Nasdaq Stock Market LLC (''Nasdaq'') recently filed to relocate a similar Nasdaq Rule into General 3, Rule 1032.[6] Phlx's General 3 is incorporated by reference to Nasdaq's General 3. The rules within Equity 2, Section 3 and Options 2, Section 2 are not necessary as they are nearly identical to Phlx General 3, Rule 1000 Series.[7]

The Exchange proposes to amend a rule citation to Streaming Quote Traders

[66] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 96281 (November 9, 2022), 87 FR 68769 (November 16, 2022) (SR–ISE–2022–18) (Order Granting Approval of a Proposed Rule Change to Amend the Short Term Option Series Program). Phlx's Options 4 Rules are incorporated by reference to ISE's Options 4 Rules and therefore the approval of ISE's Options 4 rules permits the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ on Phlx.

[4] *See* note 3 above. Phlx's Options 4 Rules are incorporated by reference to ISE's Options 4 Rules.

[5] *See* note 3 above.

[6] *See* Securities Exchange Act Release No. 96132 (October 24, 2022), 87 FR 65272 (October 28, 2022) (SR–NASDAQ–2022–058) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Equity 2, Section 3).

[7] While the term ''Floor Based Management System'' or ''FBMS'' is not specifically noted within Phlx General 3, Rule 1032, the term ''System'' is utilized. FBMS is part of the Exchange's System as that term is defined within Options 1, Section 1(b)(57).

within Options 2, Section 1(a) and Options 7, Section 1(c). The correct citation should be to Options 1, Section 1(b)(55) where Streaming Quote Trader is described.

The Exchange proposes to remove a duplicative reference to Nasdaq-100® Volatility Index Options within Options 4A, Section 12(e)(II)(xi).

Finally, the Exchange proposes to reserve Options 10, Sections 26 and 27 to harmonize section numbers across the Nasdaq affiliated markets.[8] These sections contain content in other Nasdaq affiliated rulebooks.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Short Term Option Series

The Exchange's proposal to amend the term ''Short Term Option Series'' at Options 1, Section 1(b)(53) to reflect the recent change[11] to ISE's listing rules, which Phlx incorporates by reference, to permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program is consistent with the Exchange Act. This proposal will align the description of Short Term Option Series within Options 1, Section 1(b)(53) to the expirations permitted within the Short Term Option Series Program within Supplementary .03 to Options 4, Section 5.

Other Non-Substantive Amendments

The Exchange's proposal to remove and reserve the rules within Equity 2, Section 3 and Options 2, Section 2 represent a non-substantive amendment. Nasdaq recently filed to relocate a similar Nasdaq Rule into General 3, Rule 1032.[12] Phlx's General 3 is incorporated by reference to Nasdaq's General 3, therefore the rules within Equity 2, Section 3 and Options 2, Section 2 are not necessary as a nearly identical[13] rule exists within Phlx General 3, Rule 1000 Series.

The Exchange's proposal to amend a rule citation to Streaming Quote Traders within Options 2, Section 1(a) and Options 7, Section 1(c) is non-substantive.

The Exchange's proposal to remove a duplicative reference to Nasdaq-100® Volatility Index Options within Options 4A, Section 12(e)(II)(xi) is non-substantive.

Finally, the Exchange's proposal to reserve Options 10, Sections 26 and 27 is non-substantive.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Short Term Option Series

The Exchange's proposal to amend the term ''Short Term Option Series'' at Options 1, Section 1(b)(53) to reflect the recent change[15] to ISE's listing rules, which Phlx incorporates by reference, to permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program does not impose an undue burden on competition, rather this proposal will align the description of Short Term Option Series within Options 1, Section 1(b)(53) to the expirations permitted within the Short Term Option Series Program within Supplementary .03 to Options 4, Section 5.

Other Non-Substantive Amendments

The Exchange's proposal to remove and reserve the rules within Equity 2, Section 3 and Options 2, Section 2 represent a non-substantive amendment. Nasdaq recently filed to relocate a similar Nasdaq Rule into General 3, Rule 1032.[16] Phlx's General 3 is incorporated by reference to Nasdaq's General 3, therefore the rules within Equity 2, Section 3 and Options 2, Section 2 are not necessary as a nearly identical[17] rule exists within Phlx General 3, Rule 1000 Series.

The Exchange's proposal to amend a rule citation to Streaming Quote Traders within Options 2, Section 1(a) and Options 7, Section 1(c) is non-substantive.

The Exchange's proposal to remove a duplicative reference to Nasdaq-100® Volatility Index Options within Options 4A, Section 12(e)(II)(xi) is non-substantive.

Finally, the Exchange's proposal to reserve Options 10, Sections 26 and 27 is non-substantive.[18]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[19] and subparagraph (f)(6) of Rule 19b–4[20] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[21] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[22] the Commission may designate a shorter time of such action is consistent with the protection of investor and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that this proposed rule change could immediately benefit market participants by avoiding confusion, as the Phlx Options 4 rules are incorporated to ISE's Options 4 rules. The Exchange also states that these rules permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program. For these reasons, and because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the

[8] ISE, Nasdaq GEMX, LLC (''GEMX'') and Nasdaq MRX, LLC (''MRX'') have rules within Options 10, Section 26 and 27.

[9] 15 U.S.C. 78f(b)

[10] 15 U.S.C. 78f(b)(5).

[11] *See* note 3 above.

[12] *See* note 6 above.

[13] *See* note 7 above.

[14] *See* note 9 above.

[15] *See* note 3 above.

[16] *See* note 6 above.

[17] *See* note 7 above.

[18] *See* note 9 above.

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2022–48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2022–48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2022–48 and should be submitted on or before December 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

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[23] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96431; File No. SR–CboeEDGA–2022–020]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

December 1, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 30, 2022, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') proposes to amend its Fee Schedule. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to clarify that fee code X[3] is applicable to certain routed orders that add or remove liquidity. The Exchange proposes to implement these changes effective November 21, 2022.[4]

The Exchange proposes to clarify that fee code X is applicable to routed orders that add or remove liquidity. When certain fee codes were deleted from the Fee Schedule, the Exchange simultaneously proposed to update fee code X to make clear that it applies to all other routed orders that are not otherwise specified under other fee codes in the Fee Schedule.[5] However, the Exchange did not make clear in the fee code table that fee code X therefore also is applicable to orders that both add and remove liquidity.[6] Therefore, the Exchange is now proposing to add such language to the description of fee code X, as well as eliminate the reference to ''Removing'' liquidity in the Standard Rates header for the Routing Liquidity column (which is applicable to fee code X).

[3] Fee code X is appended to routed orders.

[4] The Exchange initially filed the proposed fee changes on November 21, 2022 (SR–CboeEDGA–2022–019). On November 30, 2022, the Exchange withdrew that filing and submitted this filing.

[5] *See* Securities Exchange Act No. 9100 (January 27, 2021) 86 FR 7909 (February 2, 2021) (SR–CboeEDGA–2021–003).

[6] Under the Transaction Fees section of the Fee Schedule, bullet four provides ''[u]nless otherwise noted, all routing fees or rebates in the Fee Codes and Associated Fees table are for removing liquidity from the destination venue.''

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Exchange Act of 1934 (the ''Act''),[7] in general, and furthers the objectives of Section 6(b)(4),[8] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members, issuers and other persons using its facilities.

The Exchange believes the proposal to modify fee code X to explicitly provide that it is applicable to routed orders that add and remove liquidity on the destination exchange is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the proposal is intended only to make a clarifying change to the Fee Schedule and involves no substantive change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes its proposal to clarify that fee code X is applicable to liquidity adding and removing orders will have no impact on competition as it involves no substantive change, but merely is a clarifying change to the existing Fee Schedule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and paragraph (f) of Rule 19b–4 [10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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–2022–020 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGA–2022–020. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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–2022–020 and should be submitted on or before December 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–26538 Filed 12–6–22; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96416; File No. SR–IEX–2022–06]

Self-Regulatory Organizations; Investors Exchange LLC; Order Granting Approval of a Proposed Rule Change To Amend Rule 11.190(g) To Provide an Alternative Calculation for Non-Displayed Pegged Order Types for Determining Whether a Quote Instability Condition Exists

December 1, 2022.

I. Introduction

On September 27, 2022, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b-4 thereunder,[2] a proposed rule change to provide an alternative calculation for non-displayed pegged order types to determine whether a quote instability condition exists for purposes of determining when the Exchange's proprietary Crumbling Quote Indicator (''CQI'') is to be triggered. The proposed rule change was published for comment in the **Federal Register** on October 17, 2022.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Current CQI Operation

Pursuant to IEX Rule 11.190(g), the Exchange utilizes quoting activity of eight away exchanges' Protected Quotations [4] and a mathematical

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 96014 (October 11, 2022), 87 FR 62903 (''Notice'').

[4] *See* IEX Rule 1.160(bb) (defining ''Protected Quotation'' as an automated quotation that is calculated by IEX to be the best bid or best offer of an exchange). Current IEX Rule 11.190(g) uses the following eight exchanges' Protected Quotations: New York Stock Exchange LLC, the Nasdaq Stock Market LLC, NYSE Arca, Inc., Nasdaq BX, Inc., Cboe BYX Exchange, Inc., Cboe Bats BZX Exchange, Inc., Cboe EDGA Exchange, Inc., and

Continued

calculation to assess the probability of an imminent change to the current Protected NBB [5] to a lower price or imminent change to the current Protected NBO [6] to a higher price for a particular security. When the quoting activity meets predetermined criteria, the System [7] treats the quote as not stable (''quote instability'' or a ''crumbling quote'') and the CQI is then ''on'' at that price level for two milliseconds. During all other times, the quote is considered stable and the CQI is ''off''. The System independently assesses the stability of the Protected NBB and Protected NBO for each security. IEX characterizes these order types and the CQI functionality as being designed to ''counter the costs of 'adverse selection' that participants supplying liquidity incur when their orders are executed at worse prices as a result of certain speed-based trading strategies.'' [8]

This proposal applies to the CQI formula that informs the exercise of ''discretion'' by Discretionary Peg (''D-Peg'') [9] orders, Primary Peg (''P-Peg'') [10] orders, and Corporate Discretionary Peg (''C-Peg'') orders.[11] Each of those resting peg order types, all of which are non-displayed, passively rest at prices slightly less aggressive than the near-side quote. When the quote is stable, those peg orders exercise price discretion by ''jumping'' to a more aggressive price to interact with an active incoming liquidity taking order when the quote is stable. However, when the CQI comes on, those orders do not exercise price discretion and instead continue to rest passively. Specifically, D-Peg, P-Peg, and C-Peg orders rest at a pegged price that is the less aggressive of one minimum price variant (''MPV'') [12] less aggressive than the primary quote (*i.e.,* one MPV below (above) the NBB [13] (NBO [14]) for buy (sell) orders) or the order's limit price, if any.[15] In addition, when the CQI is on at the NBB (in the case of a buy order) or NBO (in the case of a sell order), P-Peg orders are restricted by the System from exercising price discretion to trade at the quote instability determination price level (the ''CQI Price''), and D-Peg and C-Peg orders are restricted by the System from exercising price discretion to trade at the CQI Price or at more aggressive prices than the CQI Price.

Proposed Alternative CQI Calculation

As proposed, Users [16] of D-Peg, P-Peg and C-Peg orders will be able to designate whether the order's price will be adjusted using the existing quote instability calculation (hereinafter referred to as the ''Current CQI Calculation'') or the new proposed alternative quote instability calculation (hereinafter referred to as the ''Alternative CQI Calculation''). According to the Exchange, the Alternative CQI Calculation is ''designed to incrementally increase the coverage of the quote instability calculation in predicting whether a particular quote is unstable by adjusting the logic underlying the quote instability calculation and introducing enhanced functionality designed to increase the number of crumbling quotes identified, while maintaining the quote instability calculation's accuracy in predicting the direction and timing of the next price change in the NBB or NBO, as applicable.'' [17]

The Alternative CQI Calculation applies four separate rule categories of Protected Quotation changes, each encompassing one or more sub-rules (''quote instability rules''), to determine whether the System should trigger the CQI. When a quote instability rule is ''active,'' as described below, the CQI will trigger when the rule is ''true'' thus indicating a potential crumbling quote. These quote instability rules are grouped into the following four categories:

1. *Disappearing Bids/Offers:* Four separate rules look at when the Signal Exchanges [18] fall off the best prices.

2. *Quote Size:* Two separate rules look at size imbalances between buys and sells at the best price on the Signal Exchanges.

3. *Locked or Crossed Markets:* This single rule looks for locked and crossed conditions at a Signal Exchange.

4. *Quotation Price:* Two separate rules evaluate changes in the best prices on the Signal Exchanges.[19]

Overall, there are several notable differences between the Alternative CQI Calculation and the Current CQI Calculation. First, the Alternative CQI Calculation expands the number of exchange protected quotes (*i.e.,* Signal Exchanges) that are evaluated by the System from eight exchanges to eleven.[20] In addition, the Alternative CQI Calculation can activate crumbling quote protection for one or both sides of the market (*e.g.,* it can determine a crumbling quote to exist on the bid side and, while that crumbling quote protection is active, separately and concurrently determine a crumbling quote to exist on the offer side), whereas the Current CQI Calculation only activates the CQI for one side of the market at a time.[21] Further, under the Current CQI Calculation, the Exchange only analyzes the relevant prices at the Signal Exchanges, whereas the Alternative CQI Calculation will also take into account quotation *sizes* at the eleven away exchanges under the Quote Size rules.

In addition, the Alternative CQI Calculation increases the minimum time period between CQI determinations (*i.e.,* when a new CQI can trigger during the two millisecond ''on'' period). Currently, the System will keep the CQI in effect for two milliseconds, unless, after 200 microseconds, a new determination is made by the System that the quote continues to crumble, in which case the CQI will extend for another two milliseconds from that point. Under the Alternative CQI Calculation, the CQI will also remain in effect for two milliseconds, but a determination to extend the CQI cannot be made until at least 250 microseconds have passed. The Exchange states that

Cboe EDGX Exchange, Inc. (collectively, ''Signal Exchanges'').

[5] *See* IEX Rule 1.160(cc).

[6] *See* IEX Rule 1.160(cc).

[7] *See* IEX Rule 1.160(nn).

[8] Notice, *supra* note 3, at 62904.

[9] *See* IEX Rule 11.190(b)(10).

[10] *See* IEX Rule 11.190(b)(8).

[11] *See* IEX Rule 11.190(b)(16). Note that C-Peg orders can only be buy orders, so any discussion of D-Peg sell orders does not apply to C-Peg orders. This proposal does not apply to Discretionary Limit (''D-Limit'') orders, which can be displayed. *See* IEX Rule 11.190(b)(10).

[12] *See* IEX Rule 11.210.

[13] *See* IEX Rule 1.160(u).

[14] *See* IEX Rule 1.160(u).

[15] C-Peg orders are also constrained by the consolidated last sale price of the security, and therefore cannot trade, book, or exercise discretion at a price that is more aggressive than the consolidated last sale price. *See* IEX Rule 11.190(b)(16).

[16] *See* IEX Rule 1.160(qq).

[17] Notice, *supra* note 3, at 62904.

[18] *See infra* note 20 and accompanying text.

[19] *See* Notice, *supra* note 3, at 62905–07 for the Exchange's detailed discussion of the proposed quote instability rules.

[20] The additional Signal Exchanges are MIAX PEARL, LLC, MEMX LLC, and Nasdaq Phlx LLC.

[21] More specifically, the current rule text reads as follows: ''Only one determination may be in effect at any given time for a particular security. A new determination may be made after at least 200 microseconds has elapsed since a preceding determination, or a price change on either side of the Protected NBBO occurs, whichever is first.'' The new rule text for the Alternative CQI Calculation reads: ''Quote Instability Determinations are made separately for the Protected NBB and Protected NBO, so it is possible for zero, one or both of the Protected NBB and Protected NBO to be subject to a quote instability determination concurrently.'' Additionally, the revised rule text states that ''[a] determination that the Protected NBB for a particular security is unstable does not impact the System's ability to determine that the Protected NBO for that same security is also unstable, and vice versa.''

CQI triggers in extremely rapid succession are unnecessary to continuously restrict discretion across successive NBBO changes, and that increasing what it refers to as the CQI ''cooldown period'' from 200 microsecond to 250 microseconds before the System can make another quote instability determination will reduce the technical processing burden on the System.[22]

In general, the Exchange explains that the current quote instability calculation ''utilizes a logistic regression model with multiple coefficients and variables that must exceed a pre-defined threshold in order for the System to treat the quote as unstable.'' The Exchange characterizes the new Alternative CQI Calculation as a ''rules-based model'' that ''incorporates and expands on the existing approach.'' [23]

The Alternative CQI Calculation also uses the concept of an activation value (''Activation Value'') for each of the new quote instability rules. As explained in more detail in the Notice, the Activation Values and corresponding thresholds are ''intended to optimize the overall accuracy of the quote instability determinations by providing a mechanism to turn off a particular rule when market conditions are such that it is relatively less accurate in predicting a crumbling quote.'' [24]

Specifically, the Activation Value is a function generally of the number of times the quote moves to a less aggressive price within the two milliseconds ''on'' timeframe following the time the rule was ''True'' (*i.e.,* to assess whether the rule correctly predicted a crumbling quote) and the total number of times the rule was True. Whenever the Activation Value for a given quote instability rule exceeds a fixed predetermined activation threshold specific to that rule (the ''Activation Threshold''), the rule is active (*i.e.,* it is eligible to trigger a quote instability determination when True).

Finally, the proposal sets forth several conforming changes throughout IEX Rule 11.190(b) to establish that Users may utilize one of the two crumbling quote calculations for P-Peg, D-Peg, and C-Peg orders. The Exchange also proposes to amend IEX Rule 11.190(b)(7), which sets forth the Exchange's D-Limit order type, to make clear that a User may only use the Current CQI Calculation when entering a D-Limit order.[25]

[22] *See* Notice *supra* note 3, at 62907.

[23] *See id.* at 62905.

[24] *See id.* at 62907.

[25] Unlike the non-displayed P-Peg, D-Peg, and C-Peg order types, D-Limit orders can be displayed or non-displayed.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[26] In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(5) [27] and 6(b)(8) [28] of the Exchange Act. Section 6(b)(5) of the Exchange Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Exchange Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In its filing, the Exchange explains that adding three more Signal Exchanges and also using quotation size data in addition to quotation price data is designed to increase the predictive power and accuracy of the quote instability calculation.[29] Adding additional reference exchanges and considering quoted size in addition to quoted price appear reasonably designed to contribute to the functioning of the crumbling quote indicator consistent with its original design and purpose.

Further, the Exchange states that the use of Activation Thresholds for the Alternative CQI Calculation is designed to optimize the frequency and accuracy of the quote instability calculation by enabling IEX to utilize a broader array of rules that may be predictive of a crumbling quote in certain market conditions but not others.[30] Specifically, IEX states that the proposed activation values and thresholds are designed to ''enable broader coverage while controlling for overall accuracy of the quote instability determinations by providing a mechanism to turn off a particular rule when market conditions are such that it is relatively less accurate in predicting a crumbling quote'' where certain rules with a higher potential to be less accurate have a higher activation threshold before they become active.[31] The Exchange states that it expects the Current and Alternative CQI Calculations to continue to be ''on'' for only a small portion of the trading day.[32] The Exchange further explains that it designed the Alternative CQI Calculation in response to feedback from Users of P-Peg, D-Peg, and C-Peg orders, some of which expressed a desire for additional coverage.[33] If allowed to use the Alternative CQI Calculation, IEX expects that some Users may begin to enter more and larger sized pegged orders on the Exchange.[34]

While the Exchange acknowledges that the Alternative CQI Calculation may trigger more frequently than the current version, it has developed a reasonable method, through the Activation Values and Activation Thresholds, to cause the new rules to be used in those market conditions in which the Exchange expects them to be more accurate in predicting a crumbling quote. To the extent Users see their execution quality for non-displayed orders improve when they use the Alternative CQI Calculation, they may be incentivized to post more non-displayed pegged orders on the Exchange, which in turn will benefit liquidity seeking investors especially during most of the day when the quote is stable and those pegged orders are offering aggressive price improvement to those investors.

Based on the foregoing, the Commission believes that the proposal, including the Alternative CQI Calculation, is appropriately and narrowly tailored to provide a reasonable mechanism for Users of non-displayed peg orders on the Exchange to protect their orders from adverse selection during limited periods of time in specific market conditions. Further, the proposed Alternative CQI Calculation is transparent and fully-disclosed in the rules of the Exchange. While the Exchange uses the phrase ''price discretion'' to describe the operation of the crumbling quote functionality, the Exchange itself retains no discretion to deviate from the confines of the rule, as the rule contains the entirety of the parameters under which the Alternative CQI Calculation

[26] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78f(b)(8).

[29] *See* Notice, *supra* note 3, at 62908.

[30] *See id.* at 62907.

[31] *See id.* at 62909.

[32] *See id.*

[33] *See id.* at 62908.

[34] *See id.* at 62909.

will operate. The Exchange's proposal does not otherwise amend any functionality of the affected peg order types.

In addition, because the Alternative CQI Calculation will activate without further action from the User, all Users will benefit equally regardless of their technological capabilities and ability to take action within a short prescribed period. To the extent the Alternative CQI Calculation is successful in incentivizing more firms to post non-displayed peg orders on the Exchange, it will contribute to liquidity that all market participants can access and increase opportunities for investors to receive improved prices on their liquidity taking orders. Accordingly, the proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market, and, in general, protects investors and the public interest.

Finally, the Alternative CQI Calculation cannot be used to trigger the repricing of any displayed orders, specifically, the D-Limit Order type. As such, market participants seeking to execute against displayed liquidity on IEX, including protected quotes, will not be adversely affected by the addition of the Alternative CQI Calculation to the Exchange's rules because use of the Alternative CQI Calculation is limited to the P-Peg, D-Peg, and C-Peg order types.

For the reasons discussed above, the Commission finds that the proposal will not impair access to quotations and is narrowly tailored to not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, and is reasonably designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest. Accordingly, the Commission finds the proposed rule change to be consistent with the Act, including the requirements of Section 6(b)(5) and Section 6(b)(8) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[35] that the proposed rule change (SR–IEX–2022–06), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–26533 Filed 12–6–22; 8:45 am]

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[35] 15 U.S.C. 78s(b)(2).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96422; File No. SR–BX–2022–024]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Definition of Short Term Option Series

December 1, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 22, 2022, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain rule text within General 2, Organization and Administration; Equity 2. Market Participants; Options 1, General Provisions; Options 4A, Options Index Rules; and Options 10, Doing Business with the Public.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the description of the term ''Short Term Option Series'' within Options 1, Section 1, Definitions, to conform the term to Nasdaq ISE, LLC's (''ISE'') term of Short Term Option Series which was recently amended.[3] The Exchange also proposes to amend certain rule text within Options 4A, Section 12, Terms of Index Options Contracts, related to the Short Term Option Series Program. Finally, the Exchange propose certain other non-substantive amendments. Each change is described below.

Short Term Option Series

Options 1, Section 1(a)(58) describes the term ''Short Term Option Series'' as follows:

> The term ''Short Term Option Series'' means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Wednesday or Friday of the next business week, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday, respectively. For a series listed pursuant to this Rule for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

ISE's Options 4 rules were recently amended to expand the Short Term Option Series Program to permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program.[4] In conjunction with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 96281 (November 9, 2022), 87 FR 68769 (November 16, 2022) (SR–ISE–2022–18) (Order Granting Approval of a Proposed Rule Change to Amend the Short Term Option Series Program). BX's Options 4 Rules are incorporated by reference to ISE's Options 4 Rules and therefore the approval of ISE's Options 4 rules permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ on BX.

[4] *See* note 3 above. BX's Options 4 Rules are incorporated by reference to ISE's Options 4 Rules.

that change, ISE amended its definition of Short Term Option Series, within Options 1, Section 1(a)(49), to accommodate the listing of options series that expire on Tuesdays and Thursdays.[5] Specifically, the Exchange added Tuesday and Thursday to the permitted expiration days, which currently include Monday, Wednesday, and Friday, that it may open a series for trading.

At this time, the Exchange proposes to amend the term ''Short Term Option Series'' at Options 1, Section 1(a)(58) to provide,

> The term ''Short Term Option Series'' means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Tuesday, Wednesday, Thursday, or Friday of the next business week, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday, respectively. For a series listed pursuant to this Rule for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

Today, ISE's listing rules, which BX incorporates by reference, permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program.

Options 4A, Section 12

In 2014, BX amended the Short Term Option Series Program for equity options within Chapter IV, Section 6 (currently Supplementary Material .03 to Options 4, Section 5) to change the number of currently listed option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date from thirty to fifty options classes.[6] Further, BX also amended the number of Short Term Option Series that the Exchange may open for each expiration date in that class from twenty to thirty.[7] At that time, the Exchange neglected to update the index options rules to make similar changes to the Short Term Option Series Program given that the amount of options classes that may participate in the Short Term Option Series Program is aggregated between equity options and index options instead of between equity and index options.

Today, Options 4A, Section 12(h)(1)(i) provides,

> The Exchange may select up to thirty (30) currently listed option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date. In addition to the 30 option class restriction, the Exchange may also list Short Term Option Series on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules. For each index option class eligible for participation in the Short Term Option Series Program, the Exchange may open up to 20 Short Term Option Series on index options for each expiration date in that class. The Exchange may also open Short Term Option Series that are opened by other securities exchanges in option classes selected by such exchanges under their respective short term option rules.

At this time, the Exchange proposes to amend Options 4A, Section 12(h)(1)(i) to increase the number of currently listed options classes on which Short Term Option Series may be opened on any Short Term Option Opening Date from thirty to fifty options classes for index options. Additionally, the Exchange proposes to amend the number of Short Term Option Series the Exchange may open on index options for each expiration date in that class from twenty to thirty. These amendments would align the limitations within Options 4A, Section 12(h)(1)(i) with those currently within Supplementary .03 to Options 4, Section 5. The Exchange also proposes to add certain titles before Options 4A, Section 12(h)(1)(i)–(v) to indicate the subject matter of the paragraphs. Those amendments are non-substantive amendments intended to bring clarity to the rule text.

As noted above, this amendment will not result in a greater number of listings in the Short Term Option Series Program because the amount of options classes that may participate in the Short Term Option Series Program is aggregated between equity options and index options instead of apportioned between equity and index options. Amending Options 4A, Section 12(h)(1)(i) to conform to the limitations provided within Supplementary .03 to Options 4, Section 5 will avoid confusion by making clear the aggregate limitations within equity and index options for listing Short Term Option Series. Today, ISE, Nasdaq Phlx LLC (''Phlx'') and Cboe Exchange, Inc. (''Cboe'') have similar limitations within their equity and index Short Term Option Series Program.[8]

Other Non-Substantive Amendments

The Exchange proposes to remove and reserve Equity 2, Section 3, ''Nasdaq BX Market Participant Registration.'' The Nasdaq Stock Market LLC (''Nasdaq'') recently filed to relocate a similar Nasdaq Rule into General 3, Rule 1032.[9] BX's General 3 is incorporated by reference to Nasdaq's General 3, therefore the rule within Equity 2, Section 3 is not necessary as an identical rule exists within BX General 3, Rule 1000 Series.

The Exchange proposes to make other amendments to reserve certain sections of the Rulebook. These sections contain content in other Nasdaq affiliated rulebooks. To harmonize the section numbers across the Nasdaq affiliated markets, the Exchange proposes to reserve General 2, Sections 23 and 24 as well as Options 10, Sections 26 and 27.[10] These amendments are non-substantive.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Short Term Option Series

The Exchange's proposal to amend the term ''Short Term Option Series'' at Options 1, Section 1(a)(58) to reflect the recent change [13] to ISE's listing rules, which BX incorporates by reference, to permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term

[5] *See* note 3 above.

[6] *See* Securities Exchange Act Release No. 72700 (July 29, 2014), 79 FR 45515 (August 5, 2014) (SR–BX–2014–038) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Short Term Options Series).

[7] *Id.*

[8] *See* ISE and Phlx Options 4A, Section 12(b)(4) and Cboe Exchange, Inc. Rules 4.5 and 4.13. *See also* Securities Exchange Act Release No. 95077 (June 9, 2022), 87 FR 36188 (June 15, 2022) (SR–Phlx-2022–25) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 4A, Section 12, Terms of Index Options Contracts).

[9] *See* Securities Exchange Act Release No. 96132 (October 24, 2022), 87 FR 65272 (October 28, 2022) (SR–NASDAQ–2022–058) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Equity 2, Section 3).

[10] Phlx has rules within General 2, Sections 23 and 24. ISE, Nasdaq GEMX, LLC (''GEMX'') and Nasdaq MRX, LLC (''MRX'') have rules within Options 10, Section 26 and 27.

[11] 15 U.S.C. 78f(b)

[12] 15 U.S.C. 78f(b)(5).

[13] *See* note 3 above.

Option Series Program is consistent with the Exchange Act. This proposal will align the description of Short Term Option Series within Options 1, Section 1(a)(58) to the expirations permitted within the Short Term Option Series Program within Supplementary .03 to Options 4, Section 5.

Options 4A, Section 12

In 2014, BX amended the Short Term Option Series Program for equity options within Chapter IV, Section 6 (currently Options 4, Section 5) to change the number of currently listed option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date from thirty to fifty options classes.[14] Further, BX also amended the number of Short Term Option Series that the Exchange may open for each expiration date in that class from twenty to thirty.[15] At that time, the Exchange neglected to update the index options rules to make similar changes to the Short Term Option Series Program given that the amount of options classes that may participate in the Short Term Option Series Program is aggregated between equity options and index options instead of between equity and index options. Amending Options 4A, Section 12(h)(1)(i) to conform to the limitations provided within Supplementary .03 to Options 4, Section 5 will avoid confusion by making clear the aggregate limitations within equity and index options for listing Short Term Option Series. Also, aligning the limitations within Options 4A, Section 12(h)(1)(i) with those currently within Supplementary .03 to Options 4, Section 5 will not result in a greater number of listings in the Short Term Option Series Program because the amount of options classes that may participate in the Short Term Option Series Program is aggregated between equity options and index options instead of between equity and index options. Today, ISE, Phlx and Cboe have similar limitations within their equity and index Short Term Option Series Program.[16]

Other Non-Substantive Amendments

The Exchange's proposal to remove and reserve Equity 2, Section 3, ''Nasdaq BX Market Participant Registration'' represents a non-substantive amendment. Nasdaq recently filed to relocate a similar Nasdaq Rule into General 3, Rule 1032.[17] BX's General 3 is incorporated by reference to Nasdaq's General 3, therefore the rule within Equity 2, Section 3 is not necessary as an identical rule exists within BX General 3, Rule 1000 Series.

The Exchange's proposal to make other amendments to reserve certain sections of the Rulebook, namely General 2, Sections 23 and 24 as well as Options 10, Sections 26 and 27, to harmonize section numbers across the Nasdaq affiliated markets are non-substantive.[18]

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Short Term Option Series

The Exchange's proposal to amend the term ''Short Term Option Series'' at Options 1, Section 1(a)(58) to reflect the recent change [19] to ISE's listing rules, which BX incorporates by reference, to permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program does not impose an undue burden on competition, rather this proposal will align the description of Short Term Option Series within Options 1, Section 1(a)(58) to the expirations permitted within the Short Term Option Series Program within Supplementary .03 to Options 4, Section 5.

Options 4A, Section 12

Amending Options 4A, Section 12(h)(1)(i) to conform to the limitations provided within Supplementary .03 to Options 4, Section 5 will avoid confusion by making clear the aggregate limitations within equity and index options for listing Short Term Option Series. Also, aligning the limitations within Options 4A, Section 12(h)(1)(i) with those currently within Supplementary .03 to Options 4, Section 5 will not result in a greater number of listings in the Short Term Option Series Program because the amount of options classes that may participate in the Short Term Option Series Program is aggregated between equity options and index options instead of between equity and index options. Today, ISE, Phlx and Cboe has similar limitations within its equity and index Short Term Option Series Program.[20]

Other Non-Substantive Amendments

The Exchange's proposal to remove and reserve Equity 2, Section 3, ''Nasdaq BX Market Participant Registration'' represents a non-substantive amendment. Nasdaq recently filed to relocate a similar Nasdaq Rule into General 3, Rule 1032.[21] BX's General 3 is incorporated by reference to Nasdaq's General 3, therefore the rule within Equity 2, Section 3 is not necessary as an identical rule exists within BX General 3, Rule 1000 Series.

The Exchange's proposal to make other amendments to reserve certain sections of the Rulebook, namely General 2, Sections 23 and 24 as well as Options 10, Sections 26 and 27, to harmonize section numbers across the Nasdaq affiliated markets are non-substantive.[22]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [23] and subparagraph (f)(6) of Rule 19b–4 [24] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [25] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[26] the Commission may designate a shorter time of such action is consistent with the protection of investor and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed

[14] *See* note 6 above.

[15] *See* note 6 above.

[16] *See* note 8 above.

[17] *See* note 9 above.

[18] *See* note 10 above.

[19] *See* note 3 above.

[20] *See* note 8 above.

[21] *See* note 9 above.

[22] *See* note 10 above.

[23] 15 U.S.C. 78s(b)(3)(A)(iii).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6)(iii).

rule change may become operative upon filing. The Exchange states that this proposed rule change could immediately benefit market participants by avoiding confusion, as the BX Options 4 rules are incorporated to ISE's Options 4 rules. The Exchange also states that these rules permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program. For these reasons, and because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2022–024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2022–024. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2022–024 and should be submitted on or before December 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–26534 Filed 12–6–22; 8:45 am]

BILLING CODE 8011–01–P

[27] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96426; File No. SR–NSCC–2022–005]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Partial Amendment No. 2 and Amendment No. 3 and of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Revise the Excess Capital Premium Charge Order

December 1, 2022.

On May 20, 2022, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2022–005 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on June 8, 2022,[3] and the Commission has received comments regarding the changes proposed in the proposed rule change.[4]

On July 11, 2022, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[6] On September 1, 2022, the Commission instituted proceedings, pursuant to Section 19(b)(2)(B) of the Act,[7] to determine whether to approve or disapprove the Proposed Rule Change.[8]

On July 6, 2022, NSCC filed a partial amendment (''Amendment No. 2'') to modify the proposed rule change.[9] On November 28, 2022, NSCC filed another amendment (''Amendment No. 3'') to modify the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by the clearing agency.[10]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] Securities Exchange Act Release No. 95026 (June 2, 2022), 87 FR 34913 (June 8, 2022) (File No. SR–NSCC–2022–005). The Notice referred to an incorrect filing date of May 30, 2022; however, the proposal was filed on May 20, 2022, as indicated here. Moreover, the Notice reflected the filing of Amendment No. 1, which made a correction to Exhibit 5 of the filing, specifically, to insert an additional cross-reference into a proposed definition that had been omitted.

[4] Comments are available at *https://www.sec.gov/comments/sr-nscc-2022-005/srnscc2022005.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] Securities Exchange Act Release No. 95245 (July 11, 2022), 87 FR 42523 (July 15, 2022) (SR–NSCC–2022–005).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] Securities Exchange Act Release No. 95656 (Sept. 1, 2022), 87 FR 55058 (Sept. 8, 2022) (File No. SR–NSCC–2022–005).

[9] Amendment No. 2 partially amended the proposed rule change to update the description of the impact of the proposal. The contents of that Amendment are reflected in Section II(A)(1)(vii) below. In Amendment No. 2, NSCC also provided a revised version of the confidential impact study that it included as Exhibit 3a to the proposed rule change.

[10] Amendment No. 3 amends and replaces the proposed rule change in its entirety. Specifically, it would clarify the particular circumstances in which NSCC would retain the ability to waive the ECP charge, rather than remove NSCC's discretion to waive or reduce the charge as was initially proposed in the proposed rule change. As described in greater detail below in Section II.(iv), this Amendment describes why NSCC believes it is appropriate for NSCC to retain discretion to waive an ECP charge in certain defined circumstances, defines the circumstances in which NSCC may waive the ECP charge, and discloses both the information that NSCC would review in deciding whether to waive the ECP charge as well as the

Continued

The Commission is publishing this notice to solicit comments on Amendment Nos. 2 and 3 from interested persons and to designate a longer period for Commission action pursuant to Section 19(b)(2)(B) of the Act [11] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 2 and 3 (hereinafter, ''proposed rule change'').

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to Procedure XV (Clearing Fund Formula and Other Matters) of NSCC's Rules & Procedures (''Rules'') [12] to revise the Excess Capital Premium (''ECP'') charge by enhancing the methodology for calculating the charge to (1) compare a Member's applicable capital amounts with the amount it contributes to the Clearing Fund that represents its volatility charge, (2) for Members that are broker-dealers, use net capital amounts rather than excess net capital amounts in the calculation of the ECP charge; and for all other Members, use equity capital in the calculation of the ECP charge, and (3) establish a cap of 2.0 for the Excess Capital Ratio (as defined below) that is used in calculating a Member's ECP charge.

The proposed changes would also improve the transparency of the Rules regarding the ECP charge by (1) clarifying the capital amounts that are used in the calculation of the charge by introducing new defined terms, (2) clarifying the particular circumstances in which NSCC retains the ability to waive the charge, and (3) providing that NSCC may calculate the charge based on updated capital information, as described in greater detail below.

II. Clearing Agency's Amended Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 III below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Description of Amendment No. 3

This filing constitutes Amendment No. 3 to proposed rule change SR–NSCC–2022–005, which was filed with the Commission on May 20, 2022, and previously amended on June 1, 2022 and July 6, 2022. This Amendment amends and replaces the Filing, as previously amended, in its entirety. NSCC submits this Amendment in order to clarify the particular circumstances in which NSCC would retain the ability to waive the ECP charge, rather than remove NSCC's discretion to waive or reduce the charge as was proposed in the Filing.

In particular, and as described in greater detail below, this Amendment describes why NSCC believes it is appropriate for NSCC to retain discretion to waive an ECP charge in certain defined circumstances, defines the circumstances in which NSCC may waive the ECP charge, and discloses both the information that NSCC would review in deciding whether to waive the ECP charge as well as the governance around the application of such waiver. In order to implement these proposed changes, NSCC would amend Section I(B)(2) of Procedure XV of the Rules to include a new subsection (c) to describe NSCC's discretion to waive the ECP charge, as shown in Exhibits 4 and 5 to this Amendment.

Proposed Rule Change

NSCC is proposing to modify the ECP charge, which is a component of its Clearing Fund that NSCC may impose on a Member when a portion of that Member's Required Fund Deposit (defined in the Rules as the ''Calculated Amount'') exceeds its applicable capital amounts by 1.0 (defined in the Rules as the ''Excess Capital Ratio''), as described in greater detail below.[13] The proposed changes would revise the ECP charge by enhancing the methodology for calculating the charge to (1) compare a Member's applicable capital amounts with the amount it contributes to the Clearing Fund that represents its volatility charge, (2) for Members that are broker-dealers, use net capital amounts rather than excess net capital amounts in the calculation of the ECP charge; and for all other Members, use equity capital in the calculation of the ECP charge, and (3) establish a cap of 2.0 for the Excess Capital Ratio that is used in calculating a Member's ECP charge.

The proposed changes would also improve the transparency of the Rules regarding the ECP charge by (1) clarifying the capital amounts that are used in the calculation of the charge by introducing new defined terms, (2) clarifying the particular circumstances in which NSCC retains the ability to waive the charge, and (3) providing that NSCC may calculate the charge based on updated capital information, as described in greater detail below.

(i) Overview of the Required Fund Deposit and NSCC's Clearing Fund

As part of its market risk management strategy, NSCC manages its credit exposure to Members by determining the appropriate Required Fund Deposits to the Clearing Fund and monitoring its sufficiency, as provided for in the Rules.[14] The Required Fund Deposit serves as each Member's margin.

The objective of a Member's Required Fund Deposit is to mitigate potential losses to NSCC associated with liquidating a Member's portfolio in the event NSCC ceases to act for that Member (hereinafter referred to as a ''default'').[15] The aggregate of all Members' Required Fund Deposits constitutes the Clearing Fund of NSCC. NSCC would access its Clearing Fund should a defaulting Member's own Required Fund Deposit be insufficient to satisfy losses to NSCC caused by the liquidation of that Member's portfolio. Pursuant to the Rules, each Member's Required Fund Deposit consists of a number of applicable components, each of which is calculated to address specific risks faced by NSCC, as identified within Procedure XV of the Rules.[16]

While many components of the Clearing Fund are designed to measure risks presented by the net unsettled positions a Member submits to NSCC to be cleared and settled, some components measure and mitigate other risks that NSCC may face, such as credit

governance around the application of such waiver. In order to implement these proposed changes, NSCC would amend Section I(B)(2) of Procedure XV of the Rules to include a new subsection (c) to describe NSCC's discretion to waive the ECP charge.

[11] 15 U.S.C. 78s(b)(2)(B).

[12] Capitalized terms not defined herein are defined in the Rules, *available at http://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf*.

[13] *See* Section I(B)(2) of Procedure XV, *id.*

[14] *See* Rule 4 and Procedure XV, *supra* note 12. NSCC's market risk management strategy is designed to comply with Rule 17Ad–22(e)(4) under the Act, where these risks are referred to as ''credit risks.'' 17 CFR 240.17Ad–22(e)(4).

[15] The Rules identify when NSCC may cease to act for a Member and the types of actions NSCC may take. For example, NSCC may suspend a firm's membership with NSCC or prohibit or limit a Member's access to NSCC's services in the event that Member defaults on a financial or other obligation to NSCC. *See* Rule 46, *supra* note 12.

[16] *Supra* note 12.

risks. For example, a Member may be required to make an additional deposit to the Clearing Fund pursuant to Section I(B)(1) of Procedure XV of the Rules if it is placed on the Watch List, which is defined in Rule 1 (Definitions and Descriptions) of the Rules as a list of Members who NSCC deems to pose heightened risk to it and its other Members based on consideration of relevant factors.[17]

Similarly, the ECP charge is a component of the Clearing Fund that is designed to mitigate the heightened default risk a Member could pose to NSCC if it operates with lower capital levels relative to its margin requirements. Each Business Day, NSCC determines if a Member may be subject to the ECP charge by first determining its Calculated Amount. The Calculated Amount is a portion of a Member's Required Fund Deposit designed to represent its margin requirements to NSCC. A Member's Calculated Amount is calculated as its Required Fund Deposit excluding any applicable special charge, margin requirement differential charge, coverage component charge or margin liquidity adjustment charge,[18] plus any additional amounts the Member is required to deposit to the Clearing Fund either due to being placed on the Watch List [19] or pursuant to Rule 15 (Assurances of Financial Responsibility and Operational Capability) of the Rules.[20]

NSCC then divides the Member's Calculated Amount by its current capital amount, which is the amount reported to NSCC pursuant to its ongoing membership standards, as set out in Rule 2B (Ongoing Membership Requirements and Monitoring) and Addendum B (Qualifications and Standards of Financial Responsibility, Operational Capability and Business History) of the Rules.[21] Pursuant to the current membership standards in Addendum B of the Rules, Members that are broker-dealers are required to maintain a certain level of excess net capital, and Members that are banks are required to maintain a certain level of equity capital as a requirement for continued membership with NSCC.[22] Pursuant to Section 2 of Rule 2B of the Rules, Members are required to provide NSCC with financial information, including information regarding Members' current capital amounts, on a regular basis and NSCC uses these reported capital amounts in the calculation of the ECP charge.[23]

Pursuant to Section I(B)(2) of Procedure XV, if a Member's Calculated Amount, when divided by its applicable capital amount, is greater than the Excess Capital Ratio of 1.0, NSCC may require that Member to deposit an ECP charge.[24] The applicable ECP charge may be equal to the product of (1) the amount by which a Member's Calculated Amount exceeds its applicable capital amount, multiplied by (2) the Member's Excess Capital Ratio. Members are able to access and view reports regarding their Clearing Fund and, through these reports, Members may be alerted when their Calculated Amount divided by the applicable capital amount is greater than 0.5, as an early warning regarding their capital levels.

Under Section I(B)(2) of Procedure XV, NSCC may collect a lower ECP charge than the amount calculated pursuant to the Rules, may determine not to collect the ECP charge from a Member at all, and may return all or a portion of a collected ECP charge if it believes the imposition or maintenance of the ECP charge is not necessary or appropriate.[25] Section I(B)(2) of Procedure XV describes some circumstances when NSCC may determine not to collect an ECP charge from a Member, which includes, for example, when an ECP charge results from trading activity for which the Member submits later offsetting activity that lowers its Required Fund Deposit.[26] The discretion to adjust, waive or return an ECP charge was designed to provide NSCC with the ability to determine when a calculated ECP charge may not be necessary or appropriate to mitigate the risks it was designed to address.[27]

Since the ECP charge was adopted, NSCC has calculated and assessed the ECP charge consistent with the Rules, and NSCC has exercised its discretion to both reduce and waive the ECP charge when NSCC has deemed it necessary or appropriate. NSCC recently reviewed the effectiveness of the ECP charge to identify ways NSCC could enhance both the calculation of the charge and the disclosures regarding the charge in the Rules. In connection with this review, NSCC discussed the ECP charge and its proposed enhancements with Members, NSCC management, and NSCC's supervisors at the Commission. As a result of this review, NSCC is proposing to make several enhancements to the ECP charge, as described in greater detail below.

These enhancements are designed to improve NSCC's ability to measure the increased default risks that are presented by Members who operate with lower capital. The proposed changes would simplify the calculation of the charge and the description of the charge in the Rules, making it more predictable to Members. The proposed changes are designed to improve the transparency of the ECP charge to Members by clarifying the particular circumstances in which NSCC retains the ability to waive the charge and providing that NSCC may calculate the charge based on updated capital information. The proposed improvements to the transparency of the ECP charge also include clarifying the descriptions of the capital amounts that would be used in the calculation of the charge through new defined terms. Collectively, the proposal would make the ECP charge more consistent, transparent, and predictable to Members, while maintaining the effectiveness of NSCC's risk-based margining methodology as it relates to the ECP charge.

(ii) Use Members' Volatility Component as the Calculated Amount

NSCC is proposing to replace the Calculated Amount with the amount collected as that Member's volatility component as determined pursuant to Sections I(A)(1)(a)(i)-(iii) and (2)(a)(i)-(iii) of Procedure XV of the Rules.[28]

[17] *See* Section 4 of Rule 2B, which describes NSCC's ongoing monitoring and review of Members and the factors NSCC considers in assigning Members a credit rating that could result in a Member being placed on the Watch List, *supra* note 12.

[18] The special charge is described in Section I(A)(1)(c) and (2)(c) of Procedure XV, the MRD charge is described in Section I(A)(1)(e) and (2)(d) of Procedure XV, the coverage component charge is described in Section I(A)(1)(f) and (2)(e) of Procedure XV, and the MLA charge is described in Section I(A)(1)(g) and (2)(f) of Procedure XV, *supra* note 12.

[19] *Supra* note 17.

[20] Pursuant to Section 2(b)(iv) of Rule 15, NSCC may require a Member to provide NSCC with adequate assurances of that Member's financial responsibility in the form of increased Clearing Fund deposits. *Supra* note 12.

[21] *Supra* note 12.

[22] *See* Section 1. B.1. of Addendum B, *supra* note 12. NSCC has proposed changes to the membership standards set forth in Addendum B that would modify the capital requirements for Members. *See* Securities Exchange Act Release No. 94068 (January 26, 2022), 21 FR 5544 (February 1, 2022) (SR–NSCC–2021–016).

[23] *See* Section 2(A) of Rule 2B, *supra* note 12.

[24] *Supra* note 12.

[25] When NSCC determines to collect a lower amount than that amount calculated pursuant to the Rules, as provided for under Procedure XV, NSCC may, for example, calculate that lower amount by reducing the Excess Capital Ratio used in the calculation to 2.0. *Supra* note 12.

[26] *See* footnote 7 of Procedure XV, *supra* note 12.

[27] *See* Securities Exchange Act Release No. 54457 (September 15, 2006), 71 FR 55239 (September 21, 2006) (SR–FICC–2006–03 and SR–NSCC–2006–03).

[28] The volatility component is designed to capture the market price risk associated with each Member's portfolio at a 99th percentile level of

Continued

In both determining if an ECP charge is applicable and in calculating an ECP charge, NSCC currently compares a Member's Calculated Amount to its reported capital levels. As described above, the Calculated Amount is defined in Section I(B)(2) of Procedure XV as a Member's Required Fund Deposit, excluding certain components and including other additional deposits to the Clearing Fund.[29] Because a goal of the ECP charge is to identify and mitigate risks presented when a Member's capital levels may not be adequate to meet its margin requirements to NSCC, the Calculated Amount is designed to represent a material portion of those margin requirements.

As described above, because each component of the Clearing Fund is calculated to address specific risks faced by NSCC, some components are applied only to certain positions in a Member's portfolio. For example, the CNS fails charge, which is included in the Calculated Amount, is based on the market value of only a Member's CNS Fails Positions (as defined in the Rules) of the Member.[30] The volatility component of the Clearing Fund measures the market price volatility of all of a Member's Net Unsettled Positions and Net Balance Order Unsettled Positions (as defined in the Rules). Therefore, the volatility component is often considered a comprehensive measurement of the risks presented by a Member's clearing activity and usually comprises the largest portion of a Member's Required Fund Deposit.[31] NSCC believes that replacing the Calculated Amount with a Member's volatility charge would provide an appropriate measure for purposes of the ECP charge.

Currently, determining a Member's Calculated Amount requires a more complicated calculation, as it uses a Member's Required Fund Deposit, excludes certain components, and includes other deposits. The proposal would simplify this calculation significantly by using only the volatility component. One of the tools NSCC provides to its Members is a calculator that allows them to determine their potential volatility charge based on trading activity. Therefore, this proposed change would make the calculation of the ECP charge both clearer and more predictable for Members.

NSCC does not expect that any impact of this proposed change on the number of ECP charges or the size of the calculated ECP charges would materially impact NSCC's ability to manage the risks the ECP charge is designed to address. NSCC believes the benefits of using a simpler, clearer, and more predictable calculation that is based on the most comprehensive component of the Clearing Fund outweigh any risk related to the reduction in the ECP charges NSCC would collect.

(iii) Use Net Capital for Broker-Dealer Members and Equity Capital for All Other Members in the Calculation of the ECP Charge

In the calculation of the ECP charge, NSCC is proposing to use net capital rather than excess net capital for Members that are broker-dealers, and equity capital for all other Members. As described in greater detail below, in connection with these proposed changes, NSCC would also improve the transparency of the Rules by adopting definitions of ''Net Capital'' and ''Equity Capital.''

As described above, NSCC's ongoing membership requirements, set forth in Rule 2B of the Rules, require Members to provide NSCC with regular information regarding their financial positions, including capital levels.[32] This information is provided, in part, to confirm that Members continue to maintain the minimum financial requirements of membership set forth in Addendum B of the Rules.[33] Currently, NSCC also uses these reported capital amounts in the calculation of the ECP charge.

First, NSCC believes it would be appropriate to revise the capital measure used to calculate the ECP charge for broker-dealer Members to replace excess net capital with net capital. This revision would align the capital measures used for broker-dealer Members and other Members, which would result in more consistent calculations of the ECP charge across different types of Members.

In addition to creating consistency in the calculations for different Members, NSCC believes that using net capital rather than excess net capital would also provide NSCC with a better measure of the increased default risks presented when a Member operates at low net capital levels relative to its margin requirements. This approach would be consistent with the rationale for the Commission's amendments to Rule 15c3–1 under the Act (the ''Net Capital Rule''), which were designed to promote a broker-dealer's capital quality and require the maintenance of ''net capital'' (*i.e.,* capital in excess of liabilities) in specified amounts as determined by the type of business conducted.[34] The Net Capital Rule was designed to ensure the availability of funds and assets (including securities) in the event that a broker-dealer's liquidation becomes necessary. The Net Capital Rule represented a net worth perspective, which is adjusted by unrealized profit or loss, deferred tax provisions, and certain liabilities as detailed in the rule. It also included deductions and offsets and required that a broker-dealer demonstrate compliance with the Net Capital Rule, including maintaining sufficient net capital at all times (including intraday).

Similarly, NSCC believes that the Net Capital Rule is an effective process of separating liquid and illiquid assets and computing a broker-dealer's regulatory net capital that should replace NSCC's existing practice of using excess net capital in the calculation of the ECP charge.

Second, NSCC is proposing to revise the Rules to provide that, for all Members that are not broker-dealers, it would use equity capital in calculating the ECP charge. Currently, the Rules state that NSCC would use a Member's capital amount set forth in the membership standards in Addendum B of the Rules.[35] Section 1.B of Addendum B describes the membership standards of Members, and currently states that the applicable capital measure for Members that are banks is equity capital, for Members that are trust companies and not banks the

confidence. NSCC has two methodologies for calculating the volatility component—a model-based volatility-at-risk, or VaR, charge and a haircut-based calculation, for certain positions that are excluded from the VaR charge calculation. The charge that is applied to a Member's Required Fund Deposit with respect to the volatility component is referred to as the volatility charge and is the sum of the applicable VaR charge and the haircut-based calculation. Amounts calculated pursuant to Sections I(A)(1)(a)(iv) and (2)(a)(iv) of Procedure XV with respect to long positions in Net Unsettled Positions in Family-Issued Securities are designed to address wrong-way risk presented by these positions, not volatility risks, and, as such, are not a part of a Member's volatility charge. *See* Sections I(A)(1)(a) and (2)(a) of Procedure XV, *supra* note 12.

[29] *See supra* note 18.

[30] *See* definition of ''CNS Fails Position'' in Rule 1, and *see also* Section I(A)(1)(e) of Procedure XV, *supra* note 12.

[31] *See* definitions of ''Net Unsettled Position'' and ''Net Unsettled Balance Order Position'' in Rule 1, *supra* note 12.

[32] *See* Section 2.A of Rule 2B, which requires Members to provide NSCC with a copy of their Form X–17–A–5 (Financial and Operational Combined Uniform Single (''FOCUS'') Report), Consolidated Report of Condition and Income (''Call Report''), or an equivalent, *supra* note 12.

[33] *Supra* note 12.

[34] 17 CFR 240.15c3–1. *See* Securities Exchange Act Release No. 70072 (July 30, 2013), 78 FR 51823 (August 21, 2013) (File No. S7–08–07).

[35] *Supra* note 12.

applicable capital measure is consolidated capital, and for other legal entities that are Members the applicable capital measure is determined by NSCC. Currently, and historically, NSCC has had very few Members that are trusts and not banks. For all Members that are not banks, non-bank trusts or broker-dealers (which generally include, for example, exchanges and registered clearing agencies), NSCC uses those Members' reported equity capital in the calculation of the ECP charge. Therefore, in practice, the ECP charge is calculated for the majority of Members that are not broker-dealers using their equity capital, and this proposed change is not expected to have a material impact on the collection of ECP charges. The proposal would simplify the calculation of the ECP charge for Members that are not broker-dealers by stating in Section I(B)(2) of Procedure XV that NSCC would use equity capital rather than use different measures that are based on other membership requirements. This proposed change would also create consistency in the calculations across Members.

(iv) Establish a Cap for the Excess Capital Ratio

NSCC is proposing to set a maximum amount of Excess Capital Ratio that is used in calculating Members' ECP charge to 2.0. NSCC believes capping the multiplier that is used in this calculation would allow NSCC to appropriately address the risks it faces without imposing an overly burdensome ECP charge. Historically, the Excess Capital Ratio has rarely exceeded 2.0 in the calculation of Members' ECP charges, and in cases when 2.0 was exceeded NSCC typically exercised the discretion provided to it in the Rules to reduce the applicable charge. NSCC's discretion was appropriate in these circumstances because NSCC believes it is able to mitigate the risks presented to it by a Member's lower capital levels by collecting an ECP charge calculated with an Excess Capital Ratio that is at or below 2.0.

Therefore, and consistent with NSCC's proposal to clarify its discretion to waive the ECP charge, as described below, NSCC believes capping the Excess Capital Ratio at 2.0 would continue to provide NSCC with an appropriate measure of the risks presented to it relative to Members' capital levels. This proposed change would also provide Members with more clarity and transparency into the ECP charge, by allowing them to predict and estimate the maximum amount of their potential ECP charge.

(v) Improve Transparency Regarding the ECP Charge

NSCC is proposing changes to Section I(B)(2) of Procedure XV to improve transparency regarding the ECP charge by (a) clarifying the description of the capital amounts that NSCC uses in the calculation of the ECP charge by adopting new defined terms, (b) clarifying the particular circumstances in which NSCC retains the ability to waive the charge, and (c) providing that NSCC may calculate the charge based on updated capital information.

First, NSCC is proposing to clarify the description of the capital amounts that it uses to calculate the ECP charge by introducing defined terms and specifying the reporting requirements that NSCC relies on to obtain that capital information for Members. As described above, for Members that are broker-dealers, NSCC is proposing to use a Member's net capital amount, and for all other Members, NSCC would use a Member's equity capital in the calculation of the ECP charge. In order to improve the clarity of the Rules, NSCC is proposing to introduce a defined term for ''Equity Capital'' in Rule 1 and to revise a proposed defined term for ''Net Capital'' in order to align the two defined terms. The proposal would also revise Section I(B)(2) of Procedure XV in describing the calculation of the ECP charge to use these defined terms where appropriate. Finally, the proposal would amend Addendum B to include the new defined term for Equity Capital.

The definition of Equity Capital would be, as of a particular date, the amount equal to the equity capital as reported on the Member's or Limited Member's most recent Call Report, or, if the Member or Limited Member is not required to file a Call Report, then as reported on its most recent financial statements or equivalent reporting. NSCC would also align a proposed definition of Net Capital to be, as of a particular date, the amount equal to the net capital as reported on the Member's or Limited Member's most recent FOCUS Report, or, if the Member or Limited Member is not required to file a FOCUS Report, then as reported on its most recent financial statements or equivalent reporting.

In addition to using these new defined terms, NSCC would also add a statement to Section I(B)(2) of Procedure XV to clarify to Members that the amounts used in the calculation of the ECP charge would be the amounts included in their regular reporting that is provided to NSCC pursuant to the ongoing membership reporting requirements, specifically in their FOCUS Report or Call Report, as applicable, or in an equivalent financial statement or report that is delivered to NSCC pursuant to the same requirement. Collectively, these proposed changes would provide Members with improved clarity and certainty regarding the amounts that would be used in calculating the ECP charge.

Second, the proposed changes would clarify the particular circumstances in which NSCC retains the ability to waive the ECP charge. NSCC believes that the proposed changes to the calculation of the ECP charge described in this filing would have the collective impact of eliminating most circumstances in which NSCC would have exercised this discretion. For example, the proposal to cap the Excess Capital Ratio at 2.0 and the proposal to specify that NSCC may calculate an ECP charge based on updated capital amounts, both address the most common circumstances when NSCC has either waived or reduced the ECP charge in the past. However, NSCC believes that there may still be circumstances when it may not be necessary or appropriate to collect an ECP charge from a Member, for example, in certain exigent circumstances when NSCC observes unexpected changes in market volatility or trading volumes. Therefore, NSCC is proposing to retain discretion to waive an ECP charge in certain defined circumstances and to disclose the governance around the application of such discretion. The proposed changes would revise Section I(B)(2) of Procedure XV by adding a new subsection (c) to provide Members with transparency regarding this retained discretion.

The proposed subsection (c) would describe the exigent circumstances in which NSCC would retain the ability to waive an ECP charge. Such exigent circumstances would constitute circumstances when NSCC, in its sole discretion, observes extreme market conditions or other unexpected changes in factors such as market volatility, trading volumes or other similar factors. As noted above, NSCC believes, based on a review of past data, that the proposed changes to the calculation of the ECP charge would otherwise eliminate most prior instances when an ECP charge was waived. However, in further reviewing such data, NSCC also observed that there have been instances, particularly in recent years, when NSCC has waived the ECP charge in moments covered by the concept of exigent circumstances, and that the ECP charge would have been triggered in such

circumstances even under the proposed calculation of the charge. Such moments occurred multiple times in recent years, including, for example, during the extreme market volatility experienced in early 2020 related to the global outbreak of the COVID–19 coronavirus and the meme stock market event in early 2021.

Based upon this further review of the data, NSCC believes there remains some ongoing possibility that an unexpected increase in market volatility, for example, could cause a relative increase in a Member's volatility charge, which may, in turn, trigger an ECP charge, even under the proposed new ECP charge calculation. In such circumstances, under the proposal, NSCC would determine if the ECP charge being triggered at that time is not primarily caused by the risk presented by a Member's capital levels and whether NSCC can effectively address the risk exposure presented by that Member without the collection of the ECP charge from that Member. Alternatively, NSCC may determine, based on its review of the information available to it, that the ECP charge was appropriately triggered by a Member's capital position or trading activity and was not driven primarily by the prevailing market conditions or other exigent circumstances. Therefore, NSCC believes it is appropriate to retain a certain amount of discretion to review an ECP charge that is triggered in such circumstances to determine whether a waiver of the ECP charge may be appropriate.

In addition to defining the circumstances in which NSCC may waive the ECP charge, the proposed changes would also describe the review NSCC would conduct in deciding to waive the charge in the exigent circumstances, the information NSCC would consider in such review, and the governance around a determination by NSCC to waive the ECP charge. More specifically, the proposed rule change provides that NSCC would review all relevant facts and other information available to it at the time of its decision, including the degree to which a Member's capital position and trading activity compare or correlate to the prevailing exigent circumstances and whether NSCC can effectively address the risk exposure presented by a Member without the collection of the ECP charge from that Member. For example, as noted above, if NSCC believes, based on its review of the relevant circumstances, that the risk exposure presented by a Member is driven by the unexpected increase in market volatility and not by a Member's capital levels, NSCC may determine that it is appropriate to address such risk through the collection of a special charge from that Member rather than an ECP charge.[36] By describing NSCC's review in Procedure XV, the proposed changes would alert Members that, while exigent circumstances may permit NSCC to consider whether to waive an ECP charge, NSCC would still consider information available to it at that time in determining whether a waiver is appropriate, including NSCC's ability to effectively manage the heightened default risks presented by Members that operate at lower capital levels.

Finally, the proposed rule change would provide transparency into the governance around a decision to waive an ECP charge by identifying the NSCC officer who would be authorized to apply a waiver and requiring that the decision be documented.[37]

By clarifying the particular circumstances in which NSCC retains the ability to waive the ECP charge, the proposal would provide Members with more certainty and transparency in predicting when an ECP charge may be waived and how NSCC would make a determination to apply such a waiver.

Third, NSCC would provide that it may calculate the ECP charge based on updated capital information. As described above, NSCC would use the net capital or equity capital amounts that are reported on Members' most recent financial reporting or financial statements delivered to NSCC in connection with the ongoing membership reporting requirements. Under the proposal, if a Member's capital amounts change between the dates when it submits these financial reports, it may provide NSCC with updated capital information for purposes of calculating the ECP charge. Today, when NSCC exercises its discretion to waive or reduce the amount of an applicable ECP charge, NSCC occasionally does so by applying updated capital information in its calculation. Therefore, in connection with clarifying this discretion, NSCC would disclose in the Rules that it may use updated capital information in the calculation of an ECP charge rather than require Members to wait until the issuances of their next financial reporting or financial statements for changes in their capital positions to be reflected in an ECP charge calculation.

NSCC is proposing to retain some discretion in when it would accept updated capital information for this purpose. For example, NSCC may require a Member to provide documentation of the circumstances that caused a change in capital information, and if adequate evidence is not available or NSCC does not believe the evidence sufficiently verifies that the Member's capital position has changed, NSCC would continue to calculate the ECP charge for that Member based on the prior capital information available to NSCC until the next financial reporting or financial statements are delivered. NSCC believes it is appropriate to retain some discretion to allow NSCC to determine if updated capital information is adequately verified before it agrees to rely on that information for this calculation. NSCC believes the proposal to disclose that Members would have the opportunity to provide updated capital information to NSCC to be used in an ECP charge calculation would improve the transparency of the Rules despite NSCC's proposal to retain a certain level of discretion.

(vi) Proposed Changes to Procedure XV of the Rules

The proposal would amend Section I(B)(2) of Procedure XV of the Rules to implement the proposed changes to the ECP charge. The proposed changes would organize this section into three subsections.

The proposed subsections (a) and (b) would describe the calculation used to determine if an ECP charge may be applicable to a Member and, if an ECP charge is applicable, how that charge would be calculated. The revised description of these calculations would (i) replace the definition of Calculated Amount with Members' volatility charge, (ii) replace references to the capital amounts used in the calculation with the new defined terms for Net Capital and Equity Capital, and (iii) state that the Excess Capital Ratio used in calculating an ECP charge is set at a maximum of 2.0. The proposed change would also include a statement that the applicable capital amounts used in the calculation would be the amounts most recently reported to NSCC on Members' FOCUS Reports or Call Reports, as applicable, or other equivalent financial reporting submitted to NSCC pursuant to Section 2 of Rule 2B. The proposal would also state that NSCC may, in its sole discretion, accept updated capital amounts in calculating an ECP charge.

[36] *See* Section I(A)(1)(c) and (2)(c) of Procedure XV of the Rules, under which NSCC may collect, as part of Members' Required Fund Deposit to the Clearing fund, ''[a]n additional payment (''special charge'') from Members in view of price fluctuations in or volatility or lack of liquidity of any security.'' *Supra* note 12.

[37] NSCC would also update its internal procedures to include waivers of the ECP charge in NSCC's regular updates to the Commission.

The proposed subsection (c) would describe NSCC's discretion to waive the ECP charge in certain defined circumstances, the information NSCC would consider in deciding to apply this discretion and the governance around this decision.

(vii) Impact Study Results

NSCC has provided the Commission with the results of an impact study that reviewed the potential impacts of the proposal during the period of June 1, 2020 through December 31, 2021. The study showed that the proposed enhancement would have reduced the number of ECP charges that would have been triggered by the calculation by 65 percent, from 347 ECP charges triggered for 19 Members to 122 ECP charges triggered for 14 Members. The total aggregate amount that would have been triggered by the proposed calculation if the proposal was effective during that time would have been reduced from $51.31 billion (the actual total amount of ECP charges triggered by the current calculation during that period) to approximately $17.44 billion (the total amount of ECP charges that would have been triggered during that time by the proposed calculation). The average amount that would have been calculated for each Member would have been reduced from $147.9 million to approximately $143.0 million. The study showed that the proposal would have had no impact to NSCC's overall, or Member-level, end-of-day Clearing Fund Requirement backtesting coverage.

Over the impact study period, NSCC waived and adjusted calculated ECP charges by $38.80 billion. NSCC waived a total of 33 ECP charges that totaled approximately $26.12 billion. If the proposal had been in place at that time, 14 of these charges would have been collected from Members (although the amount would have been reduced), totaling $6.46 billion, 14 charges would not have been triggered as the calculated ECP ratio was below 1.0, and NSCC would have waived 5 of the ECP charges, mainly following receipt of updated financial information. NSCC adjusted the amount of 16 ECP charges by a total of approximately $12.69 billion. If the proposal had been in place at that time, 7 of these charges would have been still collected, totaling $6.48 billion, and 9 charges would not have been triggered as the calculated ECP ratio was below 1.0.

(viii) Implementation Timeframe

NSCC would implement the proposed changes no later than 30 days after the approval of the proposed rule change by the Commission. NSCC would announce the effective date of the proposed changes by Important Notice posted to its website.

2. Statutory Basis

NSCC believes the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[38] and Rules 17Ad–22(e)(4)(i), (e)(6)(i) and (e)(23)(ii), each promulgated under the Act,[39] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the rules of NSCC be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[40]

NSCC believes the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act because such changes enhance the effectiveness of the ECP charge by (1) replacing the Calculated Amount with a Member's volatility component, (2) replacing excess net capital with net capital for broker-dealer Members and using equity capital for all other Members, and (3) establishing a cap for the Excess Capital Ratio. As described above, NSCC believes these proposed changes would create a simpler, clearer calculation of the ECP charge that is based on more consistent metrics, while allowing NSCC to continue to effectively address the heightened default risks presented by Members that operate at lower capital levels.

The Clearing Fund is a key tool that NSCC uses to mitigate potential losses to NSCC associated with liquidating a Member's portfolio in the event of Member default. Each of the proposed enhancements described above are designed to collectively improve NSCC's ability to collect amounts that reflect the risks posed by its Members. The proposal to enhance the calculation of the ECP charge by replacing the Calculated Amounts with Members' volatility charges would make the calculation clearer and more predictable to Members. The proposal to use net capital for broker-dealer Members and equity capital for all other Members in the calculation of the ECP charge would result in a more consistent calculation across different types of Members. The proposal to cap the Excess Capital Ratio at 2.0 would allow NSCC to appropriately address the risks it faces without imposing an overly burdensome ECP charge and would reduce the circumstances in which NSCC may waive the charge, resulting in a more transparent margining methodology.

Together, by improving the consistency and predictability of the ECP charge, the proposed enhancements would also improve NSCC's ability to collect amounts that reflect the risks posed by its Members such that, in the event of Member default, NSCC's operations would not be disrupted, and non-defaulting Members would not be exposed to losses they cannot anticipate or control. In this way, the proposed rule change is designed to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.[41]

The proposed changes are also designed to improve the transparency of the Rules regarding the ECP charge, for example, by introducing new defined terms regarding the capital amounts used in the charge and by clarifying the exigent circumstances in which NSCC may waive the charge. By enhancing the clarity and transparency of the Rules, the proposed changes would allow Members to better anticipate their margin charges, which would allow them to more efficiently and effectively conduct their business in accordance with the Rules. In this way, NSCC believes the proposed changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[42]

Rule 17Ad–22(e)(4)(i) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.[43]

As described above, NSCC believes the proposed rule change would enable NSCC to better identify, measure, monitor, and, through the collection of Members' Required Fund Deposits,

[38] 15 U.S.C. 78q–1(b)(3)(F).

[39] 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(i) and (e)(23)(ii).

[40] 15 U.S.C. 78q–1(b)(3)(F).

[41] *Id.*

[42] *Id.*

[43] 17 CFR 240.17Ad–22(e)(4)(i).

manage its credit exposures to Members by maintaining sufficient resources to cover those credit exposures fully with a high degree of confidence. Specifically, NSCC believes that the proposed enhancements to the calculation of the ECP charge to use the volatility charge rather than the Calculated Amount, and to use net capital and equity capital, as appropriate, would collectively make the calculation clearer and more predictable to Members. The proposal to use net capital rather than excess net capital for broker-dealer Members, and equity capital for all other Members, would also result in a more consistent calculation across different types of Members. Additionally, the proposal to cap the Excess Capital Ratio at 2.0 would allow NSCC to appropriately address the risks it faces without imposing an overly burdensome ECP charge and would reduce the circumstances in which NSCC may waive the charge, resulting in a more transparent margining methodology. Finally, the proposed change to clarify NSCC's discretion to waive the ECP charge would enable NSCC to better identify, measure, monitor, and manage its credit exposures to Members by permitting NSCC to determine, in certain exigent circumstances, when it is necessary to collect an ECP charge and when it is appropriate to waive an ECP charge.

Overall, NSCC believes the proposal would improve the clarity and predictability of the ECP charge and, in this way, would enhance NSCC's ability to effectively identify, measure and monitor its credit exposures, and would enhance NSCC's ability to maintain sufficient financial resources to cover NSCC's credit exposure to each participant fully with a high degree of confidence. As such, NSCC believes the proposed rule change is consistent with Rule 17Ad–22(e)(4)(i) under the Act.[44]

Rule 17Ad–22(e)(6)(i) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[45]

The Required Fund Deposits are made up of risk-based components (as margin) that are calculated and assessed daily to limit NSCC's exposures to Members. NSCC's proposed changes to use the volatility charge rather than the Calculated Amount, and to use net capital and equity capital, as appropriate, in the calculation of the ECP charge would collectively make the calculation clearer and more predictable to Members, while continuing to apply an appropriate risk-based charge designed to mitigate the risks presented to NSCC. Similarly, the proposal to cap the Excess Capital Ratio at 2.0 would allow NSCC to appropriately address the risks it faces without imposing an overly burdensome ECP charge and would reduce the circumstances in which NSCC may waive the charge, resulting in a more transparent margining methodology. Finally, the proposed rule change would clarify the exigent circumstances when NSCC may determine that it is appropriate to waive the ECP charge. Overall, these proposed changes would improve the effectiveness of the calculation of the ECP charge and, therefore, allow NSCC to more effectively address the increased default risks presented by Members that operate with lower capital levels relative to their margin requirements. In this way, the proposed changes enhance the ability of the ECP charge to produce margin levels commensurate with the risks NSCC faces related to its Members' operating capital levels. Therefore, NSCC believes the proposed rule change is consistent with Rule 17Ad–22(e)(6)(i) under the Act.[46]

Rule 17Ad–22(e)(23)(ii) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for providing sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in NSCC.[47] NSCC is proposing to improve the clarity and transparency of the Rules related to its calculation of the ECP charge in a number of ways described in this filing. The proposed changes would clarify the description of the capital amounts that NSCC uses in the calculation of the ECP charge by adopting new defined terms, clarify NSCC's discretion to waive the charge, and provide that NSCC may calculate the charge based on updated capital information. Additionally, as described above, the proposed changes to use the volatility charge rather than the Calculated Amount, and to use net capital and equity capital, as appropriate, in the calculation of the ECP charge, would collectively make the calculation clearer and more predictable to Members. Finally, the proposed rule change would provide clarity and transparency around the circumstances in which NSCC may waive the ECP charge, the information NSCC would consider in making this determination and the governance around such a decision. Through these proposed amendments to the Rules, the proposal would assist NSCC in providing its Members with sufficient information to identify and evaluate the risks and costs, in the form of Required Fund Deposits to the Clearing Fund, that they incur by participating in NSCC. In this way, NSCC believes the proposed changes are consistent with Rule 17Ad–22(e)(23)(ii) under the Act.[48]

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe the proposed rule change to enhance the calculation of the ECP charge would impact competition because the proposed changes are designed to create a clearer and simpler calculation that is based on more consistent metrics and is likely to result in lower and less frequent ECP charges than are applied under the current methodology. More specifically, the replacement of the Calculated Amount with the volatility charge, which is currently a portion of the Calculated Amount, when used in the calculation to determine if an ECP charge is applicable, is likely to result in fewer triggered ECP charges, as evidenced by the impact study referenced above. Additionally, the replacement of excess net capital with net capital for broker-dealer Members, and using equity capital for all other Members, would create more consistent calculations of the ECP charge across types of Members, reducing any burden on competition that the existing calculation could have presented. Finally, the proposal to cap the Excess Capital Ratio to 2.0 in the calculation of the ECP charge would limit the total amount a Member could be charged, and would provide all Members with more certainty and transparency into their potential margin requirements.

Therefore, by creating a simpler and clearer calculation that uses more consistent metrics, the proposals would improve NSCC's ability to apply the ECP charge more consistently across its Members and reduce the impact this charge could have on competition. As noted above, in the impact study results, the proposed changes are also expected

[44] *Id.*

[45] 17 CFR 240.17Ad–22(e)(6)(i).

[46] *Id.*

[47] 17 CFR 240.17Ad–22(e)(23)(ii).

[48] *Id.*

to result in fewer and lower ECP charges.

Further, NSCC does not believe the proposed rule change to improve the clarity and predictability of the calculation of the ECP charge would impact competition because this proposed change would not impact the calculation of Members' Required Fund Deposits. Therefore, this proposed change would not affect NSCC's operations or the rights and obligations of membership. As such, NSCC believes the proposed rule change to improve the transparency of the Rules would not have any impact on competition.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at *https://www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

NSCC reserves the right to not respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Section 19(b)(2) of the Act[49] provides that proceedings to determine whether to approve or disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.[50] The 180th day after publication of the Notice in the **Federal Register** is December 5, 2022.

The Commission is extending the period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that the Commission has sufficient time to consider the issues raised by the Proposed Rule Change and to take action on the Proposed Rule Change. Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Act,[51] the Commission designates February 3, 2023, as the date by which the Commission should either approve or disapprove the Proposed Rule Change SR–NSCC–2022–005.

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–NSCC–2022–005 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–NSCC–2022–005. 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 NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rulefilings.aspx*). 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–NSCC–2022–005 and should be submitted on or before December 22, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal on or before December 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[52]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–26535 Filed 12–6–22; 8:45 am]

BILLING CODE 8011–01–P

[49] 15 U.S.C. 78s(b)(2).

[50] 15 U.S.C. 78s(b)(2)(B)(ii)(II).

[51] *Id.*

[52] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96433; File No. SR–NYSECHX–2022–27]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of NYSE Chicago, Inc. To Reflect the Fee for Directed Orders Routed by the Exchange to an Alternative Trading System

December 1, 2022.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 21, 2022, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule of NYSE Chicago, Inc. (the ''Fee Schedule'') to reflect the fee for Directed Orders routed directly by the Exchange to an alternative trading system (''ATS''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to reflect the fee for Directed Orders routed directly by the Exchange to an ATS. The Exchange proposes to implement the fee change effective November 21, 2022.

Background

The Exchange operates in a highly competitive market. The Securities and Exchange Commission (''Commission'') has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [4]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [5] Indeed, equity trading is currently dispersed across 16 exchanges,[6] numerous alternative trading systems,[7] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 17% market share.[8] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 1%.[9]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. Accordingly, competitive forces constrain exchange transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

Pursuant to Commission approval, the Exchange adopted a new order type known as Directed Orders.[10] A Directed Order is a Limit Order [11] with instructions to route on arrival at its limit price to a specified ATS with which the Exchange maintains an electronic linkage. Under Exchange rules, the ATS to which a Directed Order is routed would be responsible for validating whether the order is eligible to be accepted, and if such ATS determines to reject the order, the order would be cancelled. Directed Orders must be designated with a Time in Force modifier of Day [12] or IOC [13] and are eligible to be designated for the Core Trading Session [14] only. Directed Orders that are the subject of this proposed rule change would be routed to OneChronos LLC (''OneChronos'').

In anticipation of the scheduled implementation of routing functionality to OneChronos,[15] the Exchange proposes to amend the Fee Schedule to state that the Exchange will not charge a fee for Directed Orders routed to OneChronos. To reflect the no fee, the Exchange proposes to amend current Section E. Transaction and Order Processing Fees. More specifically, the Exchange proposes to adopt footnote 1 and append it to the stated fee of $0.0030/share for securities priced at or above $1.00 under Routing Fee. Proposed footnote 1 would state ''No fee for Directed Orders routed to OneChronos LLC.'' Additionally, the Exchange proposes to define ''Directed Orders'' in proposed footnote 1. As proposed, the term ''Directed Orders'' would mean ''a Limit Order with instructions to route on arrival at its limit price to a specified alternative trading system (''ATS'') with which the Exchange maintains an electronic linkage.''

The Exchange believes that the Directed Orders functionality would facilitate additional trading opportunities by offering Participants [16]

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[5] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[6] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share.*

[7] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[9] *See id.*

[10] *See* Rule 7.31(f)(4). *See also* Securities Exchange Act Release No. 95425 (August 4, 2022), 87 FR 48735 (August 10, 2022) (SR–NYSECHX–2022–06).

[11] A Limit Order is defined in Rule 7.31(a)(2) as an order to buy or sell a stated amount of a security at a specified price or better.

[12] Pursuant to Rule 7.31(b)(1), any order to buy or sell designated Day, if not traded, will expire at the end of the designated session on the day on which it was entered.

[13] Pursuant to Rule 7.31(b)(2), a Limit Order may be designated with an Immediate-or-Cancel (''IOC'') modifier.

[14] The Core Trading Session for each security begins at 9:30 a.m. Eastern Time and ends at the conclusion of Core Trading Hours. *See* Rule 7.34(a)(2). The term ''Core Trading Hours'' means the hours of 9:30 a.m. Eastern Time through 4:00 p.m. Eastern Time or such other hours as may be determined by the Exchange from time to time. *See* Rule 1.1.

[15] *See https://www.nyse.com/publicdocs/nyse/notifications/trader-update/110000486743/ALO_MPL_One_Chronos_Chicago.pdf.*

[16] A ''Participant'' is, except as otherwise described in the Rules of the Exchange, ''any Participant Firm that holds a valid Trading Permit and any person associated with a Participant Firm who is registered with the Exchange under Articles 16 and 17 as a Market Maker Authorized Trader or Institutional Broker Representative, respectively.'' *See* Article 1, Rule 1(s).

the ability to designate orders submitted to the Exchange to be routed to OneChronos for execution. The Exchange believes the functionality could create efficiencies for Participants that choose to use the functionality by enabling them to send orders that they wish to route to OneChronos through the Exchange by leveraging order entry protocols already configured for their interaction with the Exchange. Participants that choose not to utilize Directed Orders would continue to be able to trade on the Exchange as they currently do.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[18] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [19]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

In particular, the Exchange believes the proposed rule change is a reasonable means to incent Participants to utilize the Directed Orders functionality and allow Participants to evaluate its efficacy. The proposed routing of orders to OneChronos is provided by the Exchange on a voluntary basis and no rule or regulation requires that the Exchange offer it. Nor does any rule or regulation require market participants to send orders to an ATS generally, let alone to OneChronos. The routing of orders to OneChronos would operate similarly to the Primary Only Order already offered by the Exchange, which is an order that is routed directly to the primary listing market on arrival, without interacting with the interest on the Exchange Book.[20]

The Exchange believes its proposal equitably allocates its fees among its market participants. The Exchange believes that the proposal represents an equitable allocation of fees because it would apply uniformly to all Participants, in that all Participants will have the ability to designate orders submitted to the Exchange to be routed to OneChronos, and each such Participant would not be charged a fee when utilizing the new functionality. While the Exchange has no way of knowing whether this proposed rule change would serve as an incentive to utilize the new order type, the Exchange expects that a number of Participants will utilize the new functionality because it would create efficiencies for Participants by enabling them to send orders that they wish to route to OneChronos through the Exchange, thereby enabling them to leverage order entry protocols already configured for their interactions with the Exchange.

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes it is not unfairly discriminatory as the proposal to not charge a fee would be assessed on an equal basis to all Participants that use the Directed Order functionality. The proposal to not charge a fee would also enable Participants to evaluate the efficacy of the new functionality. Moreover, this proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that this proposal does not permit unfair discrimination because the changes described in this proposal would be applied to all similarly situated Participants. Accordingly, no Participant already operating on the Exchange would be disadvantaged by the proposed allocation of fees. The Exchange further believes that the proposed rule change would not permit unfair discrimination among Participants because the Directed Order functionality would be available to all Participants on an equal basis and each such member would not be charged a fee for using the functionality.

Finally, the submission of orders to the Exchange is optional for Participants in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[21] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [22]

Intramarket Competition. The Exchange believes the proposed amendment to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change is a reasonable means to incent Participants to utilize the Directed Orders functionality and allow Participants to evaluate its efficacy. The Directed Orders functionality would be available to all Participants and all Participants that use the Directed Orders functionality to route their orders to OneChronos will not be charged a routing fee. The proposed routing of orders to OneChronos is provided by the Exchange on a voluntary basis and no rule or regulation requires that the Exchange offer it. Participants have the choice whether or not to use the Directed Orders functionality and those that choose not to utilize it will not be impacted by the proposed rule change. The Exchange also does not believe the proposed rule change would impact intramarket competition as the proposed rule change would apply to all Participants equally that choose to utilize the Directed Orders functionality, and therefore the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4) and (5).

[19] *See supra* note 4.

[20] *See* Rule 7.31(f)(1).

[21] 15 U.S.C. 78f(b)(8).

[22] *See supra* note 4.

competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading is currently less than 1%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [23] of the Act and subparagraph (f)(2) of Rule 19b–4 [24] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSECHX–2022–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2022–27. 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–NYSECHX–2022–27 and should be submitted on or before December 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–26541 Filed 12–6–22; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(2).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17723; Alaska Disaster Number AK–00056 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of Alaska

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Alaska dated 12/01/2022.

Incident: White Pass and Yukon Route Railroad Dock Rockslide and Closure.

Incident Period: 08/03/2022 and continuing.

DATES: Issued on 12/01/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 09/01/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Haines Borough, Municipality Of Skagway.

Contiguous Counties: Alaska: Chatham Reaa, City and Borough of Juneau.

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	3.040
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for economic injury is 177230.

The States which received an EIDL Declaration #17723 are Alaska.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2022–26548 Filed 12–6–22; 8:45 am]

BILLING CODE 8026–09–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2022–0060]

Rate for Assessment on Direct Payment of Fees to Representatives in 2023

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: We are announcing the assessment percentage rate under the Social Security Act (Act) is 6.3 percent for 2023.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Blair, Associate General Counsel for Program Law, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401. Phone: (410) 965–3157, email *Jeff.Blair@ssa.gov.*

SUPPLEMENTARY INFORMATION: Claimants may appoint a qualified individual as a representative to act on their behalf in matters before the Social Security Administration (SSA). If the claimant is entitled to past-due benefits and was represented either by an attorney or by a non-attorney representative who has met certain prerequisites, the Act provides that we may withhold up to 25 percent of the past-due benefits and use that money to pay the representative's approved fee directly to the representative.

When we pay the representative's approved fee directly to the representative, we must collect from that fee payment an assessment to recover the costs we incur in determining and paying representatives' fees. The Act provides that the assessment we collect will be the lesser of two amounts: a specified dollar limit; or the amount determined by multiplying the fee we are paying by the assessment percentage rate.[1]

The Act initially set the dollar limit at $75 in 2004 and provides that the limit will be adjusted annually based on changes in the cost-of-living.[2] Currently, the maximum dollar limit for the assessment is $113, as we announced in the **Federal Register** on October 24, 2022 (87 FR 64296).

The Act requires us, each year, to set the assessment percentage rate at the lesser of 6.3 percent or the percentage rate necessary to achieve full recovery of the costs we incur to determine and pay representatives' fees.[3]

Based on the best available data, we have determined that the current rate of 6.3 percent will continue for 2023. We will continue to review our costs for these services on a yearly basis.

Michelle King,

Deputy Commissioner for Budget, Finance, and Management.

[FR Doc. 2022–26560 Filed 12–6–22; 8:45 am]

BILLING CODE 4191–02–P

[1] 42 U.S.C. 406(d), 406(e), and 1383(d)(2).

[2] 42 U.S.C. 406(d)(2)(A) and 1383(d)(2)(C)(ii)(I).

[3] 42 U.S.C. 406(d)(2)(B)(ii) and 1383(d)(2)(C)(ii)(II).

DEPARTMENT OF STATE

[Public Notice: 11932]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Porcelain From Versailles: Vases for a King and Queen'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition ''Porcelain from Versailles: Vases for a King and Queen'' at the J. Paul Getty Museum at the Getty Center, Los Angeles, California, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW, (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–26609 Filed 12–6–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Proposed Land Swap of Federally Acquired Property at Golden Triangle Regional Airport, Columbus, Mississippi

AGENCY: Federal Aviation Administration, DOT.

ACTION: Request for public comments.

SUMMARY: Notice is being given that the FAA is considering a request from Golden Triangle Regional Airport Authority (GTRAA) to release and dispose of 143.95± acres of airport property in exchange for 236.14 ± acres of agricultural land to be used for future aeronautical development. The property proposed for release is made up of three parcels. Parcel 7A is approximately 31.16 acres, Parcel 7B is approximately 58.9 acres, and Parcel 7C is approximately 73.2 acres. These three parcels are currently undeveloped and not needed for aeronautical use. The property is planned to be developed into an airport compatible industrial use aluminum mill. While no money will exchange hands in this transaction, the land to be given to the airport in exchange for the property in question is higher in acreage, value, and utility in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue.

DATES: Comments must be received on or before January 6, 2023.

ADDRESSES: The public may send comments using the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov,* and follow the instructions on providing comments.
- *Fax:* 601–664–9901.
- *Mail:* David Shumate, Program Manager, Jackson Airports District Office, 100 West Cross St., Suite B, Jackson, MS 39208–2307.
- *Hand Delivery:* Deliver to mail address above between 8 a.m. and 5 p.m. Monday through Friday, excluding Federal holidays.

In addition, one copy of any comments submitted to the FAA must

be mailed or delivered to GTRAA, Attn: Matt Dowell, A.A.E, Executive Director, 2080 Airport Rd, Columbus, MS 39701

Interested persons may inspect the request and supporting documents by contacting the FAA at the address listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: David Shumate, Program Manager, Jackson Airports District Office, 100 West Cross St., Suite B, Jackson, MS 39208–2307. The land release request may be reviewed in person at this same location.

Issued in Jackson, Mississippi, on December 1, 2022.

Rans D. Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 2022–26509 Filed 12–6–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–0193]

Agency Information Collection Activities: Requests for Comments; Clearance of New Approval of Information Collection: ICAO CO_2 Certification Database

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 for a new information collection. The initial **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 26, 2022. The collection involves the possibility for airplane manufacturers, for which a newly built airplane is subject to the applicability of Annex 16, Volume III of the Convention on Civil Aviation (hereinafter the ''Chicago Convention''), to submit an electronic datasheet to the FAA for posting to the CO_2 Certification Database (CO_2DB). The information to be collected will be necessary because of FAA's commitment to help (a) provide publicly available data on the CO_2 Metric Value (MV) which represents a measure of fuel burn performance of airplane types against CO_2 technology/design standards, (b) track and communicate the improvement in airplane CO_2 MVs over time and (c) provide an incentive to improve the CO_2 MV of airplane types.

DATES: Written comments should be submitted by January 6, 2023.

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: Laszlo Windhoffer by email at: *Laszlo.Windhoffer@faa.gov;* phone: 202–267–4741.

SUPPLEMENTARY INFORMATION:

Supporting Statement A

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–XXXX.

Title: ICAO CO_2 Certification Database (CO_2DB).

Form Numbers: FAA Form 1240–6.

Type of Review: Clearance of a new information collection.

Background: The initial **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 26, 2022 (87 FR 24606).

In March 2017, the International Civil Aviation Organization (ICAO) Council adopted the Volume III of Annex 16 of the Chicago Convention (Environmental Protection) for the implementation of a new airplane CO_2 emissions standard. The Standard will apply to new airplane type designs from 2020, and to airplane type designs already in-production as of 2023. Those in-production airplane which by 2028 do not meet the standard will no longer be able to be produced unless their designs are sufficiently modified to comply with the in-production standard.

To support the implementation of Annex 16 Volume III, ICAO agreed that, similar to noise and engine emissions, an ICAO CO_2 Certification Database (CO_2DB) should be developed and continuously maintained in a publicly accessible manner. The U.S. Federal Aviation Administration will host the new database on behalf of ICAO.

The aim of the CO_2DB is to (a) Provide publicly available data on the CO_2 Metric Value (MV) which represents a measure of fuel burn performance of airplane types against CO_2 technology/design standards, (b) Track and communicate the improvement in airplane CO_2 MVs over time and (c) Provide an incentive to improve the CO_2 MV of airplane types.

The collection of data towards the CO_2DB is expected to leverage the Airplane Airworthiness Certification process, which includes; airplane performance measurement, computation of relevant metrics (*e.g.,* CO_2 MV) and submission of the information to the Certificating Authority (CA) of the State of Design. As part of the airworthiness certification process, the data/information is reviewed by the CA and approved. Given that the submission of information into the CO_2DB is voluntary, it is expected that the applicant (*e.g.,* airplane manufacturer) will decide to submit a CO_2DB Datasheet to its CA and ultimately to the U.S. FAA. If the applicant decides to submit information to the CO_2DB, the applicant will prepare a CO_2DB Datasheet by using the CO_2DB Datasheet Template that will be publicly available via the CO2DB web page expected to be hosted on the FAA Office of Environment and Energy website. Once the U.S. FAA collects the CO_2DB Datasheets it may conduct an information check to identify any gross errors or mistakes. Similar to other ICAO environment databases, the entity submitting the information (in this case the applicant) will be solely responsible for the accuracy of the information. If there are any questions about submissions, the U.S. FAA will communicate with the applicant to attempt to address any issues.

CO_2DB Datasheets will then be integrated into the CO_2DB and the records of changes will be updated. It is expected that the database will be available for download in a common table format (*e.g.,* Microsoft Excel file) as well as a collection of the submitted CO_2DB Datasheets. Additional background and supporting information will also be available on the CO_2DB website along with a Support Function communication mechanism (*e.g.,* email address).

Respondents: Respondents will be airplane manufacturers (or ''applicants'') subject to the applicability of Annex 16, Volume III of the Chicago Convention. From the outset, FAA expects about 3 U.S. airplane applicants to submit CO_2DB

Datasheets for their certified airplanes. It should be noted that additional respondents from outside the United States (*i.e.,* Airplane Manufacturers for which the Certificating Authority is another ICAO Member State than the United States) are expected to submit CO_2DB Datasheets to the CO_2DB for their certified airplane. These non-US applicants were assumed to be outside the scope of the burden analysis contained in Supporting Statement A and were therefore not included as respondents.

Frequency: If they decide to submit information to the CO_2DB, the manufacturers will submit data after the certification of an airplane. It is expected that manufacturers would submit one CO_2DB Datasheet for each airplane model. As described in Supporting Statement A and based on historical frequency of airplane certification, each U.S. manufacturer could be expected to certificate up to two new models every three years. Thus, in mathematical terms, the FAA would expect to receive an average of two thirds of one datasheet per year and per respondent.

Estimated Average Burden per Response: It is expected that filling and submitting a CO_2DB Datasheet could take approximately 2.5 hours.

Estimated Total Annual Burden: Based on the above, FAA expects that the annual submission of CO2DB Datasheet by U.S. airplane manufacturers could take approximately 5 hours for an average of 2 submissions per year ($368 in filing and submission costs). This is estimated for all 3 U.S. airplane manufacturers.

Issued in Washington, DC, on December 1, 2022.

Kevin Welsh,

Executive Director, Office of Environment and Energy, Federal Aviation Administration.

[FR Doc. 2022–26547 Filed 12–6–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Funding Opportunity for the Federal-State Partnership for Intercity Passenger Rail Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Funding Opportunity (NOFO or notice).

SUMMARY: This notice (FSP-National) details the application requirements and procedures to obtain grant funding for projects not located on the Northeast Corridor under the Federal-State Partnership for Intercity Passenger Rail Program (FSP Program) for Fiscal Year 2022. The FSP-National notice solicits applications for FSP funds made available by the Consolidated Appropriations Act, 2022, and the Infrastructure Investment and Jobs Act. The opportunity described in this notice is made available under Assistance Listings Number 20.326, ''Federal-State Partnership for Intercity Passenger Rail.''

DATES: Applications for funding under this solicitation are due no later than 5 p.m. ET, March 7, 2023. Applications that are incomplete or received after 5 p.m. ET, on March 7, 2023 will not be considered for funding. See *Section D* of this notice for additional information on the application process.

ADDRESSES: Applications must be submitted via *www.Grants.gov.* Only applicants who comply with all submission requirements described in this notice and submit applications through *www.Grants.gov* will be eligible for award. For any supporting application materials that an applicant is unable to submit via *www.Grants.gov* (such as oversized engineering drawings), an applicant may submit an original and two (2) copies to Deborah Kobrin, Office of Rail Program Development, Federal Railroad Administration, 1200 New Jersey Ave SE, Washington, DC 20590; or Mr. Sergio Coronado, Office of Rail Program Development, Federal Railroad Administration, 55 Broadway, Cambridge, MA 02142. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are advised to use other means of conveyance (such as courier service) to assure timely receipt of materials before the application deadline.

FOR FURTHER INFORMATION CONTACT: For further information concerning this Notice, please contact the FRA NOFO Support program staff via email at *FRA-NOFO-Support@dot.gov.* If additional assistance is needed, you may contact Mr. Douglas Gascon, Office of Policy and Planning, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W38–212, Washington, DC 20590; email: *douglas.gascon@dot.gov;* or telephone: 202–493–2039; or Mr. Sergio Coronado, Office of Rail Program Development, Federal Railroad Administration, 55 Broadway, Cambridge, MA 02142; email: *Sergio.Coronado@dot.gov;* telephone: 617–571–1213; or Ms. Deborah Kobrin, Office of Rail Program Development, Federal Railroad Administration, 1200 New Jersey Ave SE, Room W33–311, Washington, DC 20590; email: *deborah.kobrin@dot.gov;* telephone: 202–493–0765.

SUPPLEMENTARY INFORMATION: *Notice to applicants:* FRA recommends that applicants read this notice in its entirety prior to preparing application materials. Definitions of key terms used throughout the NOFO are provided in *Section A(2)* below. These key terms are capitalized throughout the NOFO. There are several administrative and specific eligibility requirements described herein with which applicants must comply. Additionally, applicants should note that the required Project Narrative component of the application package may not exceed 25 pages in length.

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A. Program Description

1. Overview

Our nation's rail network is a critical component of the U.S. transportation system and economy. The FSP Program provides a Federal funding opportunity to improve American passenger rail assets to expand or establish new intercity passenger rail service, including privately operated intercity passenger rail service if an eligible applicant is involved, reduce the state of good repair backlog, improve performance, and enhance rail safety. The purpose of this notice is to solicit applications for projects not located on the Northeast Corridor (NEC) through the competitive FSP Program.

This FSP-National NOFO describes funding available, application submission requirements, and the selection and evaluation criteria for projects not located on the Northeast Corridor. The Infrastructure Investment and Jobs Act (Pub. L. 117–58, November 14, 2021) (IIJA) provided distinct selection and evaluation criteria for projects located on the NEC and for projects not located on the NEC. FRA will publish a separate Notice for projects located on the NEC. Those projects are not eligible for funding under this announcement.

The FSP Program is authorized in Sections 22106 and 22307 of the IIJA, codified at 49 U.S.C. 24911, and this NOFO is funded by IIJA supplemental

appropriations as provided in Title VIII of Division J of IIJA, and the Consolidated Appropriations Act, 2022 (Pub. L. 117–103) (Appropriations Act). The opportunity described in this notice is made available under Assistance Listings Number 20.326, ''Federal-State Partnership for Intercity Passenger Rail.''

Discretionary grant awards, funded through the FSP Program, will support projects that improve safety, economic strength and global competitiveness, equity, climate and sustainability, and transformation, consistent with the U.S. Department of Transportation's (DOT) strategic goals.[1]

The FSP Program will be implemented, as appropriate and consistent with law, in alignment with the priorities in Executive Order 14052, *Implementation of the Infrastructure Investment and Jobs Act* (86 FR 64355), which are to invest public dollars efficiently, advance equity, promote the competitiveness of the U.S. economy, improve job opportunities by focusing on high labor standards, strengthen infrastructure resilience to all hazards including climate change, and effectively coordinate with State, local, Tribal, and territorial government partners.

FRA intends to use the FSP Program to support the creation of good-paying jobs with the free and fair choice to join a union and the incorporation of strong labor standards and training and placement programs, especially registered apprenticeships, and local hire agreements, in project planning and development. Projects that incorporate such planning considerations are expected to support a strong economy and labor market, in alignment with the priorities in Executive Order 14025, *Worker Organizing and Empowerment* (86 FR 22829) and Executive Order 14052, *Implementation of the Infrastructure Investment and Jobs Act* (86 FR 64335). Section E describes job creation and labor considerations that an applicant can undertake and FRA will consider during the review of applications.

In addition, FRA seeks to fund projects under the FSP Program that reduce greenhouse gas emissions and are designed with specific elements to address climate change impacts, in alignment with the priorities in Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (86 FR 7619). Specifically, FRA is looking to award projects that align with the President's greenhouse gas reduction goals, promote energy efficiency, support fiscally responsible land use and efficient transportation design, increase climate resilience, support domestic manufacturing, and reduce pollution.

FRA also seeks to fund projects that address environmental justice, particularly for communities that disproportionally experience climate change-related consequences. Environmental justice, as defined by the Environmental Protection Agency (EPA), is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. As part of the implementation of Executive Order 14008, FRA seeks to fund projects that, to the extent possible, target at least 40 percent of resources and benefits towards low-income communities, disadvantaged communities, communities underserved by affordable transportation, or overburdened [2] communities. For more information, please consult DOT's disadvantaged communities mapping tool to determine if a proposed project impacts disadvantaged communities: Transportation Disadvantaged Census Tracts at: *https://usdot.maps.arcgis.com/apps/dashboards/d6f90dfcc8b44525b04c7ce748a3674a.*

Additionally, FRA seeks to fund projects that proactively address racial equity and barriers to opportunity, including automobile dependence as a form of barrier, or redress prior inequities and barriers to opportunity, in alignment with the priorities in Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (86 FR 7009). Section E describes racial equity considerations that an applicant can undertake and FRA will consider during the review of applications.

Furthermore, consistent with the Department's Rural Opportunities to Use Transportation for Economic Success (ROUTES) initiative, the Department seeks to award funding to rural projects that address deteriorating conditions and disproportionately high fatality rates and transportation costs in rural communities.

Section E of this NOFO, which outlines the grant selection criteria, describes the process for selecting projects that further these goals. Section F.3 describes progress and performance reporting requirements for selected projects.

2. Definitions of Key Terms

Terms defined in this section are capitalized throughout this notice.

a. ''Benefit-Cost Analysis'' (or ''Cost-Benefit Analysis'') is a systematic, data-driven, and transparent analysis comparing monetized project benefits and costs, using a no-build baseline and properly discounted present values, including concise documentation of the assumptions and methodology used to produce the analysis, a description of the baseline, data sources used to project outcomes, values of key input parameters, basis of modeling (including spreadsheets, technical memos, etc.), and presentation of the calculations in sufficient detail and transparency to allow the analysis to be reproduced and sensitivity of results evaluated by FRA. Please refer to the Benefit-Cost Analysis (BCA) Guidance for Discretionary Grant Programs prior to preparing a BCA at *https://www.transportation.gov/office-policy/transportation-policy/benefit-cost-analysis-guidance.* In addition, please refer to the BCA webinar on FRA's website for rail-specific examples of how to apply the BCA Guidance for Discretionary Grant Programs to FSP-National applications.[3]

b. ''Capital Cost Estimate'' means an estimate of the cost to implement the Capital Project inclusive of Project Development through completion of Construction that accounts for risk to the cost elements and the schedule to complete the project.

c. ''Capital Project'' means a project for acquiring, constructing, improving, or inspecting rail equipment, track and track structures, or a rail facility, including expenses incidental to the acquisition or construction including pre-construction activities (such as designing, engineering, location surveying, mapping, acquiring rights-of-way) and related relocation costs,

[1] DOT Strategic Plan FY 2022–2026 (March 2022) at *https://www.transportation.gov/sites/dot.gov/files/2022-04/US_DOT_FY2022-26_Strategic_Plan.pdf.*

[2] Overburdened Community means minority, low-income, tribal, or indigenous populations or geographic locations in the United States that potentially experience disproportionate environmental harms and risks. This disproportionality can be as a result of greater vulnerability to environmental hazards, lack of opportunity for public participation, or other factors. Increased vulnerability may be attributable to an accumulation of negative or lack of positive environmental, health, economic, or social conditions within these populations or places. The term describes situations where multiple factors, including both environmental and socio-economic stressors, may act cumulatively to affect health and the environment and contribute to persistent environmental health disparities.

[3] *https://railroads.dot.gov/rail-network-development/training-guidance/webinars-0.*

environmental studies, and all work necessary for FRA to approve the project under the National Environmental Policy Act; highway-rail grade crossing improvements; communication and signalization improvements; and rehabilitating, remanufacturing, or overhauling rail rolling stock and rail facilities.

d. ''Construction'' means the Lifecycle Stage of a Capital Project when physical production of fixed works and structures, or substantial alterations to such structures or land, or production or refurbishment of vehicles and equipment, are accomplished and commissioned for operational use. Construction includes associated project administration, test of equipment as appropriate, systems integration testing, workforce training, system certification, procurement of insurance, pre-revenue service, start-up testing, and other related costs.

e. ''Commuter Rail Passenger Transportation'' means short-haul rail passenger transportation in metropolitan and suburban areas usually having reduced fare, multiple rides, and commuter tickets, and morning and evening peak period operations, consistent with 49 U.S.C. 24102(3); the term does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

f. ''Final Design (FD)'' means the Capital Project Lifecycle Stage when final design and engineering plans and specifications necessary for the Construction stage are completed, and, at a minimum, includes (1) the preparation of final design plans consistent with the applicable environmental decision document and detailed specifications, (2) the preparation of an updated Project Management Plan, (3) the preparation of an updated project schedule, cost estimate, and other necessary plans that may include a financial plan, sufficiently detailed to inform decision makers of the actions required to advance the project through completion of Construction. FD may include early construction or relocations and procurement of equipment and materials during the final design stage, when such work is permissible under applicable law.

g. ''Improvement'' means repair or enhancement to existing rail infrastructure, equipment, or facility, or construction of new rail infrastructure, equipment or facilities, that results in efficiency of the rail system and the safety of those affected by the system.

h. ''Intercity Rail Passenger Transportation'' means rail passenger transportation, except commuter rail passenger transportation. See 49 U.S.C. 24911(a)(2). In this notice, ''Intercity Passenger Rail Service'' and ''Intercity Passenger Rail Transportation'' are equivalent terms to ''Intercity Rail Passenger Transportation.''

i. ''Lifecycle Stage'' means each of the consecutive stages of a Capital Project as it is developed and implemented that include systems planning, Project Planning, Project Development, Final Design, Construction, and operation. Each sequential stage involves specific activities.[4]

j. ''Major Capital Project'' means a Capital Project with a Capital Cost Estimate of $500 million and with at least $100 million in federal assistance under the FSP Program.

k. ''National Environmental Policy Act (NEPA)'' is a federal law that requires Federal agencies to analyze and document the environmental impacts of a proposed action in consultation with appropriate Federal, State, and local authorities, and with the public. NEPA classes of action include an Environmental Impact Statement (EIS), Environmental Analysis (EA) or Categorical Exclusion (CE). The NEPA class of action depends on the nature of the proposed action, its complexity, and the potential impacts. For purposes of this NOFO, NEPA also includes all related Federal laws and regulations including the Clean Air Act, Section 4(f) of the Department of Transportation Act, Section 7 of the Endangered Species Act, and Section 106 of the National Historic Preservation Act. Additional information regarding FRA's environmental processes and requirements are located at *https://railroads.dot.gov/rail-network-development/environment/environment.*

l. ''Northeast Corridor'' (''NEC'') means the main rail line between Boston, Massachusetts and the District of Columbia; the branch rail lines connecting to Harrisburg, Pennsylvania, Springfield, Massachusetts, and Spuyten Duyvil, New York; and facilities and services used to operate and maintain these lines, consistent with 49 U.S.C. 24911(a)(3).

m. ''Project Development'' means the Capital Project Lifecycle Stage during which (1) the environmental review process required under NEPA and other related environmental laws is completed, and the permitting processes is advanced as appropriate; (2) preliminary engineering and other preliminary design is completed to support the environmental review and preparation of estimates of risk, costs, benefits, and impacts; (3) a project management plan is prepared that identifies procurement requirements and strategies; (4) a detailed project schedule and a cost estimate are prepared; and (5) a financial plan for Major Projects and other necessary plans are prepared.

n. ''Project Planning'' means the Capital Project Lifecycle Stage during which the Project Sponsor (1) identifies capital project concepts to address transportation needs and opportunities; (2) identifies and compares costs, benefits, and impacts of project options; (3) identifies the impacted environmental resources and engages with interested parties, agencies, and infrastructure owners.

o. ''Project Management Plan'' means a document that describes how the Capital Project will be implemented, monitored, and controlled to help the applicant effectively, efficiently, and safely deliver the project on-time, within-budget, and at the highest appropriate quality.

p. ''Preliminary Engineering (PE)'' means engineering design to define a Capital Project, including identification of all environmental impacts and design of all critical project elements at a level sufficient to assure reliable cost estimates and schedules. The PE development process starts with specific project design alternatives that allow for the assessment of a range of rail improvements, specific alignments, and project designs.

q. ''State of Good Repair'' means a condition in which physical assets, both individually and as a system, are (A) performing at a level at least equal to that called for in their as-built or as-modified design specification during any period when the life cycle cost of maintaining the assets is lower than the cost of replacing them; and (B) sustained through regular maintenance and replacement programs, consistent with 49 U.S.C. 24102(12).

B. Federal Award Information

1. Available Award Amount

The total funding available for awards under this NOFO is up to $2,283,150,000 made available by IIJA supplemental appropriations, and the Appropriations Act, as follows:

a. *Up to $2,232,000,000 in IIJA supplemental appropriations:* Title VIII of Division J of IIJA provided $36,000,000,000 in supplemental appropriations for the FSP Program, with not more than $24,000,000,000 made available for projects for the NEC and thus at least $12,000,000,000 of

[4] FRA evaluates project readiness for a lifecycle stage when considering a project for funding.

such funds made available for FSP-National ($2,400,000,000 made available per year for fiscal years 2022 through 2026). After the funding set aside for FRA award and project management oversight and the planning and development activities authorized at 49 U.S.C. 24911(k), up to $2,232,000,000 in funding made available for fiscal year 2022 is made available for FSP Program awards under this FSP-National NOFO.

b. *Up to $51,150,000 in fiscal year 2022 annual appropriations:* The Appropriations Act provided $100,000,000 for the FSP Program. Consistent with 49 U.S.C. 24911(d)(3), a minimum of 45 percent and a maximum of 55 percent of this amount is for FSP-National, of which not less than 20 percent (a minimum of $8,370,000) shall be for projects that benefit (in whole or in part) a long-distance route. After the funding set aside for FRA award and project management oversight and the planning and development activities authorized at 49 U.S.C. 24911(k), at least $41,850,000 and up to $51,150,000 in fiscal year 2022 annual funding is made available for FSP Program awards under this FSP-National NOFO.

Should additional FSP-National funds become available after the release of this NOFO, FRA may elect to award such additional funds to applications received under this NOFO. Any selection and award under this NOFO is subject to the availability of appropriated funds.

2. Award Size

There are no predetermined minimum or maximum dollar thresholds for awards. FRA anticipates making multiple awards with the available funding. FRA may not be able to award grants to all eligible applications even if they meet or exceed the stated evaluation criteria (see *Section E,* Application Review Information). Projects may require more funding than is available. FRA encourages applicants to propose a project that has operational independence or a component of such project and that can be completed and implemented with funding under this NOFO as a part of the total project cost together with other, non-Federal sources. (See *Section C(3)*(c) for more information.)

3. Award Type

a. Grants and Cooperative Agreements

FRA will make awards for projects selected under this notice through grant agreements or cooperative agreements. Grant agreements are used when FRA does not expect to have substantial Federal involvement in carrying out the funded activity. Cooperative agreements allow for substantial Federal involvement in carrying out the agreed upon investment, including technical assistance, review of interim work products, and increased program oversight. The term ''grant'' is used throughout this document and is intended to reference funding awarded through a grant agreement, as well as funding awarded through a cooperative agreement. The funding provided under this NOFO will be made available to grantees on a reimbursable basis. Applicants must certify that their expenditures are allowable, allocable, reasonable, and necessary to the approved project before seeking reimbursement from FRA. Additionally, the grantee is expected to expend matching funds at the required percentage concurrent with Federal funds throughout the life of the project. See an example of standard terms and conditions for FRA grant awards at: *https://www.fra.dot.gov/eLib/Details/L19057.* This template is subject to revision.

b. Letters of Intent and Phased Funding Agreements

FRA may issue Letters of Intent (LOI) or Phased Funding Agreements (PFA) to FSP grantees proposing Major Capital Projects under this FSP-National NOFO. Applications for a Major Capital Project that may seek FSP funds beyond what is made available in this NOFO and that seek an LOI or PFA must request an LOI or PFA in the Project Narrative and provide the additional information required in section D.2.a.iii. Additionally, FRA may independently determine that a project is appropriate for an LOI or PFA.

An LOI, authorized at 49 U.S.C. 24911(g)(1), is a letter from FRA to a grantee announcing ''an intention to obligate'' an amount to its Major Capital Project from future budget authority. LOIs are contingent commitments and not binding obligations of the Federal government. FRA intends to use LOIs to demonstrate its intent to provide future Final Design and Construction Lifecycle Stage funding for Major Capital Projects assuming successful completion of Project Planning and Project Development Lifecycles for the project. FRA anticipates limiting the use of LOIs primarily to appropriate projects currently in, or beginning, the Project Development Lifecycle Stage. In issuing the LOI, FRA may outline conditions and/or define readiness thresholds that the grantee may use to inform future funding requests for FSP-National funds.

A PFA, authorized at 49 U.S.C. 24911(g)(2), is an agreement associated with the obligation of an initial grant award under the FSP Program. FRA may enter into a PFA for highly rated Major Capital Projects. A PFA shall: (1) establish the terms of participation by the Federal Government in the project; (2) establish the maximum amount of Federal financial assistance for the project; (3) include the period of time for completing the project, even if such period extends beyond the period for which Federal financial assistance is authorized; and (4) make timely and efficient management of the project easier in accordance with Federal law.[5] FRA anticipates limiting the use of PFAs to applications that include funding for the Construction Lifecycle Stage and are scheduled to enter the Final Design or Construction Lifecycle Stage within two (2) years of the date of the application. PFAs are contingent commitments and are not financial obligations of the Federal government. However, unlike LOIs, PFAs are agreements with an initial obligation of funding provided from this solicitation. FRA commits to the future obligation of funding as specified in the PFA, generally for the duration of the project, as long as the grantee continues to meet the terms of the PFA and Congress appropriates sufficient FSP funding for such purpose.

4. Concurrent Applications

DOT and FRA may be concurrently soliciting applications for transportation infrastructure projects for several financial assistance programs. Applicants may submit applications requesting funding for a particular project to one or more of these programs. In the application for funding under this NOFO, applicants must indicate the other program(s) to which they submitted or plan to submit an application for funding the entire project or certain components, as well as highlight new or revised information in the application responsive to this NOFO that differs from the previously submitted application(s).

C. Eligibility Information

This section of the notice explains applicant eligibility, cost sharing and matching requirements, project eligibility, and operational independence. Applications that do not meet the requirements in this section will be ineligible for funding.

[5] Generally, prior to receiving a PFA, the project sponsor must complete the process for complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and related environmental laws for the project.

Instructions for submitting eligibility information to FRA are detailed in *Section D* of this NOFO.

1. Eligible Applicants

The following entities are eligible applicants for all projects permitted under this notice:

a. a State (including the District of Columbia);

b. a group of States;

c. an Interstate Compact;

d. a public agency or publicly chartered authority established by one or more States;

e. a political subdivision of a State;

f. Amtrak, acting on its own behalf or under a cooperative agreement with one or more States;

g. a Federally recognized Indian Tribe, or

h. any combination of the entities described in (a) through (g).

Applications must identify a lead applicant to serve as the primary point of contact for the application, and if selected, as the grantee of the FSP-National grant award.

To submit a joint application under (h) above, the lead applicant must identify the joint applicant(s) and include a signed statement from an authorized representative of each joint applicant entity that affirms the entity joins the application. See *Section D(2)* for further instructions about submitting a joint application.

An application submitted by Amtrak and one or more States, whether eligible under (a), (b), or (f) above, must identify the lead applicant and include a signed cooperative agreement between Amtrak and the state(s) consistent with 49 U.S.C. 24911(a)(1)(F). Applications may reference entities that are not eligible applicants (*e.g.,* private sector firms) in an application as a partner in project funding or implementation, but ineligible entities may not be lead or joint applicants. If the applicant intends to partner with an ineligible entity (*e.g.,* a private intercity passenger rail operator), that intention should be made clear in the application and a letter of support from the ineligible entity outlining its roles and responsibilities for the project must be included in the application. Eligible applicants who partner with private operators of intercity passenger rail will be the legally responsible party for administering and managing federal funds and ultimately delivering the project.

2. Cost Sharing and Matching

The Federal share of total costs for FSP projects funded under this notice shall not exceed 80 percent. The estimated total cost of a project must be based on the best available information, including engineering studies, studies of economic feasibility, environmental analyses, and information on the expected use of equipment and/or facilities. Additionally, in preparing the Capital Cost Estimates, applicants should, as appropriate, consult available FRA guidance, including FRA's cost estimate guidance documentation, ''Capital Cost Estimating: Guidance for Project Sponsors.'' [6]

The minimum 20 percent non-Federal share may be comprised of public sector (*e.g.,* State or local) or private sector funding. FRA will not consider any Federal financial assistance [7] or any non-Federal funds already expended (or otherwise encumbered) toward the matching requirement, unless compliant with 2 CFR part 200. In-kind contributions, including the donation of services, materials, and equipment, may be credited as a project cost in a uniform manner consistent with 2 CFR 200.306.

If Amtrak is an applicant, Amtrak may use its ticket and other non-Federal revenues generated from its operations and other sources to satisfy the non-Federal share requirements. Applicants must identify the source(s) of their matching and must clearly and distinctly reflect these funds as part of the total project cost.

Before applying, applicants should carefully review the principles for cost sharing or matching in 2 CFR 200.306. See Section D(3)(a)(iii) for required application information on non-Federal match and Section E for further discussion of FRA's consideration of matching funds in the review and selection process. FRA will approve pre-award costs incurred after announcement of awards consistent with 2 CFR 200.458, as applicable. See *Section D(6).* Cost sharing or matching may be used only for authorized Federal award purposes.

3. Other

a. Project Eligibility: The following capital projects, including acquisition of real property interests, are eligible to receive grants under this NOFO.

1. A project to replace, rehabilitate, or repair infrastructure, equipment,[8] or a facility used for providing intercity passenger rail service to bring such assets into a state of good repair.

2. A project to improve intercity passenger rail service performance, including reduced trip times, increased train frequencies, higher operating speeds, improved reliability, expanded capacity, reduced congestion, electrification, and other improvements, as determined by the Secretary.

3. A project to expand or establish new intercity passenger rail service.

4. A group of related projects described in paragraphs (1) through (3).

5. The planning, environmental studies, and final design for a project or group of projects described in paragraphs (1) through (4).

For projects that are on a shared corridor with Commuter Railroad Passenger Transportation or freight transportation, applicants must clearly demonstrate how the proposed project directly benefits Intercity Passenger Rail Transportation and that funding the proposed project would be a reasonable investment in Intercity Passenger Rail Transportation, independent and separate from consideration of the proposed project's benefits to other transportation purposes. A project that uses rolling stock or equipment originating from a ''country of concern'' or from a state-owned enterprise, as those terms are defined under 49 U.S.C. 20171, is ineligible.

Capital Projects, as further defined in *Section A(2),* may include the acquisition of real property interests, planning, Project Development, Final Design, and Construction. Pre-Construction activities are eligible for funding independently or in conjunction with proposed funding for construction. Projects that include Project Development may include engineering drawings and specifications (scale drawings at the 30% design level, including track geometry as appropriate); design criteria, schematics, and/or track charts that support the development of PE; and work that can be funded in conjunction with developing PE, such as operations modeling, surveying, project work/management plans, preliminary cost estimates, and preliminary project schedules. Project Development funded under this NOFO must be sufficiently developed when complete to support FD or Construction activities. (See *Section D(2)*(a)(xii) for additional information.)

b. Project Component: If an applicant requests funding for a component or set of components of a larger capital project, the project component(s) must be attainable with the award amount and comply with all eligibility

[6] The ''Capital Cost Estimating: Guidance for Project Sponsors,'' is available at: *https://www.fra.dot.gov/Page/P0926.*

[7] See Section D(2)(a)(iii) for supporting information required to demonstrate eligibility of Federal funds for use as match.

[8] The location of the equipment's primary use will determine whether the equipment is eligible to receive funding under this NOFO.

requirements described in *Section C.* In addition, the component(s) must enable independent analysis and decision making, as determined by FRA under NEPA (*i.e.,* have independent utility, connect logical termini, and do not restrict the consideration of alternatives for other reasonably foreseeable rail projects).

c. Application Tracks: Applicants are not limited in the number of projects for which they seek funding. While applications covering multiple tracks are not precluded, FRA generally expects that applications identify only one of the following tracks for an eligible activity: Track 1—Project Planning; Track 2—Project Development; Track 3—FD/Construction.

1. Track 1—Project Planning: Track 1 consists of planning specific to a Capital Project. Examples include the development of a purpose and need study for a proposed capital project; development of conceptual design concepts that establish the type and scope of identified capital improvements; an alternative analysis identifying the costs, benefits, service option, and methodology for eliminating preliminary project alternatives; an environmental analysis that addresses resources and potential environmental effects both to natural and the human environment.

2. Track 2—Project Development: Track 2 consists of projects for eligible Project Development activities. PE examples include PE drawings and specifications (scale drawings at the 30 percent design level, including track geometry as appropriate); design criteria, schematics and/or track charts that support the development of PE; and work that can be funded in conjunction with developing PE, such as operations modeling, surveying, project work/management plans, preliminary cost estimates, and preliminary project schedules. Project Development projects funded under this NOFO must be sufficiently developed when complete to support FD or Construction activities, including with respect to equipment.

3. Track 3—FD/Construction: Track 3 consists of projects for eligible FD and Construction, and project implementation and deployment activities, including with respect to equipment. Applicants must complete all necessary Planning and Project Development stages, including PE and NEPA requirements, prior to moving to the FD/Construction stage of a project. FD funded under this track must resolve remaining uncertainties or risks associated with changes to the design and scope of the Capital Project; address procurement processes; and update and refine the schedule, cost estimate, and plans for financing the project or program to reflect accurately the expected year-of expenditure costs and cash flow projections. Prior to obligation, applicants selected for funding for FD/Construction must demonstrate, in accordance with available FRA guidance, the following to FRA's satisfaction: (A) PE is completed for the proposed project, resulting in project designs that are reasonably expected to conform to all regulatory, safety, security, and other design requirements, including those under the Americans with Disabilities Act (ADA); (B) NEPA is completed for the proposed project; (C) the applicants have entered into the appropriate agreements with key project partners, including infrastructure-owning entities; and (D) a Project Management Plan is complete and up-to-date for managing the implementation of the proposed project, including the management and mitigation of project risks.

D. Application and Submission Information

Required documents for the application are outlined in the following paragraphs. Applicants should, as appropriate, consult available FRA guidance when developing applications. Applicants must complete and submit all components of the application. See *Section D(2)* for the application checklist. FRA welcomes the submission of additional relevant supporting documentation, such as planning, engineering, and design documentation, and letters of support from partnering organizations, which will not count against the Project Narrative 25-page limit.

1. Address To Request Application Package

Applicants may access application materials at *https://www.Grants.gov* and must submit all application materials in their entirety through *https://www.Grants.gov* no later than 5 p.m. ET, on March 7, 2023. Applicants must complete an Authorized Organization Representative (AOR) profile on *www.Grants.gov* and create a username and password. Additional information about the registration process is available at: *https://www.grants.gov/web/grants/applicants/organization-registration.html.*

Applicants are strongly encouraged to apply early to ensure that all materials are received before the application deadline. FRA reserves the right to modify this deadline. General information for submitting applications through *Grants.gov* can be found at: *https://www.fra.dot.gov/Page/P0270.*

FRA is committed to ensuring that information is available in appropriate alternative formats to meet the requirements of persons who have a disability. If you require an alternative version of files provided, please contact Laura Mahoney, Office of the Chief Financial Officer, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; email: *laura.mahoney@dot.gov;* phone: 202–578–9337.

The E-Business Point of Contact at the applicant's organization must respond to the registration email from *Grants.gov* and login at *www.Grants.gov* to authorize the applicant as the AOR. Please note there can be more than one AOR for an organization.

If an applicant experiences difficulty at any point during this process, please call the *Grants.gov* Customer Center Hotline at 1–800–518–4726, 24 hours a day, 7 days a week (closed on Federal holidays). For information and instructions on each of these processes, please see instructions at: *https://www.grants.gov/web/grants/applicants/apply-for-grants.html.*

2. Content and Form of Application Submission

FRA strongly advises applicants to read this section carefully. Applicants must submit all required information and components of the application package to be considered for funding. Applications that are not submitted on time or do not contain all required documentation will not be considered for funding. To support the application, applicants may provide other relevant and available optional supporting documentation that may have been developed by the applicant, especially such documentation that provides evidence of completion of the appropriate Lifecycle Stage(s) of a Capital Project. Additionally, applicants selected to receive funding must satisfy the requirements in 49 U.S.C. 22903 and 22905, including FRA's Buy America requirement and conditions explained in part at *https://www.fra.dot.gov/page/P0185* and further in section F.2 of this notice.

Required documents for an application package are outlined in the checklist below.

i. Project Narrative (see D.2.a).

ii. Statement of Work (see D.2.b.i).

iii. Benefit-Cost Analysis (see D.2.b.ii).

iv. Environmental Compliance Documentation (see D.2.b.iii).

v. Funding Commitment Supporting Documentation (see D.2.b.iii).

vi. SF 424—Application for Federal Assistance.

vii. SF 424C—Budget Information for Construction, or, for an equipment procurement project or non-Construction project, SF 424A—Budget Information for Non-Construction.

viii. SF 424D—Assurances for Construction, or, for an equipment procurement project or non-Construction project, SF 424B—Assurances for Non-Construction.

ix. FRA's F 30—Certifications Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying.

x. SF LLL—Disclosure of Lobbying Activities.

xi. Draft Agreement required under 49 U.S.C. 22905(c)(1), if applicable (see D.2.b.xi).

a. Project Narrative

This section describes the minimum content required in the Project Narrative of grant applications. The Project Narrative must follow the basic outline below to address the program requirements and assist evaluators in locating relevant information.

I. Cover Page, See D.2.a.i
II. Project Summary, See D.2.a.ii
III. Project Funding, See D.2.a.iii
IV. Applicant Eligibility Criteria, See D.2.a.iv
V. Project Eligibility Criteria, See D.2.a.v
VI. Detailed Project Description, See D.2.a.vi
VII. Project Location, See D.2.a.vii
VIII. Grade Crossing Information, if applicable, See D.2.a.viii
IX. Evaluation and Selection Criteria, See D.2.a.ix
X. Project Implementation and Management, See D.2.a.x
XI. Environmental Readiness, See D.2.a.xi

The above content must be provided in a narrative statement submitted by the applicant. The Project Narrative may not exceed 25 pages in length (excluding cover pages, table of contents, and supporting documentation). FRA will not review or consider Project Narratives beyond the 25-page limitation. If possible, applicants should submit supporting documents via website links rather than hard copies. If supporting documents are submitted, applicants must clearly identify the relevant portion of the supporting document with the page numbers of the cited information in the Project Narrative. The Project Narrative must adhere to the following outline.

i. *Cover Page:* include a cover page that lists the following elements in either a table or formatted list:

Project title	
Lead Applicant Name	
Joint Applicant(s) Name(s), if any	
Amount of Federal Funding Requested in this Application	
Proposed Non-Federal Match	
Total Project Cost	
Was a Federal Grant Application Previously Submitted for this Project?	Yes/No.
If Yes, State the Name of the Federal Grant Program and Title of the Project in the Previous Application	Federal Grant Program:
City(-ies), State(s) Where the Project is Located	
Current Project Lifecycle Stage	
Intercity Passenger Rail Service(s) Benefiting from the Project (incl. any Long-Distance Services)	
Infrastructure Owner(s) of Project Assets	
Congressional District(s) Where the Project is Located	
LOI/PFA Requested?	Yes/No

ii. *Project Summary:* Provide a brief 4–6 sentence summary of the proposed project. Include challenges the proposed project aims to address and summarize the intended outcomes and anticipated benefits that will result from the proposed project.

iii. *Project Funding:* Indicate in table format the amount of Federal funding requested, the proposed non-Federal match, and total project cost. For a Major Capital Project seeking funding for the Construction stage the amount of federal funding requested should include the remaining budget needed to complete the Construction Lifecycle Stage. Identify the source(s) of matching and other funds, and clearly and distinctly reflect these funds as part of the total project cost in the application budget. Include funding commitment letters outlining funding agreements, as attachments or in an appendix. Funding commitments must be signed by an authorized representative of the entity providing a Non-Federal match. If Federal funding is proposed as match, demonstrate the applicant's determination of eligibility for such use and the legal basis for that determination. Also, note if the requested Federal funding under this NOFO or other programs must be obligated or spent by a certain date due to dependencies or relationships with other Federal or non-Federal funding sources, related projects, law, or other factors. If applicable, provide the type and estimated value of any proposed in-kind contributions, as well as substantiate how the contributions meet the requirements in 2 CFR 200.306.

For a Major Capital Projects seeking funding for construction and scheduled to enter the Final Design or Construction Lifecycle Stage within two (2) years of the date of the application, provide an annualized budget of the total project cost in year of expenditure dollars based on the Capital Cost Estimate. An applicant should specify if it is seeking a PFA. Additionally, if applicable, applicants should identify and describe project phases and/or delivery elements that could be candidates for subsequent FSP funding, as part of a potential PFA if such funding becomes available. PFA disbursements are not required to align and need not be scheduled to align with project components with independent utility or operational independence, since the project as a whole achieves independent utility and operational independence. However, applicants are encouraged to identify meaningful milestones by which FRA can measure project progress for each forecasted funding request. Finally, applicants must specify whether Federal funding for the project has previously been sought and identify the Federal program and fiscal year of the funding request(s), as well as highlight new or revised information in the FSP-National NOFO application that differs from the application(s) to other financial assistance programs.

EXAMPLE PROJECT FUNDING TABLE

Task #	Task name/project component	Cost	Percentage of total cost
1 2			
Total Project Cost Federal Funds Received from Previous Grant Federal Funding Under this Application Non-Federal Funding/Match Portion of Non-Federal Funding from the Private Sector Portion of Total Project Costs Spent in a Rural Area Pending Federal Funding Requests		Cash: In-Kind:	

iv. *Applicant Eligibility Criteria:* Explain how the lead applicant and joint applicant(s) meet the applicant eligibility criteria outlined in *Section C* of this notice. For public agencies and publicly chartered authorities established by one or more States, the explanation must include relevant legislative language and citations to the applicable enabling legislation. To submit a joint application, the lead applicant must identify the joint applicant(s) and include a signed statement from an authorized representative of each joint applicant entity that affirms the entity joins the application.

For joint applications involving Amtrak and one or more States, Amtrak and the State(s) must provide a cooperative agreement for the project signed by authorized representatives of Amtrak and each State. Joint applications are expected to include a description of the roles and responsibilities of each applicant, including budget and subrecipient information showing how the applicants will share project costs.

v. *Project Eligibility Criteria:* Demonstrate that the proposed project meets the project eligibility criteria in *Section C(3)* of this notice.

vi. *Detailed Project Description:* The applicant must include a detailed project description that expands upon the brief project summary. This detailed description should provide, at a minimum: additional background on the transportation challenges the project aims to address; a summary of current and proposed railroad operations in the project area, to include identification of all railroad owners and operators; typical daily, weekly, or annual train counts by operator, and ridership data for passenger operations; the primary expected project outcomes such as increased ridership, reduced delays, improved rail network asset condition and performance, or similar outcomes and benefits; the expected users and beneficiaries of the project, including all railroad operators and types of passenger or freight rail service operating or proposed to operate in the project area; the specific components and elements of the project; and any other information the applicant deems necessary to justify the proposed project.

vii. *Project Location:* The applicant must include geospatial data for the project, as well as a map of the project's location. Geospatial data can be expressed in terms of decimal degrees for latitude and longitude of at least five decimal places of precision or start and end mileposts designating railroad code and subdivision name. On the map, include the Congressional districts in which the project will take place.

viii. *Grade Crossing Information, if applicable:* For a project that includes grade crossing components, cite specific DOT National Grade Crossing Inventory information, including the railroad that owns the infrastructure (or the crossing owner, if different from the railroad), the primary railroad operator, the DOT crossing inventory number, and the roadway at the crossing. Applicants can search for data to meet this requirement at the following link: *https://railroads.dot.gov/safety-data/fra-safety-data-reporting/crossing-inventory-data-search.*

ix. *Evaluation and Selection Criteria:* The applicant must include a thorough discussion of how the proposed project meets the evaluation and selection criteria as outlined in *Section E* of this notice. If an application does not sufficiently address the evaluation criteria and the selection criteria, it is unlikely to be a competitive application.

Applicants are encouraged to include quantifiable railroad data, such as information on delay, failure or safety incidents, passengers carried (*e.g.,* ridership), daily train movement, or similar metrics. In addition to the qualifiable data, applicants are also encouraged to include qualitative data on accessibility improvements to either new or existing assets such as stations, platforms or rolling stock. To the extent feasible, such railroad metrics should be provided and analyzed discretely for Intercity Passenger Rail and, if applicable, Commuter Rail Passenger Transportation and freight rail transportation services involved in the proposed project.

x. *Project Implementation and Management:* The applicant must describe proposed project implementation and project management arrangements, including between the lead and joint applicants, if any. Include descriptions of the expected arrangements for project contracting, contract oversight and control, change-order management, and conformance to Federal requirements for project progress reporting (see *https://www.fra.dot.gov/Page/P0274*). Describe past experience in managing and overseeing similar projects; the technical qualifications and demonstrated experience of key personnel proposed to lead and perform the technical efforts, and the qualifications of the primary and supporting organizations to fully and successfully execute the proposed project within the proposed timeframe and budget, including a discussion of the factors in 2 CFR 200.206(b); and the proposed approach to assessing and mitigating project risk (these factors may be summarized in the Project Narrative and additional information may be provided as supporting documentation, as applicable).[9] For Major Capital

[9] Project risks, such as procurement delays, environmental permitting or litigation uncertainties, increases in real estate acquisition costs, uncommitted local match, concerns expressed by stakeholders or impacted communities who may be relocated for the project, or lack of legislative approval, affect the likelihood of successful project start and completion. Applicants must identify all material risks to the project and the strategies that the lead applicant and any project partners have undertaken or will undertake to mitigate those risks. The applicant will

Projects and consistent with 49 U.S.C. 22903(a), demonstrate that project management plans include elements such as management controls, relations management, project planning and concept design, environment, design management, project delivery, construction management, construction close out, start up and revenue operation, real estate acquisition and management, and rolling stock acquisition and management (see *https://railroads.dot.gov/training-guidance/resources/project-development*).

xi. *Environmental Readiness:* If the NEPA process is complete, an applicant should indicate the date of completion and provide a website link or other reference to the documents demonstrating compliance with NEPA, which might include a final Categorical Exclusion, Finding of No Significant Impact, or Record of Decision. If the NEPA process is not yet underway, the application should state this. If the NEPA process is underway, but not complete, the application should detail the type of NEPA review underway, where the project is in the process, and indicate the anticipated date of completion of all NEPA-related milestones. If the last agency action with respect to NEPA documents occurred more than three years before the application date, the applicant should describe why the project has been delayed and why NEPA documents have not been updated and include a proposed approach for verifying and, if necessary, updating this material in accordance with applicable NEPA requirements. Additional information regarding FRA's environmental processes and requirements are located at *https://www.fra.dot.gov/environment.*

xii. *DOT Strategic Goals:* Applicants should describe efforts to consider safety, economic strength, environmental sustainability impacts, as well as efforts to improve equity and reduce barriers to opportunity in project planning. In addition, applicants should describe how planning activities and project delivery actions advance good-paying, quality jobs and workforce programs and hiring policies that promote workforce inclusion.

b. Additional Application Elements

Applicants must submit:

i. A Statement of Work (SOW) addressing the scope, schedule, budget, and performance measures for the proposed project if it were selected for award. The SOW must contain sufficient detail, so FRA and the applicant can understand the expected outcomes of the proposed work to be performed and can monitor progress toward completing project tasks and deliverables during a prospective grant's period of performance. Applicants must use FRA's standard SOW, schedule, budget, and performance measures templates to be considered for award. The four required templates are labeled ''Example General Grants—Attachments 2–5'' and are located at *https://www.fra.dot.gov/Page/P0325.* Applications that do not include all four of the grant package templates will be considered incomplete and will not be reviewed.

When preparing the budget, the total cost of a project must be based on the best available information as indicated in cited references that include engineering studies, economic feasibility studies, environmental analyses, and information on the expected use of equipment or facilities. Applicants must include annual budget estimates in year of expenditure dollars for the duration of the project.

For all projects, applicants must provide information about proposed performance measures, as described in *Section F(3)*(c) and required in 2 CFR 200.301. Further, applicants must provide their plan for taking affirmative steps to employ small businesses consistent with 2 CFR 200.321.

ii. A Benefit-Cost Analysis (BCA) consistent with 49 U.S.C. 24911(d)(2)(B)(i), as an appendix to the Project Narrative for each project submitted by an applicant. The BCA should demonstrate in economic terms the merit of investing in the proposed project. The BCA should include anticipated private and public benefits relative to the costs of the proposed project, including the project's anticipated:

1. effects on system and service performance, including as measured by applicable metrics set forth in 49 CFR part 273 (or successor regulations);

2. effects on safety, competitiveness, reliability, trip or transit time, greenhouse gas emissions, and resilience;

3. effects of anticipated positive economic and employment impacts, including development in areas near passenger stations, historic districts, or other opportunity zones;

4. efficiencies from improved connections with other modes; and

5. ability to meet existing or anticipated demand.

The BCA should be systematic, data driven, and examine the trade-offs between reasonably expected project costs and benefits. The BCA for Project Development projects should be for the underlying project, not the just the systems planning or PE/NEPA work itself. For Final Design/Construction projects applicants are required to document project benefits and costs. Estimates of benefits should be presented in monetary terms whenever possible; if a monetary estimate is not possible, the applicant should provide a quantitative estimate (in physical, non-monetary terms, such as crash or employee casualty rates, ridership estimates, emissions levels, energy efficiency improvements, etc.). Applicants must follow the BCA Guidance for Discretionary Grant Programs when preparing a BCA. The guidance is available at *https://www.transportation.gov/office-policy/transportation-policy/benefit-cost-analysis-guidance.* In addition, please also refer to the AQs Webinar on FRA's website (*https://railroads.dot.gov/rail-network-development/training-guidance/webinars-0*) for some rail-specific examples of how to apply the BCA Guidance for Discretionary Grant Programs to FSP Program applications. All benefits claimed for the project must be clearly tied to the expected outcomes of the project. The complexity and level of detail in the BCA prepared for this FSP-National NOFO should reflect the scope, scale, and the appropriate Capital Project Lifecycle stage of the proposed project.

iii. Environmental compliance documentation, as applicable, if a website link is not cited in the Project Narrative.

iv. SF 424—Application for Federal Assistance.

v. SF 424A—Budget Information for Non-Construction or SF 424C—Budget Information for Construction.

vi. SF 424B—Assurances for Non-Construction or SF 424D—Assurances for Construction.

vii. FRA F30—Certification Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying, located at *https://railroads.dot.gov/elibrary/fra-f-30-certifications-regarding-debarment-suspension-and-other-responsibility-matters.*

viii. FRA F 251—Applicant Financial Capability Questionnaire, located at *https://railroads.dot.gov/elibrary/fra-f-251.*

ix. SF LLL—Disclosure of Lobbying Activities.

x. Draft Agreement required under 49 U.S.C. 22905(c)(1), if applicable. As a

assess the greatest risks to the project and identify how the project parties will mitigate those risks. The applicant must include its risk monitoring, management and mitigation strategy and explain management staffing plans and procedures.

condition of a grant under this program for a project that uses rights-of way owned by a railroad, the grantee shall have in place a written agreement between the grantee and the railroad regarding such use and ownership, including any compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with the railroad's employees including terms regulating the contracting of work will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and an assurance that the grantee complies with liability requirements consistent with 49 U.S.C. 28103.

Forms needed for the electronic application process are at *www.Grants.gov.*

3. Unique Entity Identifier and System for Award Management (SAM)

To apply for funding through *Grants.gov*, applicants must be properly registered in SAM before submitting an application, provide a valid unique entity identifier in its application, and continue to maintain an active SAM registration all as described in detail below. Complete instructions on how to register and submit an application can be found at *www.Grants.gov.* Registering with *Grants.gov* is a one-time process; however, it can take up to several weeks for first-time registrants to receive confirmation and a user password. FRA recommends that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application package by the application deadline. Applications will not be accepted after the due date. Delayed registration is not an acceptable justification for an application extension.

FRA may not make a grant award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements, and if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant. Late applications, including those that are the result of a failure to register or comply with *Grants.gov* applicant requirements in a timely manner, will not be considered. If an applicant has not fully complied with the requirements by the submission deadline, the application will not be considered. To submit an application through *Grants.gov*, applicants must follow the directions below in sub-section C.

A. Register With the SAM at *www.SAM.gov*

All applicants for Federal financial assistance must maintain current registrations in the SAM database. An applicant must be registered in SAM to successfully register in *Grants.gov*. The SAM database is the repository for standard information about Federal financial assistance applicants, grantees, and subrecipients. Organizations that have previously submitted applications via *Grants.gov* are already registered with SAM, as it is a requirement for *Grants.gov* registration. Please note, however, that applicants must update or renew their SAM registration at least once per year to maintain an active status. Therefore, it is critical to check registration status well in advance of the application deadline. If an applicant is selected for an award, the applicant must maintain an active SAM registration with current information throughout the period of the award, including information on a grantee's immediate and highest-level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract or grant within the last three years, if applicable. Information about SAM registration procedures is available at *www.sam.gov.*

B. Obtain a Unique Entity Identifier

On April 4, 2022, the Federal government discontinued using DUNS numbers. The DUNS Number was replaced by a new, non-proprietary identifier that is provided by the System for Award Management (*SAM.gov*). This new identifier is called the Unique Entity Identifier (UEI), or the Entity ID. To find or request a Unique Entity Identifier, please visit *www.sam.gov.*

4. Submission Dates and Times

Applicants must submit complete applications to *www.Grants.gov* no later than 5:00 p.m. ET, March 7, 2023. Applicants will receive a system-generated acknowledgement of receipt. FRA reviews *www.Grants.gov* information on dates/times of applications submitted to determine timeliness of submissions. Late applications will be neither reviewed nor considered. Delayed registration is not an acceptable reason for late submission. To apply for funding under this announcement, all applicants are expected to be registered as an organization with *Grants.gov*. Applicants are strongly encouraged to apply early to ensure all materials are received before this deadline.

To ensure a fair competition of limited discretionary funds, no late submissions will be reviewed for any reason, including: (1) failure to complete the *Grants.gov* registration process before the deadline; (2) failure to follow *Grants.gov* instructions on how to register and apply as posted on its website; (3) failure to follow all the instructions in this NOFO; and (4) technical issues experienced with the applicant's computer or information technology environment.

5. Intergovernmental Review

Intergovernmental Review is required for this program. Applicants must contact their State Single Point of Contact to comply with their state's process under Executive Order 12372.

6. Funding Restrictions

Consistent with 2 CFR 200.458, as applicable, FRA will only approve pre-award costs if such costs are incurred pursuant to the negotiation and in anticipation of the grant agreement and if such costs are necessary for efficient and timely performance of the scope of work. Under 2 CFR 200.458, grant recipients must seek written approval from FRA for pre-award activities to be eligible for reimbursement under the grant. Activities initiated prior to the execution of a grant or without FRA's written approval may be ineligible for reimbursement or matching contribution. Cost sharing or matching may be used only for authorized Federal award purposes.

FRA is prohibited under 49 U.S.C. 22905(f) [10] from providing FSP grants for Commuter Rail Passenger Transportation. FRA's interpretation of this provision is informed by the language in 49 U.S.C. 24911; specifically, the eligible capital projects in 49 U.S.C. 24911(c). FRA's primary intent in funding FSP projects is to make reasonable investments in Capital Projects for Intercity Rail Passenger Transportation. Such projects may be located on shared corridors where Commuter Rail Passenger Transportation and/or freight rail also benefit from the project.

7. Other Submission Requirements

For any supporting application materials that an applicant cannot submit via *Grants.gov*, such as oversized

[10] Under 49 U.S.C. 24911(i), Partnership grants are subject to the conditions in 49 U.S.C. 22905.

engineering drawings, an applicant may submit an original and two (2) copies to Ms. Deborah Kobrin, Office of Rail Program Development, Federal Railroad Administration, 1200 New Jersey Ave. SE, Washington, DC 20590; or Mr. Sergio Coronado, Office of Rail Program Development, Federal Railroad Administration, 55 Broadway, Cambridge, MA 02142; phone: 617–571–1213. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, FRA advises applicants to use other means of conveyance (such as courier service) to assure timely receipt of materials before the application deadline. Additionally, if documents can be obtained online, explaining to FRA how to access files on a referenced website may also be sufficient.

Note: Please use generally accepted formats such as .pdf, .doc, .docx, .xls, .xlsx and .ppt, when uploading attachments. While applicants may embed picture files, such as .jpg, .gif, and .bmp in document files, applicants should not submit attachments in these formats. Additionally, the following formats will not be accepted: .com, .bat, .exe, .vbs, .cfg, .dat, .db, .dbf, .dll, .ini, .log, .ora, .sys, and .zip.

E. Application Review Information

1. Criteria: Eligibility, Completeness, and Application Risk Review

FRA will first screen each application for applicant and project eligibility (eligibility requirements are outlined in *Section C* of this notice), completeness (application documentation and submission requirements are outlined in *Section D* of this notice), and the 20 percent minimum non-Federal match.

FRA will then consider applicant risk, including the applicant's past performance in developing and delivering similar projects and previous financial contributions.

A. Evaluation Criteria

FRA will evaluate all eligible and complete applications using the evaluation criteria outlined in this section to determine technical merit and project benefits

i. Technical Merit: FRA will take into account:

1. The degree to which the tasks and subtasks outlined in the SOW are appropriate to achieve the expected outcomes of the proposed project;

2. The technical qualifications and demonstrated experience of key personnel proposed to lead and perform the technical efforts, and the qualifications of the primary and supporting organizations to fully and successfully execute the proposed project within the proposed timeframe and budget;

3. The degree to which the proposed project's business plan considers potential private sector participation in the financing, construction, or operation of the proposed project;

4. The applicant's past performance in developing and delivering similar projects, and previous financial contributions;

5. The degree to which the applicant's proposed approach to assessing and mitigating risk is appropriate for the project;

6. Whether the applicant has, or will have, the legal, financial, and technical capacity to carry out the project; satisfactory continuing access to equipment or facilities; and the capability and willingness to maintain the equipment or facilities;

7. Whether the project has completed necessary Capital Project Lifecycle prerequisites and demonstrates strong project readiness; [11] and

8. Whether the project is consistent with planning guidance and documents set forth by the Secretary of Transportation or otherwise required by law

ii. Project Benefits: FRA will take into account the Benefit-Cost Analysis of the proposed project, including anticipated private and public benefits relative to the costs of the proposed project, including—

1. Effects on system and service performance, including as measured by applicable metrics set forth in part 273 of title 49, Code of Federal Regulations (or successor regulations);

2. Effects on safety, competitiveness, reliability, trip or transit time, greenhouse gas emissions, and resilience;

3. Effects of anticipated positive economic and employment impacts, including development in areas near passenger stations, historic districts, or other opportunity zones;

4. Efficiencies from improved connections with other modes;

5. Ability to meet existing or anticipated demand; and

6. Whether the project services historically unconnected or under-connected communities.

B. Selection Criteria

In addition to the eligibility and completeness review and the evaluation criteria outlined in this section, FRA will apply the following statutory selection criteria:

i. FRA will give preference to eligible projects:

1. For which Amtrak is not the sole applicant;

2. That improve the financial performance, reliability, service frequency, or address the state of good repair of an Amtrak route; and

3. That are identified in, and consistent with, a corridor inventory prepared under the Corridor Identification and Development Program pursuant to section 25101 of the IIJA.[12]

ii. After applying the above preferences, FRA will take in account the following key DOT objectives:

1. *Safety:* FRA will assess the project's ability to foster a safe transportation system for the movement of goods and people, consistent with the Department's strategic goal to reduce transportation-related fatalities and serious injuries across the transportation system. Such considerations will include, but are not limited to, the extent to which the project improves safety at highway-rail grade crossings, reduces incidences of rail-related trespassing, and upgrades infrastructure to achieve a higher level of safety.

2. *Equitable Economic Growth and Job Creation:* FRA will assess the project's ability to contribute to economic progress stemming from infrastructure investment and associated job creation in the industry. Such considerations will include, but are not limited to, the extent to which the project results in high-quality job creation by supporting good-paying jobs with a free and fair choice to join a union, in project construction, and in on-going operations and maintenance, and incorporates strong labor standards, such as through the use of project labor agreements or union neutrality agreements; includes comprehensive planning and policies to promote hiring of underrepresented populations [13] including local and economic hiring preferences [14] and investments in high-

[11] Regarding project readiness, FRA uses a two-year timeframe as a benchmark to assess whether a project is likely to complete the required NEPA steps for the appropriate Project Lifecycle stage described in the application.

[12] The Corridor Identification and Development Program is a new program authorized under IIJA. FRA is in the process of developing this program and Project Pipeline, but it will not be finalized by the time selections are made under this solicitation and projects proposed for funding under this NOFO will not receive this preference.

[13] While underrepresented groups vary based on local demographics and specific construction jobs, such groups may include women, people of color, including Black, Latino, Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color, and individuals with disabilities.

[14] Local and economic hiring preferences are a contract provision requiring a contractor on a

Continued

quality workforce development programs with supportive services, including labor-management programs, to help train, place, and retain people in good-paying jobs or registered apprenticeship, and invests in vital infrastructure assets;

3. *Equity and Barriers to Opportunity:* FRA will assess the project's ability to address equity and barriers to opportunity, to the extent possible within the program and consistent with law. Such considerations will include, but are not limited to, the applicant's plan for using small businesses to complete its project, the extent to which the project improves or expands transportation options, and mitigates the safety risks and detrimental quality of life effects that rail lines can have on communities. This will also include community engagement efforts already taken or planned, the extent to which engagement efforts are designed to meaningfully reach impacted communities, whether engagement is accessible for persons with disabilities or limited English proficient persons within the impacted communities, and how community feedback is taken into account in decision-making.

4. *Climate Change and Sustainability:* FRA will assess the project's ability to reduce the harmful effects of climate change and anticipate necessary improvements to prepare for extreme weather events. Such considerations will include, but are not limited to, the extent to which the project reduces overall lifecycle emissions, promotes energy efficiency, incorporates lower-carbon construction materials, increases resiliency, and recycles or redevelops existing infrastructure.

5. *Transformation of our nation's transportation infrastructure:* FRA will assess the project's ability to expand and improve the nation's rail network, which needs to balance new infrastructure for increased capacity with proper maintenance of aging assets. Such considerations will include, but are not limited to, the extent to which the project adds capacity to congested corridors, builds new connections or attracts new users to passenger rail, and ensures assets will be improved to a state of good repair. In determining the allocation of program funds, FRA may also consider geographic diversity, diversity in the size of the systems receiving funding, and the applicant's receipt of other competitive awards.

project to employ workers or apprentices/trainees from a specified target group or population, as consistent with IIJA Section 25019(a), which is not otherwise allowed by law.

2. Review and Selection Process

FRA will conduct a five-part application review process, as follows:

a. Screen applications for applicant and project eligibility, completeness, the minimum match, and applicant risk including applicable past performance in developing and delivering similar projects;

b. Evaluate remaining applications in order to assign a rating of ''Not Recommended'', ''Acceptable,'' ''Recommended,'' or ''Highly Recommended'' (completed by technical panels applying the evaluation criteria);

c. Review highly rated Major Capital Projects for Letters of Intent and Phased Funding Agreements, as applicable, to determine whether either is appropriate for the project based on project specific characteristics, funding availability, and statutory and policy criteria stated in this NOFO;

d. Review, apply selection criteria, and recommend initial selection of projects for the FRA Administrator's review (completed by a Senior Review Team, which includes senior leadership from the Office of the Secretary and FRA) which may include LOIs or PFAs; and

e. Select recommended awards, including associated interest in issuing Phased Funding Agreements or Letters of Intent, for the Secretary's or his designee's review and approval (completed by the FRA Administrator).

3. Reporting Matters Related to Integrity and Performance

Before making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold of $250,000 (see 2 CFR 200.88 Simplified Acquisition Threshold), FRA will review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)). See 41 U.S.C. 2313.

An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM.

FRA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 62 CFR 200.205.

F. Federal Award Administration Information

1. Federal Award Notices

FRA will announce applications selected for funding in a press release and on FRA's website after the application review period. This announcement is FRA's notification to successful and unsuccessful applicants alike. FRA will contact applicants with successful applications after announcement with information and instructions about the award process. This notification is not an authorization to begin proposed project activities. FRA requires satisfaction of applicable requirements by the applicant and a formal agreement signed by both the grantee and the FRA, including an approved scope, schedule, and budget, before obligating the grant. See an example of standard terms and conditions for FRA grant awards at *https://railroads.dot.gov/elibrary/award-administration-and-grant-conditions.* This template is subject to revision.

2. Administrative and National Policy Requirements

In connection with any program or activity conducted with or benefiting from funds awarded under this notice, grantees of funds must comply with all applicable requirements of Federal law, including, without limitation, the Constitution of the United States; the conditions of performance, nondiscrimination requirements, and other assurances made applicable to the award of funds in accordance with regulations of DOT; and applicable Federal financial assistance and contracting principles promulgated by the Office of Management and Budget (OMB). In complying with these requirements, grantees, in particular, must ensure that no concession agreements are denied or other contracting decisions made on the basis of speech or other activities protected by the First Amendment. If DOT determines that a grantee has failed to comply with applicable Federal requirements, DOT may terminate the award of funds and disallow previously incurred costs, requiring the grantee to reimburse any expended award funds.

Examples of administrative and national policy requirements include: 2 CFR part 200; procurement standards at 2 CFR part 200 Subpart D—Procurement Standards; 2 CFR 1207.317 and 2 CFR 200.401; compliance with Federal civil

rights laws and regulations; disadvantaged business enterprises requirements; debarment and suspension requirements; drug-free workplace requirements; FRA's and OMB's Assurances and Certifications; ADA; safety requirements; NEPA; and environmental justice requirements. Unless otherwise stated in statutory or legislative authority, or appropriations language, all financial assistance awards follow the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards at 2 CFR part 200 and 2 CFR part 1201.

Assistance under this NOFO is subject to the grant conditions in 49 U.S.C. 22905, including protective arrangements that are equivalent to the protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 836) with respect to employees affected by actions taken in connection with the project to be financed in whole or in part by grants subject to 49 U.S.C. 22905, the provision deeming operators rail carriers and employers for certain purposes, and grantee agreements with railroad right-of-way owners for projects using railroad rights-of-way (see D.2.b.xi).[15]

Projects that have not sufficiently considered climate change and sustainability in their planning, as determined by FRA, will be required to do so before receiving funds for construction, consistent with Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (86 FR 7619). In the grant agreement, recipients will be expected to describe activities they have taken, or will take prior to obligation of construction funds that addresses climate change and environmental justice (EJ). Activities that address climate change include, but are not limited to, demonstrating the project will result in significant greenhouse gas emissions reductions; the project supports emissions reductions goals in a Local/Regional/State plan; the project improves disaster preparedness and resilience; and the project primarily focuses on funding for state of good repair and clean transportation options, including public transportation, walking, biking, and micro-mobility. Activities that address EJ include but are not limited to: basing project design on the results of a proven EJ screening tool (developed by another Federal agency such as the EPA, a State agency, etc.); conducting enhanced, targeted outreach to EJ communities; considering EJ in alternatives analysis and final project design; and supporting a modal shift in freight or passenger movement to reduce emissions or reduce induced travel demand.

Projects must consider and address equity and barriers to opportunity in their planning, as determined by FRA, and as a condition of receiving construction funds, consistent with Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (86 FR 7009). The grant agreement will include the grantee's description of activities it has taken, or will take prior to obligation of construction funds that addresses equity and barriers to opportunity. These activities may include, but are not limited to: completing an equity impact analysis for the project; adopting an equity and inclusion program/plan; conducting meaningful, accessible public engagement to ensure underserved communities are provided an opportunity to be involved in the planning process; including investments that either redress past barriers to opportunity or that proactively create new connections and opportunities for underserved communities; hiring from local communities; improving access to or providing economic growth opportunities for underserved, overburdened, or rural communities; or addressing historic or current inequitable air pollution or other environmental burdens and impacts.

To the extent that applicants have not sufficiently considered job quality and labor rights in their planning, as determined by the Department of Labor, the applicants will be required to do so before receiving funds for construction, consistent with Executive Order 14025, *Worker Organizing and Empowerment* (86 FR 22829), and Executive Order 14052, *Implementation of the Infrastructure Investment and Jobs Act* (86 FR 64335). Specifically, the project planning activities and project delivery actions must support: (a) strong labor standards and the free and fair choice to join a union,[16] including project labor agreements, local hire agreements,[17] distribution of workplace rights notices, and use of an appropriately trained workforce; (b) support of high-quality workforce development programs, including registered apprenticeship, labor-management training programs, and supportive services to help train, place, and retain people in good-paying jobs and registered apprenticeships; and (c) comprehensive planning and policies to promote hiring and inclusion for all groups of workers, including through the use of local and economic hiring preferences, linkage agreements with workforce programs that serve underrepresented groups, and proactive plans to prevent harassment.

The Office of Federal Contract Compliance Programs (OFCCP) is charged with protecting America's workers by enforcing equal employment opportunity and affirmative action obligations of employers that do business with the federal government. OFCCP enforces Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. Together these legal authorities make it unlawful for federal contractors and subcontractors to discriminate in employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran.

Consistent with E.O. 11246, *Equal Employment Opportunity* (30 FR 12319, and as amended), all Federally-assisted contractors are required to make good faith efforts to meet the goals of 6.9% of construction project hours being performed by women, in addition to goals that vary based on geography for construction work hours and for work being performed by people of color. Under Section 503 of the Rehabilitation Act and its implementing regulations, affirmative action obligations for certain contractors include an aspirational employment goal of 7% workers with disabilities.

Applications should demonstrate that the recipient has a plan for compliance with civil rights obligations and nondiscrimination laws, including Title VI of the Civil Rights Act of 1964 and implementing regulations (49 CFR 21), the Americans with Disabilities Act of 1990 (ADA), and Section 504 of the Rehabilitation Act, and accompanying regulations. This may include, as applicable, providing a Title VI plan, community participation plan, and other information about the communities that will be benefited and impacted by the project. The Department's and FRA's Office of Civil Rights may provide resources and technical assistance to recipients to

[15] FRA has posted draft guidance to grantees on implementing protective arrangements at *https://www.govinfo.gov/content/pkg/FR-2022-03-04/pdf/2022-04530.pdf* to assist grantees implementing the protective arrangements; and answers to frequently asked questions intended to assist grantees subject to the requirements of 49 U.S.C. 22905(c)(1) at *https://railroads.dot.gov/elibrary/frequently-asked-questions-about-rail-improvement-grant-conditions-under-49-usc-ss-22905c1.*

[16] Federal funds may not be used to support or oppose union organizing, whether directly or as an offset for other funds.

[17] IIJA div. B 25019 provides authority to use geographical and economic hiring preferences, including local hire, for construction jobs, subject to any applicable State and local laws, policies, and procedures.

ensure full and sustainable compliance with Federal civil rights requirements. The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has a Mega Construction Project Program through which it engages with project sponsors as early as the design phase to help promote compliance with non-discrimination and affirmative action obligations. Through the program, OFCCP offers contractors and subcontractors extensive compliance assistance, conducts compliance evaluations, and helps to build partnerships between the project sponsor, prime contractor, subcontractors, and relevant stakeholders. OFCCP will identify projects that receive an award under this notice and are required to participate in OFCCP's Mega Construction Project Program from a wide range of Federally-assisted projects over which OFCCP has jurisdiction and that have a project cost above $35 million. DOT will require project sponsors with costs above $35 million that receive awards under this funding opportunity to partner with OFCCP, if selected by OFCCP, as a condition of their DOT award. Under that partnership, OFCCP will ask these project sponsors to make clear to prime contractors in the pre-bid phase that project sponsor's award terms will require their participation in the Mega Construction Project Program. Additional information on how OFCCP makes their selections for participation in the Mega Construction Project Program is outlined under ''Scheduling'' on the Department of Labor website: *https://www.dol.gov/agencies/ofccp/faqs/construction-compliance.*

It is the policy of the United States to strengthen the security and resilience of its critical infrastructure against both physical and cyber threats. Each applicant selected for Federal funding under this notice must demonstrate, prior to signing of the grant agreement, efforts to consider and address physical and cyber security risks relevant to the transportation mode and type and scale of the project. Projects that have not appropriately considered and addressed physical and cyber security and resilience in their planning, design, and project oversight, as determined by the Department and the Department of Homeland Security, will be required to do so before receiving funds for construction, consistent with *Presidential Policy Directive 21—Critical Infrastructure Security and Resilience and the National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems.* Additional information on cybersecurity performance goals can be found at *https://www.cisa.gov/cpg.*[18]

Assistance under this NOFO is subject to the Buy America requirements in 49 U.S.C. 22905(a) and the Build America, Buy America Act, Public Law 117–58, 70901–52. In addition, as expressed in Executive Order 14005, *Ensuring the Future Is Made in All of America by All of America's Workers* (86 FR 7475), it is the policy of the executive branch to maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States. FRA expects all applicants to comply with that requirement without needing a waiver. However, to obtain a waiver, an applicant must be prepared to demonstrate how they will maximize the use of domestic goods, products, and materials in constructing their project. If an applicant anticipates it may need a waiver, the applicant should indicate the need in its application and submit materials necessary for such requests together with its application.

Grantees must comply with applicable appropriations act requirements. Rights to intangible property under grants awarded under this NOFO are governed in accordance with 2 CFR 200.315. See an example of standard terms and conditions for FRA grant awards at *https://railroads.fra.dot.gov/elibrary/award-administration-and-grant-conditions.* This template is subject to revision.

3. Reporting

a. Progress Reporting on Grant Activity: Each applicant selected for a grant will be required to comply with all standard FRA reporting requirements, including quarterly progress reports, quarterly Federal financial reports, and interim and final performance reports, as well as all applicable auditing, monitoring and close out requirements. Reports may be submitted electronically. Pursuant to 2 CFR 170.210, non-Federal entities applying under this NOFO must have the necessary processes and systems in place to comply with the reporting requirements should they receive Federal funding.

b. Additional Reporting: Applicants selected for funding are required to comply with all reporting requirements in the standard terms and conditions for FRA grant awards including 2 CFR 180.335 and 2 CFR 180.350. If the total value of a selected applicant's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then the applicant must, consistent with 2 CFR part 200 Appendix XII, maintain the information reported to SAM and ensure that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111–212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

c. Performance and Program Evaluation: Recipients and subrecipients are also encouraged to incorporate program evaluation, including associated data collection activities from the outset of their program design and implementation, to meaningfully document and measure their progress towards meeting an agency priority goal(s). Title I of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), Public Law 115–435 (2019) urges Federal awarding agencies and Federal assistance recipients and subrecipients to use program evaluation as a critical tool to learn, to improve equitable delivery, and to elevate program service and delivery across the program lifecycle. Evaluation means ''an assessment using systematic data collection and analysis of one or more programs, policies, and organizations intended to assess their effectiveness and efficiency.'' 5 U.S.C. 311. Credible program evaluation activities are implemented with relevance and utility, rigor, independence and objectivity, transparency, and ethics (OMB Circular A–11, Part 6 Section 290). For grant recipients receiving an award, evaluation costs are allowable costs (either as direct or indirect), unless prohibited by statute or regulation, and such costs may include the personnel and equipment needed for data infrastructure and expertise in data

[18] These performance goals provide a baseline set of cybersecurity practices broadly applicable across critical infrastructure with known risk-reduction value, a benchmark for critical infrastructure operators to measure and improve their cybersecurity maturity, and a combination of recommended practices for IT and OT owners, including a prioritized set of security practices.

analysis, performance, and evaluation. (2 CFR part 200).

d. Performance Reporting: Each applicant selected for funding must collect information and report on the project's performance using measures mutually agreed upon by FRA and the grantee to assess progress in achieving strategic goals and objectives. Examples of some rail performance measures are listed in the table below. The applicable measure(s) will depend upon the type of project. Applicants requesting funding for rolling stock must integrate at least one equipment/rolling stock performance measure, consistent with the grantee's application materials and program goals.

PERFORMANCE MEASURE

Rail measures	Unit measured	Temporal	Primary strategic goal	Secondary strategic goal	Description
Slow Order Miles Reduced.	Miles	Annual	State of Good Repair.	Safety	The number of miles per year within the project area that have temporary speed restrictions (''slow orders'') imposed due to track condition. This is an indicator of the overall condition of track. This measure can be used for projects to rehabilitate sections of a rail line since the rehabilitation should eliminate, or at least reduce the slow orders upon project completion.
Number of Passenger Trains.	Count	Annual	Economic Competitiveness.	Safety	The number of daily passenger trains between city pairs.
Passenger Counts.	Count	Annual	Economic Competitiveness.	State of Good Repair.	Count of the annual passenger boardings and alightings at stations within the project area.
Delay Minutes	Time/Trip	Annual	Economic Competitiveness.	Quality of Life	Point-to-point delay minutes reduced between pre-determined station stops within the project area. This measure demonstrates how track improvements and other upgrades improve operations on a rail line. It also helps make sure the railroad is maintaining the line after project completion.
Track Miles	Miles	One Time	State of Good Repair.	Economic Competitiveness.	The number of track miles replaced, rehabilitated, or added within the project area. This measure can be beneficial for projects building sidings or sections of additional main line track on a railroad.

a. Program Evaluation: As a condition of grant award, grantees may be required to participate in an evaluation undertaken by DOT, or another agency or partner. The evaluation may take different forms such as an implementation assessment across grant recipients, an impact and/or outcomes analysis of all or selected sites within or across grantee, or a benefit/cost analysis or assessment of return on investment. The Department may require applicants to collect data elements to aid the evaluation. As a part of the evaluation, as a condition of award, grantee must agree to: (1) make records available to the evaluation contractor; (2) provide access to program records, and any other relevant documents to calculate costs and benefits; (3) in the case of an impact analysis, facilitate the access to relevant information as requested; and (4) follow evaluation procedures as specified by the evaluation contractor or DOT staff.

G. Federal Awarding Agency Contacts

For further information concerning this Notice, please contact the FRA NOFO Support program staff via email at *FRA-NOFO-Support@dot.gov.* If additional assistance is needed, you may contact Mr. Douglas Gascon; email: *douglas.gascon@dot.gov;* telephone: 202–493–2039; Mr. Sergio Coronado; email: *Sergio.Coronado@dot.gov;* telephone: 617–571–1213; or Ms. Deborah Kobrin; email: *deborah.kobrin@dot.gov;* telephone: 202–493–0765 in FRA's Office of Rail Program Development.

H. Other Information

On May 13, 2022, FRA published a Notice in the **Federal Register** that established and requested expressions of interest in the Corridor Identification and Development Program. Eligible applicants to the Corridor Identification and Development Program, as outlined within 49 U.S.C. 25101, are encouraged to submit an expression of interest. While the expression of interest is non-binding and does not obligate an applicant to pursue the proposed corridor, FRA has begun to use these expressions of interest to engage with stakeholders as the Corridor Identification and Development Program is implemented. Furthermore, once corridors are selected under the Corridor Identification and Development Program, they will receive a statutory selection preference as part of subsequent FSP-National funding opportunities.

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains Confidential Business Information (CBI)''; (2) mark each affected page ''CBI''; and (3) highlight or otherwise denote the CBI portions.

The DOT regulations implementing the Freedom of Information Act (FOIA) are found at 49 CFR part 7 Subpart C—Availability of Reasonably Described Records under the Freedom of Information Act which sets forth rules for FRA to make requested materials, information, and records publicly available under FOIA. Unless prohibited by law and to the extent permitted under the FOIA, contents of application and proposals submitted by successful applicants may be released in response to FOIA requests. In addition, following the completion of the selection process and announcement of awards, FRA may publish a list of all applications received along with the names of the applicant organizations and funding amounts requested. Except for

information withheld under the previous paragraph, FRA may also make application narratives publicly available or share application information within DOT or with other Federal agencies if FRA determines that sharing is relevant to the respective program's objectives.

Issued in Washington, DC.

Amitabha Bose,

Administrator.

[FR Doc. 2022–26610 Filed 12–6–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2010–0145]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on November 9, 2022, Union Pacific Railroad Company (UPRR) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232 (Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices). The relevant FRA Docket Number is FRA–2010–0145.

Specifically, UPRR requests an extension of a waiver granting relief from 49 CFR 232.103(n)(1), *General requirements for all train brake systems,* related to securement of freight cars. UPRR seeks continued approval that the engineering principles used in the design of its Roseville, California, yard, specifically the yard's continuous speed control, ''is a sufficient primary retarder to prevent equipment rollouts and act as an acceptable form of alternative securement.'' In support of its request, UPRR states that it has ''not had any injuries attributable to the use of this securement method'' and that ''the safety of operations is enhanced. . .[as workers are not] risk[ing] personal injury from tying additional handbrakes and climbing on and off equipment.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by February 6, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2022–26552 Filed 12–6–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2022–0095]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that on October 17, 2022, and November 16, 2022, Amtrak petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2022–0095.

Specifically, Amtrak requests permission to remove automatic wayside signals between Park Interlocking at milepost (MP) 46.3 and Roy Interlocking at MP 94.3 on Amtrak's Mid-Atlantic Division, from Main Line Philadelphia to Harrisburg Northeast Corridor. In its petition, Amtrak explains that formerly, the automatic wayside signals served as distant signals to the existing interlockings. However, as Amtrak has fully implemented positive train control, which imposes ''updated standards for cab, no-wayside signal territory to remove all automatic signals[,] including distant signals,'' Amtrak seeks permission to remove 10 signals (at MPs 55.3, 59.2, 64.5, 66.1, 70.8, 71.8, 81.5, 86.0, 92.3, and 96.4). Amtrak states that the removal of the signals will ''eliminate maintenance and operation of unnecessary hardware [that is] no longer needed.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by February 6, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2022–26551 Filed 12–6–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Safety Advisory 22–4 Suicide Prevention Signage on Public Transit

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of Safety Advisory.

SUMMARY: The Federal Transit Administration (FTA) is issuing Safety Advisory 22–4 to encourage rail transit agencies to implement, update, or expand suicide prevention signage and messaging campaigns that apply best practices for deterring suicide attempts. This safety advisory provides guidance on suicide prevention signage and mental health intervention campaigns and provides supporting resources for transit agencies. The FTA's Safety Advisory 22–4, ''Suicide Prevention Signage on Public Transit,''' is available on the agency's website. (*https://www.transit.dot.gov/regulations-and-guidance/safety/fta-safety-advisories*).

FOR FURTHER INFORMATION CONTACT: Joseph DeLorenzo, Associate Administrator for Transit Safety and Oversight, telephone (202) 366–1783 or *Joseph.DeLorenzo@dot.gov.*

Authority: 49 U.S.C. 5329; 49 CFR 1.91 and 670.29.

Nuria I. Fernandez,

Administrator.

[FR Doc. 2022–26574 Filed 12–6–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0091; Notice 1]

Navistar, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Navistar, Inc., (Navistar), has determined that certain model year (MY) 2022–2023 IC Bus school and commercial buses do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 205, Glazing Materials. Navistar filed two noncompliance reports dated November 17, 2021. Navistar petitioned NHTSA on December 16, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Navistar's petition.

DATES: Send comments on or before January 6, 2023.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Jack Chern, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366–0661.

SUPPLEMENTARY INFORMATION:

I. Overview: Navistar determined that side window glazing supplied by Custom Glass Solutions and installed on certain MY 2022–2023 IC Bus school and commercial buses do not fully comply with paragraph S6.2 of FMVSS No. 205, *Glazing Materials* (49 CFR 571.205).

Navistar filed an original noncompliance report dated November 17, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Navistar petitioned NHTSA on December 16, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that they believe this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of Navistar's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Approximately 1,289 MY 2022–2023 IC Bus CE and EV school buses, manufactured between July 26, 2021, and October 7, 2021, and approximately 4 MY 2022 IC Bus CE commercial buses manufactured between August 26, 2021, and September 14, 2021, are potentially involved.

III. Noncompliance: Navistar explains that noncompliance is that the two side pieces of the flat three-piece windshield installed in the subject vehicles was incorrectly marked as ''AS2'' when it should have been marked as ''AS1'' and therefore, does not comply with paragraph S6.2 of FMVSS No. 205.

IV. Rule Requirements: Paragraph S6.2 of FMVSS No. 205 includes the requirements relevant to this petition. A prime glazing manufacturer marks its glazing with the AS number required by section 7 of ANSI/SAE Z26.1–1996 (incorporated by reference, see § 571.5).

V. Summary of Navistar's Petition: The following views and arguments presented in this section, ''V. Summary of Navistar's Petition,'' are the views and arguments provided by Navistar. They have not been evaluated by the Agency and do not reflect the views of the Agency. Navistar describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Navistar explains that there is ''no potential safety consequence'' because the side window glass supplied by Custom Glass Solutions (CGS) in the subject vehicles meets the AS1 requirements as specified by FMVSS No. 205 even though it was incorrectly marked as AS2. Navistar says that other than the incorrect marking, ''the material itself is fully compliant to the standard.'' Navistar included with its petition the test report confirming that the glazing material itself is actually meeting the requirements of AS1 glazing, and that just the labeling was incorrect.

Navistar says that despite the incorrect marking, ''the correct part was sold and shipped to Navistar for use as windshields.'' According to Navistar, the subject noncompliance ''could not result in the wrong replacement part ordered'' because the part is ordered using ''its unique part number and not the 'M number' (which corresponds to the glass construction from which the part is fabricated.''

Navistar concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Navistar no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–26507 Filed 12–6–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Application and Renewal Fees Imposed on Surety Companies and Reinsuring Companies; Increase in Fees Imposed

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Notice of fees imposed on Surety Companies and Reinsuring Companies.

SUMMARY: The Department of the Treasury, Bureau of the Fiscal Service, is increasing the fees it imposes on and collects from surety companies and reinsuring companies, effective January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Melvin Saunders, at (304) 480–5108 or *melvin.saunders@fiscal.treasury.gov;* or Bobbi McDonald, at (304) 480–7098 or *bobbi.mcdonald@fiscal.treasury.gov*.

SUPPLEMENTARY INFORMATION: The Independent Offices Appropriations Act of 1952 (IOAA), codified at 31 U.S.C. 9701, authorizes Federal agencies to establish fees for a service or thing of value provided by the agency to members of the public. Office of Management and Budget Circular A–25 allows agencies to impose user fees for services that confer a special benefit to identifiable recipients beyond those accruing to the general public. Pursuant to 31 CFR 223.22, Treasury imposes fees on surety companies and reinsuring companies seeking to obtain or renew certification or recognition from Treasury. The fees imposed and collected cover the costs incurred by the Government for services performed reviewing, analyzing, and evaluating the companies' applications, financial statements, and other information. Treasury determines the amount of fees in accordance with the IOAA and the Office of Management and Budget Circular A–25, as amended. The change in fees is the result of a thorough analysis of costs associated with the corporate federal surety bond program.

The new fee rate schedule is as follows:

(1) Examination of a company's application for a Certificate of Authority as an acceptable surety or as an acceptable reinsuring company on Federal bonds: $11,300.

(2) Determination of a company's continued qualification for annual renewal of its Certificate of Authority: $ 7,000.

(3) Examination of a company's application for recognition as an Admitted Reinsurer: $4,100.

(4) Determination of a company's continued qualification for annual renewal of its authority as an Admitted Reinsurer: $2,900.

Questions concerning this notice should be directed to the Surety Bond Branch, Special Assets and Liabilities Division, Bureau of the Fiscal Service, Surety Bonds (A–1G), 257 Bosley Industrial Drive, Parkersburg, WV 26106, Telephone (304) 480–6635.

Timothy E. Gribben,

Commissioner, Bureau of the Fiscal Service.

[FR Doc. 2022–26608 Filed 12–6–22; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions

Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On December 2, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. CELESTIN, Rony, Haiti; DOB 24 Jun 1974; POB Hinche, Centre, Haiti; nationality Haiti; Gender Male; National ID No. 06–01–99–1974–06–00005 (Haiti) (individual) [ILLICIT–DRUGS–EO14059]. Sanctioned pursuant to section 1(a)(i) of Executive Order 14059 (E.O. 14059) of December 15, 2021, ''Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade,'' for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

2. FOURCAND, Herve (a.k.a. FOURCAND, Richard Herve; a.k.a. FOURCAND, Richard Lenine Herve), Haiti; DOB 14 Jun 1964; nationality Haiti; Gender Male; National ID No. 01–01–99–1964–06–00256 (Haiti) (individual) [ILLICIT–DRUGS–EO14059]. Sanctioned pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

Dated: December 2, 2022.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–26575 Filed 12–6–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date.

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On December 1, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individuals

1. KHALIL, Hassan (a.k.a. EL KHALIL, Hassan Kazem), Lebanon; DOB 09 May 1979; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport 3030829 (Lebanon) expires 20 Jan 2020 (individual) [SDGT] (Linked To: HIZBALLAH).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism," 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. MANSOUR, Adel Mohamad (Arabic: عادل محمد منصور) (a.k.a. MANSUR, Adil), Hadatha, Bint Jbeil, Nabatieh, Lebanon; DOB 18 May 1966; POB Hadatha, Lebanon; nationality Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: AL-QARD AL-HASSAN ASSOCIATION).

   Designated pursuant to section 1(a)(iii)(E)(1) of E.O. 13224, as amended, for being a leader or official of, AL-QARD AL-HASSAN ASSOCIATION, a person whose property and interests in property are blocked pursuant to E.O. 13224.

3. NESER, Naser Hassan (Arabic: ناصر حسن نصر) (a.k.a. NESR, Nasser Hassan; a.k.a. NISR, Nasir), Mahfouz, Al Ahlam 6, Haret Hreik, Roueiss, Beirut, Lebanon; DOB 20 Apr 1963; POB Kafarser, Lebanon; nationality Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. 288030510000000 (Lebanon) (individual) [SDGT] (Linked To: THE AUDITORS FOR ACCOUNTING AND AUDITING).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or to have acted or purported to act for or on behalf of, directly or indirectly, THE AUDITORS FOR ACCOUNTING AND AUDITING, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Entities

1. AL-KHOBARA FOR ACCOUNTING, AUDITING, AND STUDIES (Arabic: الخبراء المحاسبة والتدقيق والدراسات) (a.k.a. AL KHOBARA CO. ACCOUNTING-AUDITING STUDIES), Hadi Nasrallah Highway, Al-Qard Al-Hasan Building, First Floor, Baabda, Mount Lebanon, Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Registration Number 81396 (Lebanon) [SDGT] (Linked To: MANSOUR, Adel Mohamad).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, ADEL MOHAMAD MANSOUR, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. THE AUDITORS FOR ACCOUNTING AND AUDITING (Arabic: المدققون المحاسبة والتدقيق), Sayed Hadi Nasrallah Street, Al Nakhel Building, 5th floor, Burj Barajne, Beirut, Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Registration Number 278 (Lebanon) issued 22 Feb 2006 [SDGT] (Linked To: DAHER, Ibrahim Ali).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, IBRAHIM ALI DAHER, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Dated: December 1, 2022.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–26578 Filed 12–6–22; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea M. Gacki, Director, tel.: 202–622–2480; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On November 23, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

BILLING CODE 4810–AL–P

Individuals:

1. OSANLOO, Mohammad Taghi (Arabic: محمد تقی اصانلو) (a.k.a. OSANLOO, Mohammad Taqi; a.k.a. OSANLOU, Mohammad Taghi; a.k.a. OSANLOU, Mohammad Taqi; a.k.a. OSANLU, Mohammad Taghi; a.k.a. OSANLU, Mohammad Taqi), Urmia, Iran; DOB 30 Nov 1962; POB Zanjan, Iran; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport G10512748 (Iran) expires 13 Apr 2024; IRGC Brigadier General (individual) [IRGC] [IFSR] [IRAN-HR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS).

   Designated pursuant to section 1(a)(ii)(C) of Executive Order 13553 of September 28, 2010, "Blocking Property of Certain Persons With Respect To Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions" (E.O. 13553), 75 FR 60567, 3 CFR 2010 Comp., p. 253, for having acted or purported to act for or on behalf of, directly or indirectly, the ISLAMIC REVOLUTIONARY GUARD CORPS, a person whose property and interests in property are blocked pursuant to E.O. 13553.

2. ASGARI, Hassan (Arabic: حسن عسگری) (a.k.a. ASKARI, Hassan (Arabic: حسن عسکری)), Sanandaj, Iran; POB Bijar, Iran; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Governor, Sanandaj (individual) [IRGC] [IFSR] [IRAN-HR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS).

   Designated pursuant to section 1(a)(ii)(C) of E.O. 13553 for having acted or purported to act for or on behalf of, directly or indirectly, the ISLAMIC REVOLUTIONARY GUARD CORPS, a person whose property and interests in property are blocked pursuant to E.O. 13553.

3. MORADI, Alireza (Arabic: علیرضا مرادی) (a.k.a. CHEGHAMARANI, Ali Reza Moradi (Arabic: علیرضا مرادي چقامارانی); a.k.a. CHEGHA-MARANI, Ali Reza Moradi; a.k.a. CHEGHAMARANI, Alireza Moradi; a.k.a. CHEGHA-MARANI, Alireza Moradi; a.k.a. CHOGHAMARANI, Ali Reza Moradi; a.k.a. CHOGHAMARANI, Alireza Moradi; a.k.a. MORADI CHOGHAMARANI, Ali Reza Hajji Morad; a.k.a. MORADI HAJIMRAD, Ali Reza; a.k.a. MORADI, Ali Reza; a.k.a. MORADICHOGHAMARANI, Ali Reza), Sanandaj, Iran; DOB 11 Aug 1962; POB Kermanshah, Iran; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport T23715965 (Iran) expires 09 May 2017; National ID No. 3257894351 (Iran); LEF Commander, Sanandaj (individual) [IRAN-HR] (Linked To: LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN).

   Designated pursuant to section 1(a)(ii)(C) of E.O. 13553 for having acted or purported to act for or on behalf of, directly or indirectly, the LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13553.

On November 23, 2021, OFAC published revised information for the following entity on OFAC's SDN List.

Entity:

1. EMERALD FZE (Arabic: اميرالد م م ح), P3-E-LOB, Hamryah Free Zone, Sharjah, United Arab Emirates; E-LOB Office No E-68F-15, United Arab Emirates; Additional Sanctions Information - Subject to Secondary Sanctions; Commercial Registry Number 11579352 (United Arab Emirates); Registration Number 13108 (United Arab Emirates) [IRAN-EO13846] (Linked To: NAFTIRAN INTERTRADE CO. (NICO) LIMITED).

   Designated on July 6, 2022 pursuant to section 1(a)(ii)(A) of Executive Order 13846 of August 6, 2018, "Reimposing Certain Sanctions With Respect to Iran," 83 FR 38939, 3 CFR, 2019 Comp., p. 854 (E.O. 13846) for, on or after November 5, 2018, having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, NAFTIRAN INTERTRADE CO. (NICO) LIMITED.

Dated: November 23, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–26602 Filed 12–6–22; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Notice 2022–61]

Prevailing Wage and Apprenticeship Initial Guidance Under Section 45(b)(6)(B)(ii) and Other Substantially Similar Provisions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice; correction.

SUMMARY: The Internal Revenue Service (IRS) is correcting a notice published in the November 30, 2022, issue of the **Federal Register**. These corrections apply to the notice heading and the date that is 60 days after the Secretary of the Treasury or her delegate (Secretary) publishes the guidance described in the notice.

FOR FURTHER INFORMATION CONTACT: Alexander Scott, CC:PSI:6, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, at (202) 317–6853 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Corrections

In the **Federal Register** of November 30, 2022 (87 FR 73580) in FR Doc. 2022–26108, make the following corrections:

1. On page 73580, in the ''Heading'', replace ''[2022–61]'' with ''[Notice 2022–61]''.

2. On page 73580, in the **SUMMARY** caption, replace ''January 30, 2023'' with ''January 29, 2023'' in penultimate sentence.

3. On page 73580, in the **DATES** caption, replace ''January 30, 2023'' with ''January 29, 2023''.

Oluwafunmilayo A. Taylor,

Branch Chief, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2022–26549 Filed 12–6–22; 8:45 am]

BILLING CODE 4830–01–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meetings

TIME AND DATE: December 8, 2022, 1:30 p.m. to 5:30 p.m., Eastern Time.

PLACE: This meeting will take place at the Holiday Inn, Savannah, Historic District, 520 West Bryan Street, Savannah, GA 31401. This meeting will also be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1–929–205–6099 (US Toll) or 1–669–900–6833 (US Toll) or (ii) 1–877–853–5247 (US Toll Free) or 1–888–788–0099 (US Toll Free), Meeting ID: 921 6857 9375, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is *https://kellen.zoom.us/meeting/register/tJYsceGtqTIpHdGvW1rdWp_GJbo2vONw9CpP.*

Proposed Agenda

I. Welcome and Call To Order—UCR Board Chair

The UCR Board Chair will welcome attendees, call the meeting to order, call roll for the Board, confirm the presence of a quorum, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify publication of the meeting notice on the UCR website and distribution to the UCR contact list via email, followed by subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Board Agenda—UCR Board Chair

For Discussion and Possible Board Action

The proposed Agenda will be reviewed, and the Board will consider adoption.

Ground Rules

➢ Board actions taken only in designated areas on agenda

IV. Approval of Minutes of the October 27, 2022, UCR Board Meeting—UCR Board Chair

For Discussion and Possible Board Action

Draft Minutes from the October 27, 2022, UCR Board meeting will be reviewed. The Board will consider action to approve.

V. Report of FMCSA—FMCSA Representative

The Federal Motor Carrier Safety Administration (FMCSA) will provide a report on relevant activity.

VI. Renewal of UCR Contract With Contractor (DSL Transportation Services, Inc.)—UCR Chief Legal Officer

For Discussion and Possible Board Action

The UCR Chief Legal Officer will discuss a possible extension to the contract between the UCR Plan and DSL Transportation Services, Inc. The Board may take action to approve the extension.

VII. Subcommittee Reports

Audit Subcommittee—UCR Audit Subcommittee Chair

A. Review Recent Updates to the UCR Handbook—UCR Audit Subcommittee Chair, UCR Executive Director

The UCR Audit Subcommittee Chair and UCR Executive Director will lead a discussion on updating and clarifying the language in the UCR Handbook in regard to the usage of the term ''operated'' as it relates to a motor carrier beginning operations. A general update on other revisions to the UCR Handbook will also be provided.

B. Review States' Audit Compliance Snapshot for Registration Rates Audit Percentages for Years 2021 and 2022—UCR Audit Subcommittee Chair

The UCR Subcommittee Chair will review audit compliance rates for the states for registration years 2021 and 2022 and related compliance percentages for FARs, retreat audits, and registration compliance percentages.

C. Discuss Options for Hosting a Monthly Question and Answer Session for State Auditors—UCR Audit Subcommittee Chair and UCR Audit Subcommittee Vice-Chair

The UCR Audit Subcommittee Chair and UCR Audit Subcommittee Vice-Chair will lead a discussion regarding the value of a series of 60-minute virtual question and answer sessions for state auditors.

Finance Subcommittee—UCR Finance Subcommittee Chair

A. UCR Investment Policy—UCR Finance Subcommittee Chair

For Discussion and Possible Board Action

The UCR Finance Subcommittee Chair will lead a discussion on a recommended investment policy that will result in an enhanced cash management and investment strategy designed to increase the interest income that is earned on both administrative reserve funds and excess fees held in the UCR Depository. The Board may take action to approve a UCR Investment Policy. The Finance Subcommittee recommends the UCR Board adopt this proposal.

B. Review of 2023 UCR Administrative Budget—UCR Depository Manager and UCR Finance Subcommittee Chair

For Discussion and Possible Board Action

The UCR Depository Manager and UCR Finance Subcommittee Chair will lead a discussion regarding the proposed 2023 UCR administrative budget. The Board may take action to approve a 2023 administrative budget. The Finance Subcommittee recommends approval of the 2023 proposed administrative budget.

C. Revision to the Finance Subcommittee Meetings in the 2023 Proposed Meetings Schedule—UCR Finance Subcommittee Chair

The UCR Finance Subcommittee Chair will propose a modification to the 2023 schedule to separate the timing of this meeting from the annual NARUC conference.

Education and Training Subcommittee—UCR Education and Training Subcommittee Chair

Update on Current and Future Training Initiatives—UCR Education and Training Subcommittee Chair and UCR Chief of Staff

The Education and Training Subcommittee Chair and the UCR Chief of Staff will provide an update on current and planned future training initiatives and the E-Certificate program.

Industry Advisory Subcommittee—UCR Industry Advisory Subcommittee Chair

Update on Current Initiatives—UCR Industry Advisory Subcommittee Chair and UCR Staff Executive

The UCR Industry Advisory Subcommittee Chair and the UCR Staff Executive will provide an update on current and planned initiatives regarding motor carrier industry concerns.

VIII. Contractor Reports—UCR Executive Director

- *UCR Executive Director's Report*

The UCR Executive Director will provide a report covering recent activity for the UCR Plan.

- *DSL Transportation Services, Inc.*

DSL Transportation Services, Inc. will report on the latest data from the Focused Anomaly Reviews (FARs) program, discuss motor carrier inspection results, pilot projects and other matters.

- *Seikosoft*

Seikosoft will provide an update on recent/new activity related to the National Registration System (NRS).

- *UCR Administrator Report (Kellen)*

The UCR Chief of Staff will provide a management report covering recent activity for the Depository, Operations, and Communications.

IX. Other Business—UCR Board Chair

The UCR Board Chair will call for any other business, old or new, from the floor.

X. Adjournment—UCR Board Chair

The UCR Board Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, November 30, 2022, at: *https://plan.ucr.gov.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

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Part II

Department of Energy

10 CFR Parts 429 and 431

Energy Conservation Program: Test Procedure for Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[EERE–2017–BT–TP–0020]

RIN 1904–AD94

Energy Conservation Program: Test Procedure for Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (''DOE'') is publishing a final rule to amend its test procedures for single package vertical air conditioners and single package vertical heat pumps, collectively referred to as single package vertical units (''SPVUs''). DOE is incorporating by reference the most recent version of the relevant industry test standard, AHRI 390–2021, and amending certain provisions for representations for SPVUs. DOE is also establishing definitions for ''single-phase single package vertical air conditioners with cooling capacity less than 65,000 Btu/h'' and for ''single-phase single package vertical heat pumps with cooling capacity less than 65,000 Btu/h'' to distinguish such equipment from certain residential central air conditioners and heat pumps.

DATES: The effective date of this rule is January 6, 2023. The final rule changes will be mandatory for product testing starting December 4, 2023. The incorporation by reference of certain materials listed in the rule is approved by the Director of the Federal Register on January 6, 2023.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov* under docket number EERE–2017–BT–TP–0020. All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *www.regulations.gov/docket?D=EERE-2017-BT-TP-0020.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Nolan Brickwood, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–4498. Email: *Nolan.Brickwood@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE maintains a previously approved incorporation by reference and incorporates by reference the following industry standards into parts 429 and 431:

AHRI Standard 390 (I–P)–2021 ''Performance Rating of Single Package Vertical Air-Conditioners and Heat Pumps,'' copyright 2021 (AHRI 390–2021).

ANSI/ASHRAE Standard 37–2009, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' ASHRAE approved June 24, 2009 (ANSI/ASHRAE 37–2009).

ANSI/ASHRAE Standard 41.2–1987 (RA 92), ''Standard Methods For Laboratory Airflow Measurement,'' ANSI-reaffirmed April 22, 1992.

Copies of AHRI 390–2021 can be obtained from the Air-conditioning, Heating, and Refrigeration Institute (AHRI), 2311 Wilson Blvd., Suite 400, Arlington, VA 22201, (703) 524–8800, or by going to *www.ahrinet.org/search-standards.aspx.* Copies of ANSI/ASHRAE Standard 37–2009 and ANSI/ASHRAE 41.2–1987 (RA 92) can be obtained from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE), 180 Technology Parkway NW, Peachtree Corners, GA 30092, (404) 636–8400, or by going to *www.ashrae.org/.* (ASHRAE standards co-published with American National Standards Institute (ANSI).)

See section IV.N of this document for a further discussion of these standards.

Table of Contents

I. Authority and Background

Single package vertical air conditioners (''SPVACs'') and single package vertical heat pumps (''SPVHPs''), collectively referred to as single package vertical units (''SPVUs''), are a category of small, large, and very large commercial package air conditioning and heating equipment. (42 U.S.C. 6311(1)(B)–(D); 42 U.S.C. 6313(a)(10)) Accordingly, SPVUs are included in the list of ''covered equipment'' for which the U.S. Department of Energy (''DOE'') is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(B)–(D)) DOE's energy conservation standards and test procedures for SPVUs are currently prescribed at title 10 of the Code of Federal Regulations (''CFR'') subpart F of part 431, §§ 431.97 and 431.96, respectively. The following sections discuss DOE's authority to establish test procedures for SPVUs and relevant background information

regarding DOE's consideration of test procedures for this equipment.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C [2] of EPCA, added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes SPVUs, the subject of this document. (42 U.S.C. 6311(1)(B)–(D))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291; 42 U.S.C. 6311), test procedures (42 U.S.C. 6293; 42 U.S.C. 6314), labeling provisions (42 U.S.C. 6294; 42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6295; 42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6296; 42 U.S.C. 6316).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making other representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and 42 U.S.C. 6316(b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of a given type of covered equipment during a representative average use cycle (as determined by the Secretary) and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered equipment, including SPVUs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)) In addition, if the Secretary determines that a test procedure amendment is warranted, the Secretary must publish proposed test procedures in the **Federal Register**, and afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. (42 U.S.C. 6314(a)(1)(A)(ii))

The U.S. Department of Energy (''DOE'') is also undertaking this rulemaking in part in response to updates to the relevant industry standard. As discussed earlier in this document, SPVUs are a category of commercial package air conditioning and heating equipment. EPCA requires the DOE test procedures for commercial package air conditioning and heating equipment to be the generally accepted industry testing procedure developed or recognized by the Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE''), as referenced in ASHRAE Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' (ASHRAE Standard 90.1). (42 U.S.C. 6314(a)(4)(A)) EPCA further requires that each time the referenced industry test procedure is amended in ASHRAE Standard 90.1, DOE must amend its test procedure to be consistent with the industry update, unless DOE determines in a rulemaking that there is clear and convincing evidence that the updated update industry test procedure would not be representative of an average use cycle or would be unduly burdensome to conduct. (42 U.S.C. 6314(a)(4)(B)(C)) While ASHRAE Standard 90.1 itself has not been updated, the test procedure referenced in 90.1 for SPVUs, AHRI Standard 390–2021, ''Performance Rating of Single Package Vertical Air-Conditioners and Heat Pumps'' (''AHRI 390–2021''), has been updated. DOE is considering the updated AHRI 390–2021 under its lookback review.

DOE is publishing this final rule in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6314(a)(1)(A))

B. Background

DOE's existing test procedures for SPVUs are set forth at 10 CFR 431.96. The Federal test procedure currently incorporates ANSI/AHRI Standard 390–2003 (''ANSI/AHRI 390–2003''), ''Performance Rating of Single Package Vertical Air-Conditioners and Heat Pumps,'' (omitting section 6.4), and it also includes additional provisions in paragraphs (c) and (e) of 10 CFR 431.96 that provide for an optional break-in period and additional provisions for equipment set-up, respectively. DOE established its test procedure for SPVUs in a final rule for commercial heating, air conditioning, and water heating equipment published in the **Federal Register** on May 16, 2012. 77 FR 28928, 28932. ANSI/AHRI 390–2003 was the SPVU test procedure referenced in the edition of ASHRAE Standard 90.1 current at that time; ANSI/AHRI 390–2003 remains the test procedure referenced by ASHRAE Standard 90.1.

On June 24, 2021, AHRI published updates to its test procedure for SPVUs as AHRI 390–2021. Among other things, AHRI 390–2021 maintains the existing efficiency metrics—energy efficiency ratio (''EER'') for cooling mode and coefficient of performance (''COP'') for heating mode—but it also added a seasonal metric that includes part-load cooling performance—the integrated energy efficiency ratio (''IEER'') metric. AHRI 390–2021 also includes additional specifications regarding the test methods and conditions.

DOE published a notice of proposed rulemaking (''NOPR'') on January 14, 2022, presenting DOE's proposals to amend the SPVU test procedure (''January 2022 NOPR''). 87 FR 2490. In the January 2022 NOPR, DOE proposed to amend the test procedures for SPVUs to incorporate by reference AHRI 390–

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

2021. DOE proposed to add a new appendix G, ''Uniform test method for measuring the energy consumption of single package vertical air conditioners and single package vertical heat pumps,'' (''appendix G'') that would include the relevant test procedure requirements for SPVUs for measuring the existing efficiency metrics: (1) EER for cooling mode and (2) COP for heating mode. DOE also proposed to add a new appendix G1 that would include the relevant test procedure requirements for SPVUs for measuring with the updated efficiency metrics: (1) IEER for cooling mode and (2) COP for heating mode. 87 FR 2490, 2492.

Additionally, DOE proposed to define in 10 CFR 431.92 ''single-phase single package vertical air conditioner with cooling capacity less than 65,000 Btu/h'' and ''single-phase single package vertical heat pump with cooling capacity less than 65,000 Btu/h'' as subsets of the broader SPVAC and SPVHP equipment category, in order to clarify what kind of single-phase equipment with cooling capacity less than 65,000 Btu/h was contemplated in the broader definitions of SPVAC and SPVHP established by Congress and what classifies as a consumer product instead. Single-phase equipment meeting these definitions would be subject to the applicable commercial equipment energy conservation standards for SPVACs and SPVHPs, while single-phase products not meeting these definitions would properly be classified as a central air conditioner (''CAC'') and subject to the applicable consumer products energy conservation standards. 87 FR 2490, 2492.

DOE held a public meeting related to the January 2022 NOPR on February 9, 2022 (''NOPR public meeting''). DOE received comments in response to the January 2022 NOPR from the interested parties listed in Table II.1.

TABLE II.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE JANUARY 2022 NOPR

Commenter(s)	Reference in this Final Rule	Document No. in Docket	Commenter type
Appliance Standards Awareness Project, American Council for an Energy-Efficiency Economy, New York State Energy Research and Development Authority, and the Natural Resources Defense Council.	Joint Efficiency Advocates	14	Efficiency/Environmental Advocate.
Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison; collectively, the California Investor-Owned Utilities.	CA IOUs	13	Utility.
Lennox International	Lennox	12	Manufacturer.
GE Appliances, a Haier Company	GE	15	Manufacturer.
Friedrich Air Conditioning	Friedrich	18	Manufacturer.
Northwest Energy Efficiency Alliance	NEEA	16	Efficiency/Environmental Advocate.
Air-Conditioning Heating and Refrigeration Institute[3]	AHRI	17	Trade Association.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[4]

II. Synopsis of the Final Rule

In this final rule, DOE is amending the test procedure for SPVUs to incorporate by reference AHRI 390–2021. DOE is establishing a new appendix G that includes the relevant test procedure requirements for SPVUs for measuring the existing efficiency metrics: (1) EER for cooling mode and (2) COP for heating mode. DOE is also establishing a new appendix G1 that includes the relevant test procedure requirements for SPVUs for measuring the updated efficiency metrics, (1) IEER for cooling mode and (2) COP for heating mode. Appendix G1 provides the test procedure for representations based on IEER and will be mandatory only at such time as compliance is required with amended energy conservation standards based on IEER should DOE adopt standards using such metrics. In conjunction, DOE is amending table 1 to paragraph (b) 10 CFR 431.96 to identify the newly added appendices G and G1 as the applicable test procedures for testing SPVUs.

Additionally, DOE is defining ''single-phase single package vertical air conditioner with cooling capacity less than 65,000 Btu/h'' and ''single-phase single package vertical heat pump with cooling capacity less than 65,000 Btu/h'' as subsets of the broader SPVAC and SPVHP equipment category. Single-phase equipment meeting these definitions are subject to the applicable energy conservation standards for SPVACs and SPVHPs, whereas single-phase products not meeting these definitions would properly be classified as central air conditioners (''CACs'') and subject to the applicable energy conservation standards for CACs.

The adopted amendments are summarized in Table II.1 compared to the test procedure provision prior to the amendment, as well as the reason for the adopted change.

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE

Current DOE TP	Amended TP	Attribution
Incorporates by reference ANSI/AHRI 390–2003 (excluding section 6.4).	Incorporates by reference AHRI 390–2021, which includes the following changes. —Includes a new energy efficiency descriptor, IEER, which incorporates part-load performance.	Adopt industry test procedure.

[3] AHRI's comment was received 6 days after the comment submission deadline. DOE will generally not consider late-filed comments, but if DOE considers one late comment, it will consider all late comments. DOE considered the late comment in this case primarily because of the short duration between the comment's filing and the close of the comment period.

[4] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for SPVUs. (Docket No. EERE–2017–BT–TP–0020, which is maintained at *www.regulations.gov*) The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE—Continued

Current DOE TP	Amended TP	Attribution
	—Provides direction and accompanying definitions for determining whether a unit is tested as a ducted or non-ducted unit. —Directs that the outdoor air-side attachments used for testing must be specified by the manufacturer in the supplemental testing instructions. —Includes refrigerant charging instructions for cases where they are not provided by the manufacturer. —Specifies tolerances for achieving the rated airflow and/or minimum external static pressure (''ESP'') during testing and specifies how to set indoor airflow if airflow and ESP tolerances cannot be simultaneously met. ≤—Incorporates specifications for measuring outdoor air conditions. —Requires data be recorded at equal intervals of 5 minutes or less over a 30-minute measurement period. —Clarifies that test results for outdoor air enthalpy method are based on results without test apparatus connected. —Defines the term ''manufacturer's installation instructions'' and includes hierarchy of precedence if multiple instructions are included.	
Only includes definitions for the equipment categories; ''Single Package Vertical Air Conditioner'' and ''Single Package Vertical Heat Pump''.	Includes additional definitions: ''single-phase single package vertical air conditioner with cooling capacity less than 65,000 Btu/h'' and ''single-phase single package vertical heat pump with cooling capacity less than 65,000 Btu/h''.	Explicitly delineate SPVUs from other covered products.
Does not include provisions for certain components.	Provides instructions for testing SPVUs with certain specific components. This includes: —a list of specific components that must be present for testing, specified in 10 CFR 429.43; —provisions for testing units with certain specific components, specified in appendix G1.	Establish provisions for testing with certain components.

DOE has determined that the amendments would not be unduly burdensome. Furthermore, DOE has determined that the amended test procedure in appendix G as described in section III of this final rule would not alter the measured efficiency of SPVUs or require retesting solely as a result of DOE's adoption of the amendments to the test procedure. Use of the updated industry test procedure provisions in appendix G1 and the related amendments to representation requirements in 10 CFR 429.43 will not be required until the compliance date of any amended standards denominated in terms of IEER. Additionally, DOE has determined that the amendments would not increase the cost of testing. Discussion of DOE's actions are addressed in detail in section III of this final rule.

The effective date for the amended test procedures adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the amended test procedures beginning 360 days after the publication of this final rule.

III. Discussion

A. Scope of Applicability

EPCA, as amended by the Energy Independence and Security Act of 2007 (''EISA 2007''), Public Law 110–140 (Dec. 19, 2007), defines ''single package vertical air conditioner'' and ''single package vertical heat pump'' at 42 U.S.C. 6311(22) and (23), respectively. In particular, single package vertical air conditioners can be single- or three-phase; must have major components arranged vertically; must be an encased combination of components; and must be intended for exterior mounting on, adjacent interior to, or through an outside wall. Single package vertical heat pumps are single package vertical air conditioners that use reverse cycle refrigeration as their primary heat source and may include secondary supplemental heating by means of electrical resistance, steam, hot water, or gas. DOE codified the statutory definitions into its regulations at 10 CFR 431.92. Additionally, EPCA established initial equipment classes for SPVUs, including those with a capacity less than 65,000 Btu/h based on phase. (42 U.S.C. 6313(a)(10)(A)(i)–(ii) and (v)–(vi))

DOE currently defines an SPVAC as air-cooled commercial package air conditioning and heating equipment that: (1) is factory-assembled as a single package that: (i) has major components that are arranged vertically; (ii) is an encased combination of cooling and optional heating components; and (iii) is intended for exterior mounting on, adjacent interior to, or through an outside wall; (2) is powered by a single- or 3-phase current; (3) may contain 1 or more separate indoor grilles, outdoor louvers, various ventilation options, indoor free air discharges, ductwork, well plenum, or sleeves; and (4) has heating components that may include electrical resistance, steam, hot water, or gas, but may not include reverse cycle refrigeration as a heating means. 10 CFR 431.92. Additionally, DOE defines an SPVHP as a single package vertical air conditioner that: (1) uses reverse cycle refrigeration as its primary heat source; and (2) may include secondary supplemental heating by means of electrical resistance, steam, hot water, or gas. *Id.* The Federal test procedures are applicable to SPVUs with a cooling capacity less than 760,000 Btu/h. (42 U.S.C. 6311(8)(D)(ii))

In the January 2022 NOPR, DOE explained that reading the definitions of SPVUs and CACs [5] in isolation, certain single-phase air conditioners and heat pumps with cooling capacity less than 65,000 Btu/h and with their components arranged vertically could be understood to be SPVUs, as opposed to CACs. 87 FR

[5] EPCA defines a ''central air conditioner'' as a product, other than a packaged terminal air conditioner, which is powered by single-phase electric current, air-cooled, rated below 65,000 Btu per hour, is not contained within the same cabinet as a furnace with a rated capacity above 225,000 Btu per hour, and is a heat pump or a cooling only unit. (42 U.S.C. 6291(21))

2490, 2493–2494. However, DOE had previously explained that the definitions of SPVUs and CACs under EPCA must be read in the context of DOE's authority to regulate certain consumer products (covered products) and certain industrial equipment (covered equipment); under EPCA a product cannot be both covered equipment and a covered product as the definition of covered equipment excludes covered products. 79 FR 78613, 78625 (Dec. 30, 2014). ''Covered products'' are certain consumer products explicitly set forth in the statute, as well as consumer products that have been classified as a covered product under 42 U.S.C. 6292(b). EPCA defines ''consumer product,'' in part, as an article which, to any significant extent, is distributed in commerce for personal use or consumption by individuals. (42 U.S.C. 6291(1)(B)) As discussed in the January 2022 NOPR, CACs are covered products, and a product can only be classified as an SPVU, and, therefore, industrial equipment under EPCA, if it does not meet the definition of any covered product, including CACs. 87 FR 2490, 2494.

To clarify the distinction between SPVUs as industrial equipment and CACs as covered consumer products, DOE proposed in the January 2022 NOPR to add specific definitions for ''single-phase single package vertical air conditioner with cooling capacity less than 65,000 Btu/h'' and ''single-phase single package vertical heat pump with cooling capacity less than 65,000 Btu/h'' to explicitly identify those design characteristics specific to models that are not of a type distributed in commerce for personal use or consumption by individuals, and therefore are not consumer products or CACs. The current definitions of SPVAC and SPVHP at 10 CFR 431.92 allow for both wall-mounted and floor-mounted units, and either may use single-phase or three-phase power. DOE proposed in the January 2022 NOPR to include certain characteristics as part of these definitions in order to evidence that this equipment should be properly classified as covered equipment and SPVUs rather than covered products and CACs, and that they would likely not be of a type distributed to any significant extent in commerce for personal use or consumption by individuals. Specifically, DOE preliminarily determined that weatherization, or in the case of non-weatherized units, the presence of optional air ventilation provisions, represent key design characteristics that indicate use in commercial applications. DOE did not identify any products intended for consumer applications with these design characteristics. 87 FR 2490, 2493–2495.

DOE proposed to define ''single-phase single package vertical air conditioner with cooling capacity less than 65,000 Btu/h'' and ''single-phase single package vertical heat pump with cooling capacity less than 65,000 Btu/h'' as SPVACs and SPVHPs, respectively, that are either (1) weatherized, determined by a model being denoted for ''Outdoor Use'' or marked as ''Suitable for Outdoor Use'' on the equipment nameplate; or (2) non-weatherized and have optional ventilation air provisions available with the ability to draw in and condition a minimum of 400 CFM of outdoor air. 87 FR 2490, 2495.

DOE also proposed to amend the definitions of ''single package vertical air conditioner'' and ''single package vertical heat pump'' to state that those definitions include the equipment within the newly proposed definitions of SPVACs and SPVHPs, respectively, with cooling capacity less than 65,000 Btu/h. 87 FR 2490, 2495.

In regard to determining if a unit is capable of providing 400 cubic feet per minute (''CFM'') of outdoor air, DOE proposed to include provisions in 10 CFR 429.134 that specify the method of measurement of the maximum outdoor ventilation airflow rate. DOE proposed to specify that the outdoor ventilation airflow rate should be set up and measured in accordance with ASHRAE 41.2–1987, ''Standard Methods for Laboratory Airflow Measurement,'' and Section 6.4 of ASHRAE 37–2009. DOE also proposed specifications to clarify how these provisions are applied to measure the outdoor ventilation airflow rate. 87 FR 2490, 2495. As discussed in the January 2022 NOPR, DOE preliminarily determined that units for commercial applications provide sufficient ventilation airflow to meet commercial building ventilation requirements and specify ventilation airflow as low as 400 CFM. DOE preliminarily determined that units for consumer applications, including multi-family applications, typically have little or no capability for ventilation, with ventilation airflow only as high as 120 CFM. Therefore, DOE proposed 400 CFM as the characteristic applicable to SPVUs. 87 FR 2490, 2494–2495. For models meeting the proposed amended SPVU definitions, DOE is able to conclude from these characteristics that such units are properly categorized as SPVUs and that they are unlikely to serve or be distributed in commerce for personal use or consumption as covered products.

In response to the proposed definitions in the January 2022 NOPR, Lennox commented that a critical factor for them and the heating, ventilating, air conditioning (HVAC) industry is to ensure current products and new entries into the market are classified consistently across manufacturers. Lennox stated they generally supported DOE's effort to ensure current equipment and new entries into the market are classified consistently across manufacturers, and generally supported the distinguishing definitions proposed in the January 2022 NOPR. (Lennox, No. 12, p. 1) Furthermore, they stated that the distinguishing characteristics of outdoor ventilation airflow rate in CFM and weatherization are conceptually acceptable as long as characteristics like CFM thresholds are reasonably set and appropriately characterize the equipment. (Lennox, No. 12, p. 2)

The CA IOUs commented that they agreed with DOE's conclusion that certain single-phase products currently classified as SPVUs satisfy the regulatory definition of consumer CAC, and supported the clarification that those products should be rated as CACs. The CA IOUs commented that manufacturer literature and website review confirms the installation of such products in consumer applications such as apartments, condominiums, and student and senior housing, and that these applications are no different from the installations for space-constrained consumer products. CA IOUs stated that DOE's proposed approach facilitates consistency in the treatment of products intended for residential use. (CA IOUs, No. 13, pp. 1–2) CA IOUs also supported DOE's proposal to designate certain single-phase equipment as commercial and industrial equipment, but urged DOE to test such equipment with a cooling capacity less than 65,000 Btu/h using AHRI Standard 210/240–2023. (CA IOUs, No. 13, p. 2) They stated that the proposed definitions would otherwise be inconsistent with DOE's treatment of other single-package consumer products with a cooling capacity less than 65,000 Btu/h that are optionally capable of providing commercial levels of ventilation air or are weatherized, and urged DOE to follow DOE precedents and use AHRI Standard 210/240–2023. They recognized that energy conservation standards set for this equipment in a subsequent rulemaking may need to be different than other equipment, but noted that using the same test procedure for all products that compete in the market would enable consumer

comparison of the efficiency metrics. (CA IOUs, No. 13, p. 2)

Friedrich opposed DOE's proposed definitions requirement that units must have the ability to provide a minimum of 400 CFM of outdoor air to qualify as an SPVU. (Friedrich, No. 18, p. 1) Friedrich commented that it is their understanding that this proposed requirement is irrespective of whether the unit is weatherized or non-weatherized. Friedrich commented that the proposed 400 CFM outdoor air requirement would be between 61 to 114 percent of the application supply airflow for their equipment, and that conditioning outdoor air that makes up such a large portion of the supply air will lead to higher energy consumption for those commercial sites, a decrease in occupancy comfort, and possibly humidity issues. Friedrich opposed DOE's statement that it identified each unit on the market as meeting this outdoor ventilation airflow requirement, noting that one of their specific product lines was not considered. (Friedrich, No. 18, pp. 1–2) Friedrich stated that their affected units have been tested according to AHRI 390 since 2005. They commented that their units are installed in hotels and other commercial locations within a closet, and that these installations typically have short discharge ducts, which is different from CACs. They stated that the exterior wall is designed with a large cutout area for the heat exchangers of these equipment. (Friedrich, No. 18, p. 2) Friedrich commented that this change will result in a change in minimum efficiency, and the current installed base will be left without a replacement option. They stated that this would necessitate a substantial change to building infrastructure because SPVAC and SPVHP replacements' unit size and method are designed into the building, and these substantial changes may compromise the integrity of building structure. (Friedrich, No. 18, p. 3)

Friedrich also opposed DOE's classification of the primary market for SPVUs in its review of the ventilation requirements specified in ANSI/ASHRAE Standard 62.1–2019, ''Ventilation for Acceptable Indoor Air Quality,'' as excluding hotels and motels. Friedrich stated that one of its model lines is installed in hotels, hospitality, and other light commercial lodging locations in conjunction with Dedicated Outdoor Air Systems (''DOAS'') to meet ASHRAE Standard 62.1–2019 ventilation requirements. (Friedrich, No. 18, p. 2)

AHRI questioned the proposed outdoor ventilation airflow requirement, noting that some standards (including California's Title 24 and ASHRAE 90.1) are looking to lower the threshold of economizing requirements for exterior-mounted products installed in buildings that are three stories or higher to 33,000 Btu/h. (Public Meeting Transcript, No. 11, p. 13) The CA IOUs commented that Title 24 does not require equipment that serves dwelling units to include an economizer, noting that requirements for multifamily buildings have been moved to Subchapter 11 Multifamily Buildings—Performance and Prescriptive Compliance Approaches and provides an exception for systems serving dwelling units. They further commented that Draft Addendum to ASHRAE 90.1–2019 will not require indoor equipment with a cooling capacity of less than 54,000 Btu/h to include an economizer. This proposal reduces the system cooling capacity threshold for economizing to 33,000 Btu/h from 54,000 Btu/h, but only for ''fan-cooling units located outside the building.'' (CA IOUs, No. 13, p. 4)

GE stated that DOE has neither the authority nor the justification to redefine the SPVU product class, and that DOE cannot and should not create a separate product class for SPVUs with cooling capacity below 65,000 Btu/h. (GE, No. 15, p. 2) Further, GE commented that the definition of SPVU is set by statute and that DOE has identified no authority that permits it to modify this statutory definition through regulation. GE also commented that the definition of SPVUs is included in ASHRAE 90.1 which is recognized by EPCA as the industry standard for commercial products. They noted that the presence of SPVUs in ASHRAE 90.1 strongly indicates SPVUs are commercial, not consumer products. GE also commented that SPVUs with cooling capacity under 65,000 BTU/hr are marketed and sold as commercial products into commercial buildings, including hotels, dormitories, nursing homes and other medical care facilities, and senior housing communities. GE provided marketing material for their equipment and stated that it demonstrates that these products are marketed for commercial use. (GE, No. 15, p. 2) GE also commented that DOE should not change a product class definition through a test procedure rulemaking. GE stated that should DOE make the change it is proposing, it should do so only through a standards rulemaking and that to do otherwise, DOE would be effectively establishing new efficiency standards for existing products without EPCA's statutorily mandated 5-year compliance period. (GE, No. 15, p. 2)

AHRI characterized DOE's proposal as to define single-phase SPVAC and SPVHPs with cooling capacity less than 65,000 Btu/h as one reclassifying single-phase SPVAC and SPVHPs as space constrained consumer central air conditioners and heat pumps, and disagreed with this proposal because SPVUs are classified as a type of commercial air conditioner under EPCA. (AHRI, No. 17, p. 5) AHRI noted that EPCA defines industrial equipment as any article of equipment of certain specified types that consumes, or is designed to consume, energy, which is distributed to any significant extent for industrial and commercial use, and which is not a covered product as defined, without regard to whether such article is in fact distributed in commerce for industrial or commercial use. AHRI said that the definition for SPVUs created by Congress in 2007 was the definition in AHRI 390–2003, and that Congress in choosing this definition meant to adopt AHRI's definition as it was implemented by AHRI in testing and certifying SPVU models under AHRI 390–2003. (AHRI, No. 17, pp. 5–6) AHRI further contended that DOE should recognize that the models AHRI lists in its directory are SPVUs as they have their components arranged vertically and meet the definition of AHRI 390–2003, and that they are not consumer products or CACs. (AHRI, No. 17, p. 6)

AHRI asserted that SPVUs fall squarely within the purview of ASHRAE 90.1, which did not amend the definition to exclude any subset of the broader SPVAC and SPVHP categories. (AHRI, No. 17, p. 6) AHRI noted that what it calls smaller SPVUs are often designed to be installed through-the-wall in hotels, apartments, dormitories, and multi-family residential buildings, but disagreed that these applications could lead to these units being classified as consumer products. AHRI commented that the scope of ASHRAE 90.1, which is the minimum energy code for commercial buildings, covers multifamily structures of more than three stories as well as hotels and dormitories. AHRI stated that it is to be expected that certain SPVUs and other HVAC products listed in ASHRAE 90.1 would be used in these commercial applications covered by ASHRAE 90.1. AHRI noted that many SPVUs are sold in the same applications as packaged terminal equipment and DOE is not now questioning the use of package terminal equipment in these commercial applications. They further stated that a key distinction between SPVUs and residential products is that they are not

sold directly to consumers, and that SPVUs are incorporated into the design of the building and usable spaces therein. AHRI continued that SPVUs are sold to commercial entities that build, own, or operate the building, and that these entities also own and maintain the products. AHRI said that consumers are not directly involved in the selection of the units or in the sale transactions, which would be the case for a ''consumer product.'' (AHRI, No. 17, p. 7)

AHRI contended that the products in question listed in its Directory meet the EPCA definition of SPVUs and AHRI maintains that DOE cannot recategorize a subset of products on assertions that those may be occasionally misapplied in the field. AHRI commented that DOE has not provided evidence of what AHRI categorizes as SPVUs being applied in any substantial number in single-family homes, or multi-family homes below three stories. AHRI also stated that for products marketed toward multifamily buildings over three stories, some manufacturers have chosen to rate certain product lines to AHRI Standard 210/240 because these product lines appear to have multi-stage compressors that do not benefit from efficiency distinction using a full-load performance method, such as AHRI Standard 390–2003. AHRI stated that now that AHRI 390–2021 has published and includes a part-load efficiency metric, they expect manufacturers to no longer have reason to use the part-load performance of another industry test standard to market products effectively. (AHRI, No. 17, pp. 7–8)

AHRI commented that the definition of ''space constrained product'' at 10 CFR 430.2 cannot accommodate the full range of units at issue due to the definition's maximum capacity cap of 30,000 Btu/h. Therefore, AHRI stated that DOE's proposal would split product lines into part residential and part commercial. AHRI noted that these proposed definitions would subject products between 30,000 and 65,000 Btu/h to the substantially higher efficiencies and regional standards of CACs. AHRI commented that definitionally, space-constrained residential products must be, ''currently usually installed in single-family homes,'' but that no one contends that these products are installed in single family homes. Further, AHRI questioned how SPVUs, which were established as a commercial category in 2007, would meet the portion of the space-constrained products definition that limits inclusion to product types that were available for purchase in the United States as of December 1, 2000. (AHRI, No. 17, pp. 8–9)

DOE presents the relevant history here in support of DOE's determination regarding the differentiation between CACs and SPVUs.

In an energy conservation standards NOPR for CACs, DOE stated that it understood that SPVUs are not distributed for personal use or consumption by individuals, and therefore are commercial equipment. 65 FR 59589, 59610 (Oct. 5, 2000). As a result, this equipment would have been subject to standards for commercial package air conditioning and heating equipment. *Id.* In the subsequent final rule published on January 22, 2001, DOE established a separate CAC class for space-constrained products, which included through-the-wall (''TTW'') products but did not establish standards for them, and announced an intent to go through a rulemaking for space-constrained products. 66 FR 7169, 7196–7197. In 2004, DOE amended the CAC standards, establishing separate standards for space constrained products and TTW products, with the standards specific for TTW products applicable only to products manufactured prior to January 23, 2010. For products manufactured after January 23, 2010, the standards for space constrained products applied to these TTW air conditioners and heat pumps. 69 FR 50997, 50998 (Aug. 17, 2004).

Beginning in 2002, ASHRAE first classified SPVU as a separate equipment class, through addendum ''d'' to ASHRAE 90.1–2001 and, later, addendum ''b'' to ASHRAE 90.1–2004. DOE reviewed these changes but took no action because SPVU equipment was subject to standards for commercial package air conditioning and heating equipment, and Energy Policy Act of 2005 (Pub. L. 109–58) had limited DOE's authority for this equipment. 72 FR 10038, 10046–10047 (Mar. 7, 2007). In 2007, Congress established definitions and equipment classes specific for SPVUs (through the EISA 2007; Pub. L. 110–140), which DOE codified in 2009. (74 FR 12058 (Mar. 23, 2009)) Compliance with these SPVU standards was required starting January 1, 2010.

In early 2011, ASHRAE put forward proposed addendum ''i'' to ASHRAE 90.1–2010 to increase its efficiency standards for SPVU while establishing separate equipment classes with less-stringent efficiency levels for nonweatherized space constrained single-package vertical units. This proposal was formally incorporated into ASHRAE 90.1–2013. In an April 2014 Notice of Data Availability (''April 2014 NODA'') for certain industrial equipment including SPVUs, DOE, upon its review of the market of what ASHRAE Standard 90.1 classified in a new equipment class for SPVUs used in space-constrained applications as ''nonweatherized space constrained single-package vertical unit[s],'' identified certain models of SPVUs in the AHRI Directory categorized as ''space constrained'' that were previously classified by DOE as TTW CAC. 79 FR 20114, 20122–23 (April 11, 2014). DOE noted that it is in this TTW CAC product class that DOE expressly contemplated residential space-constrained units, including those models previously classified as TTW that manufacturers were then attempting to classify as SPVUs. *Id.* The re-classification of these models by manufacturers was made despite no apparent changes in technology or features, or any other indication that would demonstrate that commercial classification became more appropriate than residential classification. *Id.* DOE explained that to the extent that a unit meets the definition of ''central air conditioner'' (*see* 42 U.S.C. 6291(21); 10 CFR 430.2), a consumer product, it is excluded from the definition of industrial equipment (*see* 42 U.S.C. 6311(2)(A)(iii)), and therefore cannot be covered equipment. 79 FR 20114, 20123. DOE concluded that allowing models of a product type sold for personal use to instead be classified as commercial equipment simply because it is also of a type sold for commercial or industrial uses would allow those products to evade DOE's standards for consumer products and be contrary to EPCA. *Id.*

DOE defined and established standards for space constrained CACs, including TTW units, prior to EISA 2007, which established standards specific to SPVU. 69 FR 50997, 50998. There is no indication that the SPVU provisions in EISA 2007's amendments to EPCA reclassified or were intended to reclassify products that were previously covered as covered products (*i.e.,* space constrained and TTW CAC) as commercial equipment; instead, the new provisions intended to establish a new class for a different type of commercial equipment.

In response to GE's and Friedrich's assertions that the product lines referenced in their comments are commercial equipment, and AHRI's comments regarding the differentiation between commercial equipment and consumer products, DOE reiterates that EPCA defines ''consumer product'' and ''industrial equipment'' as mutually exclusive. Specially, EPCA defines

''industrial equipment'' as any article of equipment of certain specified types that consumes or is designed to consume energy, which is distributed in commerce to any significant extent for industrial and commercial use, and *which is not a covered product as defined in 42 U.S.C. 6291(2),* without regard to whether such article is in fact distributed in commerce for industrial or commercial use. (42 U.S.C. 6311(2)(A) (emphasis added)) A covered product is a consumer product of a type specified in 42 U.S.C. 6292. EPCA defines ''consumer product'' as any article: (1) of a type that consumes or is designed to consume energy, and, to any significant extent, is distributed in commerce for personal use or consumption by individuals, (2) without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual. (42 U.S.C. 6291(1)) EPCA specifies that CACs are covered consumer products. (42 U.S.C. 6292(3))

As noted, the definition of ''consumer product'' is not limited to products used in single-family homes, and instead covers products that, in part, are distributed in commerce for *personal use or consumption by individuals. Id.* (emphasis added). As discussed in the January 2022 NOPR, products serving a household, including a household in a multi-family building, are for personal use by individuals and are serving consumer applications rather than commercial or industrial applications. 87 FR 2490, 2494.

In addition, based on the similarities between units distributed for use in multi-family applications and those units distributed for commercial lodging applications referenced by GE and Friedrich, DOE finds that such units may still be of a type distributed in commerce for personal or individual use and therefore may be regulated as consumer products. (*See* 42 U.S.C. 6291(1)(B)) These products are only offered in single-phase electrical configurations, are non-weatherized, serve individual rooms, and are designed to be installed in closets or other enclosures through an opening in the exterior wall, with supply air ducts to distribute conditioned air to the occupied space. These products meet the definition of CACs, and have characteristics too similar to other CACs to allow clear distinction between commercial and consumer use. They are therefore of a type distributed in commerce for personal or individual use, and such products are consumer products. DOE also recognizes that the definition of space constrained products specifies, in part, that such products are substantially smaller than those of other units that are currently usually installed in site-built single-family homes and of a similar cooling capacity, and, if a heat pump, heating capacity. 10 CFR 430.2. The definition, however, does not require space constrained products to be installed in single-family homes, but references products installed in such applications for comparative purposes.

Additionally, based on review of product literature, DOE identified multiple model lines with similar design as equipment cited by GE that included installation instructions for townhouse type applications or model lines with marketing literature [6] showing three-story multi-family apartment buildings in addition to commercial lodging applications.[7] In addition, DOE noted that the marketing literature for the Friedrich Vert-I-Pak model line cited in their comments also indicates that it is intended for both commercial lodging and multi-family apartment building applications. (Docket No. EERE–2017–BT–TP–0020–0019) The use and marketing of these units for townhomes and multifamily housing indicates that these products are used for individual households' use and consumption. DOE considers this information to be evidence that these products are distributed in commerce to a significant extent for personal use or consumption by individuals.

In response to Friedrich's understanding of the requirement for 400 CFM of outdoor ventilation air applying to both weatherized and non-weatherized SPVUs, DOE notes that the outdoor air ventilation requirement would only apply to non-weatherized units. DOE does not agree with Friedrich's assertion that DOE did not consider all SPVUs available on the market to determine the 400 CFM outdoor ventilation air requirement. As discussed, DOE reviewed the product literature for Friedrich's Vert-I-Pak model line and considers these to be CACs, as they meet the definitions of consumer product and CAC.

DOE also disagrees with Friedrich's assertion that CACs are not installed with unducted intake and short discharge duct lengths, and that DOE's revised definition of SPVU would leave the market without replacement options. DOE has identified several units from multiple manufacturers with similar design to Friedrich's Vert-I-Pak model line (and GE's Zoneline model line, referenced in their comments) and that are marketed towards multi-family, hotel, and hospitality; that are correctly certified as a space-constrained CAC using DOE's appendix M and AHRI Standard 210/240–2023 (''AHRI 210/240–2023''), ''Performance Rating of Unitary Air-conditioning & Air-source Heat Pump Equipment.'' (*See* Docket No. EERE–2017–BT–TP–0020–0021, Docket No. EERE–2017–BT–TP–0020–0022, Docket No. EERE–2017–BT–TP–0020–0023, and Docket No. EERE–2017–BT–TP–0020–0024)

AHRI commented that making this change through the test procedure rulemaking is inappropriate. (AHRI, No. 17, p. 8) AHRI stated that the economic impacts to manufacturers and their customers that would ensue from this proposed change to the method of determination for represented efficiency would be enormous, and a complete rulemaking analysis under 42 U.S.C. 6295(p) is first required to assess technological feasibility and economic justification. (AHRI, No. 17, p. 8) AHRI also commented that the proposed test method for validating the outdoor testing ventilation airflow has not been vetted, and time to research this method or other options was not afforded to stakeholders given the comment period's length and the significant number of overlapping rulemakings impacting manufacturers of air conditioning products. AHRI characterized DOE's proposal as a significant recategorization that should occur over a longer timeframe than under a test procedure NOPR and its comment period. Additionally, AHRI commented that an SPVU's primary function is cooling and heating and AHRI is not aware of any field applications where an SPVU is used primarily for ventilation. (AHRI, No. 17, p. 8–9)

In regards to AHRI's and GE's comment that the definition change should be done through the standards rulemaking, DOE notes that it is not re-categorizing any existing equipment. DOE is re-iterating its long-standing application of the space constrained product definition, the CAC definition, and the SPVU definition, and codifying additional SPVU definitions to better clarify the application of these definitions. The new definitions do not reclassify any products; DOE has

[6] *See* Docket No. EERE–2017–BT–TP–0020–0021, Docket No. EERE–2017–BT–TP–0020–0022, Docket No. EERE–2017–BT–TP–0020–0023, and Docket No. EERE–2017–BT–TP–0020–0024 for examples of products that were previously incorrectly certified but are now correctly certified. See Docket No. EERE–2017–BT–TP–0020–0019 and Docket No. EERE–2017–BT–TP–0020–0020 for Friedrich and GE literature showing similar marketing literature as these products.

[7] DOE notes that ASHRAE 90.1–2019 defines ''low-rise residential buildings'' as single-family houses, multifamily structures of three stories or fewer above grade, manufactured houses (mobile homes), and manufactured houses (modular).

concluded that any products not meeting the definition finalized by this rule should have previously been properly classified, and would continue to be classified, as consumer products because they are distributed in commerce for personal use or consumption. As a result, an energy conservation standards rulemaking is not required to adopt these definitions.

With regards to AHRI's concern about the impact of changes to California's Title 24 and ASHRAE 90.1, DOE notes, consistent with the CA IOU comments, that the revised requirements for economizing apply only to outdoor mounted units. As a result, DOE does not expect this design requirement to impact the products it considers to be CACs. The provisions would require indoor equipment with a cooling capacity of less than 54,000 Btu/h to include an economizer and that the proposal reducing the system cooling capacity threshold for economizing to 33,000 Btu/h from 54,000 Btu/h only applies to ''fan-cooling units located outside the building.'' Therefore, DOE believes that the outdoor ventilation airflow threshold remains a distinguishing characteristic to distinguish SPVUs from consumer products.

In regards to AHRI's comment that some manufacturers have chosen to rate certain product lines marketed toward multifamily buildings over three stories to AHRI 210/240–2023 and DOE's appendix M because they incorporate multi-stage compressors, DOE first notes that, in addition to making representations using these test standards, manufacturers are certifying compliance for these products as space-constrained CACs. As discussed, these products that are being correctly certified as space-constrained CACs are similar in design to the products currently being misclassified as SPVUs. DOE also notes that the definitions of SPVU and CAC and applicable test procedures are not dependent on technology options for improving efficiency of the product. Products are explicitly categorized based on the definitions provided in 10 CFR parts 430 and 431, and not based on the test procedures that provide the most benefit.

In response to AHRI's comment that SPVUs are not primarily used for ventilation, DOE recognizes that the primary function of an SPVU is for cooling and/or heating. The proposed definition identifies characteristics of equipment intended to distinguish SPVU from consumer products, but does not change the application of the equipment. Further, DOE has found that all SPVUs available on the market that include an outdoor ventilation option publish ventilation airflow rates, so DOE anticipates this is common industry practice.

For the reasons previously discussed, DOE has determined that the definitions proposed in the January 2022 NOPR for ''single-phase single package vertical air conditioner with cooling capacity less than 65,000 Btu/h'' and ''single-phase single package vertical heat pump with cooling capacity less than 65,000 Btu/h'' are appropriate to explicitly delineate such equipment from certain covered consumer products. These definitions will not reclassify any existing products, and are intended to prevent the misclassification of consumer products as industrial equipment, specifically SPVUs. In addition, the methods proposed in the January 2022 NOPR for determining if a unit is capable of providing 400 CFM of outdoor air are based on the industry standard test methods for measuring airflow and DOE considers them to be consistent with industry practice. As a result, DOE is adopting these definitions in 10 CFR 431.92 and provisions for determining the outdoor ventilation airflow rate in 10 CFR 429.134 in this final rule.

B. Updates to Industry Standards

1. AHRI 390

In the January 2022 NOPR, DOE proposed to incorporate by reference AHRI 390–2021, which maintains the existing full-load cooling mode metric, EER, and adds the seasonal cooling metric, IEER. More specifically, DOE proposed to add a new appendix G that would include the relevant test procedure requirements for SPVUs for measuring efficiency using the existing efficiency metrics (*i.e.,* EER for cooling mode and COP for heating mode) and to add a new appendix G1 that would incorporate the provisions for measuring efficiency using IEER and COP. 87 FR 2496.

In response to the NOPR, Lennox and NEEA commented that they support the incorporation of AHRI 390–2021. (Lennox, No. 11, p. 2; NEEA, No. 16, pp. 1–2) The CA IOUs urged DOE to follow its precedent for other commercial and industrial equipment by requiring testing to AHRI 210/240–2023 on all SPVUs with a cooling capacity of less than 65,000 Btu/h. They stated that using the same test procedure for all products that compete in the market would enable consumer comparison of the efficiency metrics. CA IOUs commented that this path would also benefit manufacturers, since using AHRI Standard 210/240–2023 would reduce the testing burden for manufacturers of single-speed products, as the basic models would be subject to two cooling tests instead of four. Furthermore, they stated it will allow manufacturers to provide cold-climate heat pump data if they offer products that can operate as heat pumps at 5 °F. (CA IOUs, No. 13, pp. 2–3)

AHRI commented that AHRI 390–2021 is a solid test procedure and supported its use for calculating IEER. (AHRI, No. 17, p. 10) In the public meeting AHRI noted that the new industry test procedure incorporates part-load performance, which they stated is a necessary step for regulation due to developments in these products. (Public Meeting Transcript, No. 11, p. 16) In the public meeting AHRI stated that they did not dispute DOE's authority to consider test procedure changes under the lookback provisions in EPCA, but noted that if there is a deviation between the test procedure cited in ASHRAE 90.1 and the DOE test procedure, it would create challenges and confusion in the marketplace with different efficiency metrics and test procedures. (Public Meeting Transcript, No. 11, pp. 17–19) AHRI stated in their comment however that DOE must follow the statutorily mandated process and only adopt a revised test method after it has been adopted by ASHRAE 90.1. (AHRI, No. 17, p. 3) Further, AHRI commented that DOE lacks the authority to adopt a test procedure edition not cited in ASHARE 90.1. *Id.* AHRI stated that waiting to harmonize will establish consistent energy efficiency levels and design requirements between ASHRAE Standard 90.1 and the Federal requirements as well as comparable metrics. *Id.* AHRI further asserted that in order for DOE to deviate from ANSI/AHRI 390–2003, the Department would need to propose and justify by clear and convincing evidence each amendment made to arrive at a test procedure equivalent to AHRI 390–2021, which AHRI conceded would be unnecessarily onerous. (AHRI, No. 17, pp. 3–4, 8–10)

During the public meeting, AHRI noted that they are working to evaluate a crosswalk between EER and IEER, but that there is no consistent correlation between the metrics. AHRI also noted that they are also evaluating the impact of the new test procedure on the heating metric, COP. AHRI noted that this work is being conducted in support of the ASHRAE 90.1 process. (Public Meeting Transcript, No. 11, pp. 17–19)

In response to AHRI, DOE has the authority to adopt AHRI 390–2021 in this rulemaking under the authority and in satisfaction of EPCA's 7-year-lookback review requirement for test

procedures. (42 U.S.C. 6314(a)(1)(A)) With respect to small, large, and very large commercial package air conditioning and heating equipment (of which SPVUs are a category), EPCA directs that the test procedures shall typically be those generally accepted industry testing procedures or rating procedures developed or recognized by AHRI or by ASHRAE, as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) But if the industry test procedure referenced in Standard 90.1 is determined by DOE to not meet the representativeness and undue burden requirements in 42 U.S.C. 6314(a)(2) and (3) by clear and convincing evidence, DOE must then establish an amended test procedure that meets EPCA's requirements. However, the industry test procedure currently referenced in Standard 90.1 is AHRI 390–2003, because Standard 90.1 has not yet been updated to reference AHRI 390–2021. The 42 U.S.C. 6314(a)(4) review has not been triggered. Therefore, DOE is not undertaking this rulemaking under 42 U.S.C. 6314(a)(4) but under its lookback review duty in 42 U.S.C. 6314(a)(1)(A)

Under its 7-year-lookback review DOE must also ensure that test procedures established are reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle and are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) DOE is directed during its 7-year-lookback review to evaluate whether an amended test procedure would more accurately or fully comply with those requirements, and if DOE determines an amended test procedure would do so, then DOE is required to prescribe such test procedures for the product class. 42 U.S.C. 6314(a)(1)(A). A test procedure may not be reasonably representative because more representative test procedures are available. And a test procedure that was reasonably representative in the past may become unreasonably representative when newly available test procedures allow for better, more complete measurements. DOE's lookback review ensures that DOE is not bound to an industry test procedure that has gone without updating for too long and is no longer representative of current equipment. While AHRI acknowledged DOE's lookback review authority in the public meeting, their submitted comment does not mention DOE's lookback review and therefore only engaged with the review process under 42 U.S.C. 6314(a)(4)(A). AHRI stated in its written comment that DOE is mandated to adopt an industry test procedure only after that test procedure is adopted in Standard 90.1, but identified no such mandate within the statute itself. And the lookback review language at issue here was added to EPCA in EISA 2007, well after the relevant Standard 90.1 test procedure language was added in 1992. *Compare* sec. 302 of EISA 2007, Public Law 110–140, 121 Stat. 1552 (Dec. 19, 2007) *with* sec. 121 of the Energy Policy Act of 1992, Public Law 106–486, 106 Stat. 2808 (Oct. 24, 1992). Therefore, the most natural reading of the two together is that Congress intended to add the lookback review to those triggers for review of test procedures that already existed. The language of the lookback review applies generally, to all covered equipment. Rather than tie DOE's hands to an outdated test procedure in the manner the industry commenters suggest, EPCA compels DOE to use due diligence to review the totality of relevant and available information before settling on appropriate energy conservation standards and test procedures. DOE finds here that AHRI 390–2003 no longer meets EPCA's requirements because AHRI 390–2021 is more representative without incurring undue burden, as discussed.

In this instance, the industry test procedure referenced in ASHRAE Standard 90.1, AHRI 390–2003, has since been superseded. DOE acknowledges that DOE has previously stated that it will only consider an update to ASHRAE Standard 90.1 that modifies the referenced industry test procedure to be a trigger under that provision of the statute, as opposed to an update of just the industry test procedure itself. (*See, e.g.,* 86 FR 35668, 35676 (July 7, 2021)) DOE stands by that position regarding what constitutes a triggering event in the context of ASHRAE equipment and does not consider the provisions in 42 U.S.C. 6314(a)(4) to have been triggered. However, that does not preclude DOE from considering the updated version of the industry test procedure (*i.e.,* AHRI 390–2021) when reviewing DOE's test procedures under EPCA's lookback provision. Not only does DOE have discretion to do so, but it has a statutory duty to do so, in order to ensure that its test procedures produce results that are representative of an average use cycle and are not unduly burdensome to conduct.

DOE agrees also that the approach envisioned by AHRI, where for a 90.1 test procedure found to not meet EPCA's requirements DOE must go amendment-by-amendment and presumably line-by-line to alter to make it meet EPCA's requirements, would lead to an overly onerous process. It would be far too difficult to compile clear and convincing evidence for every minute adjustment in isolation of the test procedure as a whole. However, DOE does not agree with AHRI that EPCA requires this unreasonable approach and instead interprets EPCA as allowing DOE to amend a TP in a more reasonable manner considering the whole of the test procedure in order to best meet the requirements of EPCA where industry has failed to do so. DOE also notes that AHRI contemplated the process through which DOE is reviewing updates to an industry test procedure under Standard 90.1, but in this final rule DOE is proceeding under its lookback review.

As supported by many of the comments that DOE received, including from AHRI itself, DOE has determined that the test methods specified in AHRI 390–2021 would produce test results that better reflect energy efficiency of SPVUs during a representative average use cycle than the current DOE test procedure and AHRI 390–2003. As discussed in section III.C and in the January 2022 NOPR, DOE notes that the IEER metric included in AHRI 390–2021 is representative of the cooling efficiency for SPVUs on an annual basis and is more representative than the current EER metric, which only captures the system performance at a single, full-load operating point. DOE also notes that the other test procedure changes incorporated in this final rule better ensure accurate and repeatable measurements, and ensure that representative test conditions are maintained during testing. These changes include:

Providing direction for determining whether a unit is tested as a ducted or non-ducted unit.

Directing that the outdoor air-side attachments used for testing must be specified by the manufacturer in the supplemental testing instructions.

Including refrigerant charging instructions for cases where they are not provided by the manufacturer.

Specifying tolerances for achieving the rated airflow and/or minimum external static pressure (''ESP'') during testing and specifies how to set indoor airflow if airflow and ESP tolerances cannot be simultaneously met.

Incorporating specifications for measuring outdoor air conditions.

Clarifying that test results for outdoor air enthalpy method are based on results without test apparatus connected.

Defining the term ''manufacturer's installation instructions'' and including hierarchy of precedence if multiple

manufacturer installation instructions are included.

Accordingly, for the foregoing reasons, DOE is incorporating by reference AHRI 390–2021 into the DOE test procedure for SPVUs.

DOE recognizes that adopting AHRI 390–2021 as the Federal test procedure for SPVUs may create some disharmony between the Federal test procedure and the test procedure currently specified in ASHRAE Standard 90.1 for a period of time. However, such disharmony is likely to be brief given the anticipated adoption of AHRI 390–2021 in the near future noted by commenters. Such a situation is preferable to the alternative where DOE would need to reinitiate another rulemaking once Standard 90.1's reference is updated, which would be after this statutorily-required lookback proceeding, in order to amend the Federal test procedure to adopt AHRI 390–2021—precisely the same test procedure available for consideration now. Because DOE is able to consider and adopt AHRI 390–2021 under its lookback provision, this situation and potential waste of resources is avoided and a more stable regulatory environment is created.

DOE notes that commenters' concern regarding a crosswalk and potential market confusion from having Federal standards rely on different metrics than the efficiency levels specified in the current version of ASHRAE Standard 90.1 relate to the energy conservation standards for SPVUs, which DOE is addressing in a separate standards rulemaking. Finally, DOE notes that manufacturers are not required to use the IEER test method outlined in appendix G1 to make representations until 360 days after issuance of this final rule, and they are not required to use the test procedure to certify compliance with any energy conservation standards for SPVUs based on IEER until the compliance date established for such standards. Until the time that IEER is required for compliance, appendix G, which retains the EER metric, will be required to determine compliance with current standards for SPVUs.

With regards to the CA IOUs recommendation that DOE incorporate by reference AHRI 210/240–2023 for SPVUs <65,000 Btu/h cooling capacity, DOE notes that AHRI 390–2021 was explicitly developed to represent the energy use of SPVU equipment, including efficiency metrics that are based on operating conditions specific to SPVU applications (*i.e.,* modular classrooms, modular offices, and telecommunication shelters) while AHRI 210/240–2023 was not. Because AHRI 390–2021 more accurately represents installations of SPVUs and is therefore more representative for determining the energy use of SPVUs, DOE is not incorporating by reference AHRI 210/240–2023 as the test procedure for SPVUs.

Accordingly, for the foregoing reasons, DOE is incorporating by reference AHRI 390–2021 into the Federal test procedure SPVUs because it is reasonably designed to produce results that are representative of the energy efficiency of that covered equipment during an average use cycle and is not unduly burdensome to conduct.

2. ASHRAE 37

ANSI/ASHRAE 37–2009, a method of test for many categories of air conditioning and heating equipment, is referenced by AHRI 390–2021 for testing SPVUs. In particular, Appendix E of AHRI 390–2021 specifies the method of test for SPVUs, including the use of specified provisions of ANSI/ASHRAE 37–2009. Consistent with AHRI 390–2021, DOE proposed in the January 2022 NOPR to incorporate by reference ANSI/ASHRAE 37–2009 in its test procedure for SPVUs. Specifically, DOE proposed to utilize the applicable sections of ANSI/ASHRAE 37–2009—all sections except sections 1, 2, and 4. DOE also proposed that in the event of any conflicts between the DOE test procedure, AHRI 390–2021, and ASHRAE 37–2009, the DOE test procedure takes highest precedence, followed by AHRI 390–2021, followed by ASHRAE 37–2009. 87 FR 2490, 2496. DOE did not receive any comments regarding this proposal. For the reasons discussed, DOE is incorporating by reference ANSI/ASHRAE 37–2009 in this final rule along with the provisions regarding the order of precedence in the event of conflicts between the DOE test procedure, AHRI 390–2021, and ASHRAE 37–2009.

C. Energy Efficiency Descriptor

1. Efficiency Metrics

In the January 2022 NOPR, DOE proposed to incorporate by reference AHRI 390–2021, which maintains the existing full-load cooling mode metric, EER,[8] and heating mode metric, COP,[9] and adds the seasonal cooling metric, IEER. Specifically, DOE proposed to add a new appendix G that would include the relevant test procedure requirements for SPVUs for measuring efficiency using the existing efficiency metrics (*i.e.,* EER for cooling mode and COP for heating mode) and to add a new appendix G1 that would incorporate the provisions for measuring efficiency using IEER and COP. In the January 2022 NOPR, DOE stated that it considers the IEER metric, which includes test conditions and weighting factors for the four load levels representing 100, 75, 50, and 25 percent of full-load capacity, representative of the cooling efficiency for SPVUs on an annual basis, and more representative than the current EER metric. DOE requested comment on its proposal to adopt IEER for SPVUs. 87 FR 2490, 2497–2498.

Lennox supported using AHRI 390–2021 for calculating IEER. They also stated that IEER is more representative of an average use cycle and how products operate in field applications, because EER only considers full load operation while IEER considers four load levels including part load operation. (Lennox, No. 11, p. 2) NEEA supported DOE's proposed adoption of IEER as a regulated metric as it provides a more accurate representation of total energy consumption than EER alone, because it measures part load energy consumption, but noted the limitations of the IEER metric—it does not capture energy consumption during other modes of operation such as ventilation or economizing. (NEEA No. 16, p. 2)

The Joint Efficiency Advocates supported adopting IEER as the efficiency metric in appendix G1. However, they expressed concern that the weighting factors in the calculation of IEER may underweight performance at higher outdoor temperatures and urged DOE to ensure that the calculation adequately represents seasonal efficiency. The Joint Efficiency Advocates commented that calculating the weighting factors solely based on operating hours does not take into account that an hour of operation at a higher outdoor temperature is providing more cooling and consuming more energy than an hour of operation at a lower outdoor temperature. (Joint Efficiency Advocates, No. 14, pp. 1–2) The Joint Efficiency Advocates also stated that SPVU product literature indicates installations in hotels, multifamily dwellings, and permanent classrooms, and encouraged DOE to investigate whether the weighting factors are representative of SPVU installations. (Joint Efficiency Advocates, No. 14, p. 2)

Regarding the test conditions and weighting factors, DOE notes that the test conditions for each of the Standard

[8] EER is the ratio of the produced cooling effect of the SPVU to its net work input, expressed in Btu/watt-hour, and measured at standard rating conditions.

[9] COP is the ratio of the produced heating effect of the SPVU to its net work input, when both are expressed in identical units of measurement, and measured at standard rating conditions.

Rating Conditions in AHRI 390–2021 were developed in a similar manor as AHRI Standard 340/360–2022 (''AHRI 340/360–2022''), ''Performance Rating of Commercial and Industrial Unitary Air-conditioning and Heat Pump Equipment,'' and was based on modeling buildings in which SPVUs are installed (modular schools, modular office, and telecommunication shelters), utilizing weather data from 15 climate zones. DOE finds these building types appropriate and will not consider additional building types at this time, as per the Joint Efficiency Advocates comments, because applications such as hotels and multi-family homes are common for the CAC products that are currently being misclassified as SPVUs as discussed in section III.A. of this document.

Additionally, the weighting factors in AHRI 390–2021 were developed to represent the number of hours per year spent at each test condition. AHRI 390–2021 requires that a unit is tested at each of the four Standard Rating Conditions when determining the IEER metric, and that the performance of the unit at each test point (including part-load) is incorporated into the IEER metric. While individual equipment performance at part-load may vary between different model lines, each unit is tested under the same Standard Rating Conditions that produce results of SPVU efficiency during operation under representative conditions. DOE notes that this aligns with the approach taken for other small, large, and very large commercial package air conditioning and heating equipment (*e.g.,* the IEER metric specified in AHRI 340/360).

AHRI commented that no correlation has been established between the EER and IEER metrics. AHRI stated they plan to collect one year of AHRI certification data and will submit a proposed addendum to ASHRAE 90.1 using IEER. AHRI commented their support the adoption of AHRI 390–2021 and the use of IEER as the federally regulated metric only after ASHRAE 90.1 adopts the new procedure and new efficiency metrics. Additionally, they stated no testing was conducted to analyze the impact of test procedure changes on the heating metric, COP. (AHRI, No. 17, pp. 3, 10)

Per AHRI's comments that they support the adoption of AHRI 390–2021 and the use of IEER as the federally regulated metric only after ASHRAE 90.1 adopts the new procedure and new efficiency metrics, DOE notes the discussion in section III.B.I of this document. Any future energy conservation standards based on IEER would evaluate differences in the measured energy efficiency based on the IEER metric relative to EER (*i.e.,* by developing an appropriate ''crosswalk,'' as necessary), and would consider data and/or analysis that compares the ratings of SPVUs under the two metrics. DOE would also welcome any data showing differences in testing of the heating metrics, but is not aware that any of the changes made in AHRI 390–2021 would cause a change to the heating rating of SPVUs.

For the reasons previously discussed, DOE has determined that at this time, the test conditions and weighting factors represent the industry consensus standard are appropriate for determining the representative performance of SVPU units, and that the resulting IEER values are based on up-to-date weather data and operation hours. DOE recognizes that comments provided by the Joint Efficiency Advocates are informative and may suggest the need for DOE to investigate further the approach used to calculate SPVU performance in a future rulemaking. However, without further information, DOE continues to conclude that the test conditions and weighting factors in AHRI 390–2021 produce results reflecting the energy efficiency of SPVUs during a representative average use cycle. Therefore, DOE is adopting the test conditions and weighting factors in AHRI 390–2021.

The CA IOUs recommended that DOE reconsider the name IEER to avoid confusion for consumers because the IEER weighting factors in AHRI Standard 390–2021 are different from other commercial equipment, specifically AHRI Standard 340/360–2007, ''Performance Rating of Commercial and Industrial Unitary Air-conditioning and Heat Pump Equipment'', and AHRI Standard 1230–2010, ''Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment''. The CA IOUs recommended DOE consider renaming the part-load cooling efficiency metric for SPVUs to ''SPVU annual cooling efficiency.'' They stated that this change would allow end-users to compare and select equipment based on regulated efficiency metrics and remove any added ambiguity on weighting factors. (CA IOUs, No. 13, p. 3)

Regarding CA IOU's comment on renaming the IEER metric, the differences in IEER metrics between AHRI 390–2021 as compared to AHRI 340/360–2022 or AHRI 1230–2021 better reflect typical operation and performance of SPVUs. In particular, the weighting factors and temperature conditions were developed specifically to represent SPVU applications. DOE notes that AHRI 390–2021 maintains the IEER name and that changing the name from ''IEER'' might spawn unnecessary confusion by suggesting that there is some significant difference as to how that term is used in the context of the amended Federal test procedure as compared to AHRI 390–2021. DOE also notes that there is no significant overlap in the applications of CUACs or VRFs and SPVUs such that there would be confusion to potential customers. Therefore, DOE concludes that there is not a need to deviate from the metric name ''IEER'' specified in AHRI 390–2021. Consequently, DOE is adopting the IEER metric measured per AHRI 390–2021 in the Federal test procedure for SPVUs, as proposed. Further, DOE is adopting the proposed revisions to the definition for IEER at 10 CFR 431.92 to distinguish between the test procedures for ACUACs and VRFs and SPVUs.

2. Low Temperature Heating Test

In the January 2022 NOPR, DOE noted that the heating mode test used to calculate COP and determine compliance with standards for SPVHPs is conducted at 47 °F outdoor air dry-bulb temperature and 43 °F outdoor air wet-bulb temperature, and is designated as the ''Full Load Standard Rating Capacity Test, Heating'' in Table 3 of AHRI 390–2021. 87 FR 2490, 2498. In the January 2022 NOPR, DOE proposed to allow manufacturers to make voluntary representations at the optional ''Low Temperature Operation'' condition in Table 3 of AHRI 390–2021. That test is based on an outdoor air dry-bulb temperature of 17 °F and outdoor air wet-bulb temperature of 15 °F. DOE proposed to specify in appendices G and G1 that the low temperature operation heating mode test conditions specified in Table 3 of AHRI 390–2021 are optional. This addition was made to clarify that additional representations for SPVHPs at a lower temperature condition are optional, but that if such representations are made, they must be based on testing conducted in accordance with the DOE test procedure using the specified low temperature operation heating mode test conditions in addition to those made at the full-load standard heating conditions. DOE requested comment from interested parties on this proposal. 87 FR 2490, 2498.

In response to the January 2022 NOPR, Lennox, the Joint Efficiency Advocates, and AHRI supported allowing optional representations of

the low temperature condition. (Lennox, No. 12, p. 2; Joint Efficiency Advocates, No. 14, p. 1; AHRI, Public Meeting Transcript, No. 11, p. 19) Lennox commented that COP representations at low temperatures are important performance characteristic, and stated the representations are already being made by manufacturers. (Lennox, No. 12, pp. 2–3)

The CA IOUs and NEEA recommended that DOE require the testing and reporting of heating COP at the Low Temperature Operation test condition. (CA IOUs, No. 13, p. 3; NEEA, No. 16, p. 3) NEEA commented that both AHRI 210/240–2023 and AHRI 340/360–2022 require heating mode testing at multiple conditions for all heat pump units. (NEEA, No. 16, pp. 3–4) NEEA noted that requiring this optional test would provide additional information on cold weather performance for consumers, and that the market share of SPVHPs at 20–30 percent was significant enough to investigate low ambient temperature test condition, despite AHRI's conclusion to the contrary. Further, the CA IOUs suggested that if the unit is not tested at 17 °F to assign a default COP of 1.0 to the SVPHP basic model. The CA IOUs commented that DOE should publish the value in DOE's compliance certification database (''CCD'') for SPVUs to account for auxiliary energy solely supplied by an electric resistance element. (CA IOUs, No. 13, p. 3)

The CA IOUs and the Joint Efficiency Advocates both commented that DOE should create an additional optional heating test at 5 °F outdoor dry bulb/3 °F outdoor wet bulb. (CA IOUs, No. 13, p. 3; Joint Efficiency Advocates, No. 14, p. 3) The CA IOUs commented that this would allow manufacturers to certify cold-climate SPVHPs, which are already distributed in commerce, to meet existing cold climate specifications in the Northeast region. They commented this test would be consistent with the H4 heating mode tests outlined in appendix M1 to subpart B of 10 CFR part 430 (*i.e.,* the test procedure for CACs) and is consistent with the optional heating mode test for single phase SPVUs less than 65,000 Btu/h deemed by DOE to be consumer products in the NOPR. (CA IOUs, No. 13, p. 3) The Joint Efficiency Advocates commented that Northeast Energy Efficiency Partnerships (''NEEP'') has published a cold climate SPVHP specification that sets a minimum COP at 5 °F, and it is reasonable to expect that an increasing number of manufacturers will test and report cold climate performance. Further, they stated that adding an optional 5 °F test point to the SPVU test procedure will help ensure that any representations that manufacturers make about low-temperature performance will be based on a standardized test procedure. They encouraged DOE to allow both optional COP values at 17 °F and 5 °F to be reported and made available in the public DOE CCD for SPVUs. (Joint Efficiency Advocates, No. 14, p. 3)

In response to requests for an optional 5 °F heating test, DOE understands this test to be common for other cold-climate equipment. DOE notes that no such test is included in the industry test procedure, AHRI 390–2021. At this time, DOE is not aware of any cold-climate SPVUs. Based on DOE's review, all units that have reported to the NEEP specification discussed by commenters meet the definition of consumer products and are therefore currently misclassified as SPVUs. Through a review of SPVU market literature, DOE was unable to find any cold-climate units available on the market. For these reasons, DOE is not including an optional 5 °F heating test at this time.

In response to comments requesting that DOE make the 17 °F test required, DOE first notes that AHRI 390–2021 only requires testing at the full-load heating test condition of 47 °F and that DOE's current heating mode standards for SPVUs are based on this full-load heating test condition. AHRI 390–2021 includes the low temperature heating test as an optional test. DOE notes that this is the same approach used in AHRI 340/360–2021. Any required representations for other test conditions would necessitate the establishment of standards for said representations. DOE is not proposing to regulate the COP measured at the 17 °F test at this time and, consistent with AHRI 390–2021, is adopting this as an optional test in this final rule.

In response to comments that the low temperature heating performance should be made available in the CCD, because DOE is not proposing to regulate COP measured at 17F, requiring reporting of performance for low temperature heating performance is not necessary. DOE will address any amended reporting requirements as necessary based on optional representations of low temperature performance for SPVUs through a separate rulemaking.

3. Fan Energy Use

As part of a request for information published on July 20, 2018, DOE requested comment on whether changes to the SPVU test procedure are needed to properly characterize a representative average use cycle, including changes to more accurately represent fan energy use in field applications. 83 FR 34499, 34503. DOE also requested information as to the extent that accounting for the energy use of fans in commercial equipment such as SPVUs would be additive of other existing accountings of fan energy use. *Id.* The Appliance Standards and Rulemaking Federal Advisory Committee (''ASRAC'') Commercial and Industrial Fans and Blowers Working Group (''Working Group'') had previously provided recommendations regarding the energy conservation standards, test procedures, and efficiency metrics for commercial and industrial fans and blowers in a term sheet. (Docket No. EERE–2013–BT–STD–0006–0179 at p. 1) Specifically, recommendation #3 discussed the need for DOE's test procedures and related efficiency metrics to account more fully for the energy consumption of fan use in regulated commercial air-conditioning equipment. (Docket No. EERE–2013–BT–STD–0006–0179 at pp. 3–4) The Working Group recommended that DOE consider revising efficiency metrics that include energy use of supply and condenser fans to include the full energy consumption of those fans during all relevant operating modes, including ventilation and part-load operation, in the next round of test procedure rulemakings. The Working Group included SPVUs in its list of regulated equipment for which fan energy use should be considered. (Docket No. EERE–2013–BT–STD–0006–0179 at pp. 3–4, 16)

In the January 2022 NOPR, DOE preliminarily concluded that it did not have sufficient information regarding the operation of fans outside of mechanical heating and cooling during an average use cycle (*e.g.,* economizing, ventilation) specific to SPVU installations as would allow it to consider changing the existing efficiency metric(s) to include this aspect of energy use. DOE stated also that it lacked sufficient information on the number of units capable of operating in these modes, total energy use in these operating modes, and information regarding the frequency of operation of these modes during field conditions. 87 FR 2490, 2499.

In response to the January 2022 NOPR, NEEA commented that IEER for SPVUs does not capture energy consumption during other modes of operation, such as ventilation or economizing. They stated that DOE's previous market analysis assumed that 65 percent of these units are installed in spaces that require regular ventilation (*e.g.,* modular offices and classrooms).

NEEA noted that some SPVU equipment is promoted for use in buildings that require significant ventilation, and that prior DOE analyses have found that most SPVUs are installed in spaces requiring regular ventilation. NEEA noted that their previous research has shown that commercial HVAC units can spend up to 30 percent of operating time in ventilation-only modes. They stated that DOE should continue researching ways to account for energy consumption during ventilation-only modes in an occupied space. Otherwise, they asserted, the metrics do not capture the full energy saving potential of features such as efficient fans and economizers. (NEEA, No. 16, p. 2)

The Joint Efficiency Advocates similarly urged DOE to more fully capture fan energy use in the SPVU test procedure. They expressed concern that by not capturing fan energy use outside of cooling for ACs or heating and cooling for heat pumps (*e.g.,* for ventilation or supplementary heating), the test procedure may significantly underestimate fan energy consumption. The Joint Efficiency Advocates noted as an example that EPA recommends that outdoor air be supplied continuously during occupied hours to maintain good indoor air quality in portable classrooms. The Joint Efficiency Advocates also commented that failing to capture fan energy use in these additional operational modes could result in inaccurate relative rankings of equipment. Therefore, they urged DOE to capture fan energy use outside of cooling mode for ACs and outside heating and cooling modes for heat pumps to ensure the test procedures are representative of an average energy use cycle. (Joint Efficiency Advocates, No. 14, pp. 2–3)

DOE maintains that it does not have sufficient information at this time regarding the operation of fans outside of mechanical heating and cooling during an average use cycle (*e.g.,* economizing, ventilation) specific to SPVU installations as would allow it to consider changing the existing efficiency metric(s) to include this aspect of energy use. DOE notes that NEEA's research was not specific to SPVUs, so the conclusions with regards to how much HVAC equipment operate in fan only modes may not be relevant. In particular, NEEA's research revolved around furnaces installed in retail stores and warehouses located in Winnipeg, Montreal, and Toronto, while SPVUs are installed in smaller modular buildings and in more diverse climate profiles. Therefore, energy consumption modeling specific to SPVUs and in climate regions more representative of SPVU installations would likely be significantly different. Per NEEA's comment, DOE's previous analysis acknowledges that SPVUs are commonly installed in locations requiring ventilation (*i.e.,* modular offices and classrooms), and DOE maintains that is the case. DOE recognizes that the current metrics for SPVUs do not include fan energy use during all relevant operation modes. Provisions to measure fan energy use when there is no heating or cooling being provided, and when performing ancillary functions (*e.g.,* economizing, ventilation, filtration, and auxiliary heat), are not included in the industry test standard, AHRI 390–2021. However, DOE's previous analysis did not include sufficient information on the number of units capable of operating in these modes, total energy use in these operating modes, and information regarding the frequency of operation of these modes during field conditions and DOE maintains that it still lacks this information, which the Department would need to be able to determine whether such testing would be appropriate for SPVUs and to develop a metric representing the national average fan operating hours for SPVUs. If additional information becomes available as would allow DOE to consider incorporation of fan energy use during other relevant SPVU operating modes for all relevant building types into the test method and metric for SPVUs, DOE may consider such information in a future rulemaking.

D. Test Method

In DOE's existing regulations, table 1 to paragraph (b) of 10 CFR 431.96 specifies the applicable industry test procedure for each category of commercial package air conditioning and heating equipment, and it identifies additional testing requirements that also apply. In this final rule, DOE is reorganizing subpart F to 10 CFR part 431 so that the test procedure requirements for SPVUs are included in separate appendices (appendix G and G1). DOE is also amending table 1 to paragraph (b) of 10 CFR 431.96 to identify only the applicable appendix to use for testing SPVUs (appendix G or G1), and as an additional consequence of this change 10 CFR 431.96 would no longer include any additional test requirements for SPVUs.

1. External Static Pressures

In the January 2022 NOPR, DOE noted that AHRI 390–2021 maintained the same minimum ESP requirements as specified in ANSI/AHRI 390–2003. DOE stated that it does not have data indicating that these minimum ESP requirements are unrepresentative of field operation for ducted SPVUs. DOE also noted that SPVUs are typically installed in smaller modular buildings with different duct configurations than other equipment (*e.g.,* CACs, other categories of commercial package air-conditioning and heating equipment). Based on this, DOE proposed not to revise the ESP requirements in the DOE test procedure for SPVUs but to instead remain consistent with AHRI 390–2021. 87 FR 2490, 2503.

In response to the NOPR, the Joint Efficiency Advocates commented that by maintaining the existing ESP requirements (which were unchanged in the update from AHRI 390–2003 to AHRI 390–2021) the proposed test procedures may significantly underestimate fan energy consumption by specifying ESP requirements that are too low and not representative of field installations. They stated that virtually all ducted SPVUs are tested at a minimum ESP between 0.1 and 0.2 inches of water column (''in. w.c.''). Further, they commented that while the duct runs may typically be short in SPVU installations, testing any ducted unit at an ESP of 0.1 is unrealistic. They noted that DOE found that for CACs filter foulant and evaporator coil fouling alone contribute 0.2 in. w.c. of ESP. Therefore, they asserted that the proposed test procedure would likely underestimate fan power consumption and that DOE should investigate more representative ESP values. (Joint Efficiency Advocates, No. 14, pp. 1–2)

NEEA commented that DOE and efficiency advocates had previously acknowledged inconsistencies among the various minimum ESP values used for testing across different HVAC equipment. NEEA also pointed out that DOE's analysis of field CAC installations showed that filter and evaporator coil foulant alone contributed 0.2 in. w.c. of ESP, regardless of the installed ductwork. NEEA asserted that no in-field operation data was provided to support the current ESP values that are maintained in AHRI 390–2021. NEEA supported DOE's request for additional ESP data and recommended pursuing further research to validate whether the ESP values in AHRI 390–2021 and proposed in the NOPR are representative of average field installations. NEEA also encouraged DOE to continue evaluating other components known to affect energy consumption in these units. (NEEA, No. 16, pp. 2–3)

AHRI commented that they agreed that with DOE's statement that SPVUs are typically installed in smaller

modular buildings with different duct configurations. AHRI also agreed that minimum ESP requirements for other equipment may not be relevant for SPVUs. They stated the majority of this equipment is not used in ducted applications and that Table 2 of AHRI 390–2021 ESPs are representative of the short duct runs that are occasionally applied and are very conservative for those products applied without supply ducts. AHRI commented that these products are installed adjacent to exterior walls, so discharge ductwork is very short. AHRI supported DOE's tentative proposal to not revise the ESP requirements. (AHRI, No. 17, p. 11)

In response to NEEA and the Joint Efficiency Advocates, DOE maintains that it does not have data indicating that these minimum ESP requirements are unrepresentative of field operation for ducted SPVUs. DOE notes that minimum ESP requirements and studies of field installations for other equipment (*e.g.,* CACs) may not be relevant for SPVUs. Particularly, this research was used in a February 2017 CAC test procedure final rule to help determine the representative minimum statics for CACs. 82 FR 1426, 1447. DOE notes that for conventional equipment generally installed in single family homes with significant ductwork, the representative minimum ESP was determined to be 0.5 in. H_2O. However, in the same NOPR, DOE also determined that certain types of CACs with short ducts (*i.e.,* low static CACs) had different representative minimum statics, 0.1 in. H_2O, so filters and evaporator foulant do not account for 0.2 in. H_2O in all circumstances, per NEEA's suggestion. *Id.* DOE maintains that SPVUs are typically installed in smaller modular buildings with different duct configurations than other types of equipment (*i.e.,* conventional CACs), and would therefore necessitate a similar field research study to determine if the current minimum statics are unrepresentative for SPVUs. Based on this, DOE is not revising the ESP requirements in the DOE test procedure for SPVUs and is instead maintaining the ESP requirements consistent with AHRI 390–2021 at this time.

2. Defrost Energy Use

In the January 2022 NOPR, DOE noted that AHRI 390–2021 does not include provisions for measuring defrost energy for SPVHPs. Consistent with ANSI/AHRI 390–2003, AHRI 390–2021, and DOE's test procedures for other commercial heat pumps, DOE did not propose to include provisions for including the defrost energy of SPVHPs. DOE noted that it lacked sufficient information on the number of SPVHP installations by building type and geographical region, as well as information regarding the frequency of operation of defrost cycles or representative low ambient conditions during field use and the annual heating and cooling loads in those installations. That information would be needed to determine whether such testing conditions would be appropriate for SPVUs and to develop a metric representing the national average for SPVUs. DOE requested comment and data on the number of SPVHP installations by building type and geographical region and the annual heating and cooling loads for such buildings. DOE also requested data on the frequency of operation of defrost cycles and representative low ambient conditions for those buildings and installations. 87 FR 2490, 2505.

AHRI commented that the Guidehouse presentation [10] includes detailed information regarding building types and climate zones analyzed to determine the appropriate IEER coefficients for this equipment which could be extrapolated to determine installations by building types. AHRI noted that certain applications will require defrost, but not all, and that defrost is an operation cycle to protect the outdoor coil. They continued that the cycle is only triggered during heating season, and the frequency and time of the defrost cycle is generally programmed at the factory. Further, they noted that defrost cycling is a function of both outside coil temperature and compressor pressure: (1) if outdoor coil temperature is sensed below a set temperature (typically 32 °F) for a set time period (60 minutes is typical factory default), the defrost cycle is triggered; or (2) when the low pressure setpoint threshold for refrigerant entering the compressor is crossed due to frost on the coils, the defrost cycle will also be triggered. They stated the cycle for defrost operation starts with the compressor operation switching from heating to cooling to heat outside coil for defrosting, and that this cycle is typically run for approximately 10 minutes. Finally, AHRI commented that the return to normal heat pump operation after defrost operation will typically cease when the outdoor coil temperature rises above the thaw temperature setpoint or when the set time period has expired, whichever comes first. (AHRI, No. 17, pp. 11–12)

NEEA supported DOE's continued research around defrost energy consumption.(NEEA, No. 16, pp. 2–3) While DOE appreciates further insight into the process of defrost cycles provided by AHRI, DOE did not receive any additional information on defrost energy use and therefore DOE maintains that it lacks sufficient information at this time on the number of SPVHP installations by building type and geographical region, as well as information regarding the frequency of operation of defrost cycles or representative low ambient conditions during field use and the annual heating and cooling loads in those installations, which would be needed to determine whether such testing conditions would be appropriate for SPVUs and to develop a metric representing the national average for SPVUs. Given the lack of data and that the industry test procedure, AHRI 390–2021, does not include provisions for measuring defrost energy for SPVHPs, DOE is not including provisions for measuring the defrost energy of SPVHPs in the DOE test procedure at this time.

E. Configuration of Unit Under Test

1. Background and Summary

SPVUs are sold with a wide variety of components, including many that can optionally be installed on or within the unit both in the factory and in the field. In all cases, these components are distributed in commerce with the SPVU, but can be packaged or shipped in different ways from the point of manufacturer for ease of transportation. Some optional components may affect a model's measured efficiency when tested to the DOE test procedure adopted in this final rule, and others may not. DOE is handling SPVU components in two distinct ways in this final rule to help manufacturers better understand their options for developing representations for their differing product offerings.

First, the treatment of some components is specified by the test procedure to limit their impact on measured efficiency. For example, a fresh air damper must be set in the closed position and sealed during testing, resulting in a measured efficiency that would be similar or identical to the measured efficiency for a unit without a fresh air damper.

Second, for certain components not directly addressed in the DOE test procedure, this final rule provides more specific instructions on how each component should be handled for the

[10] The Guidehouse presentation is included in an appendix to AHRI's comment and was presented during the AHRI 390 working group developing the new industry standard.

purposes of making representations in part 429. Specifically, these instructions provide manufacturers clarity on how components should be treated and how to group individual models with and without optional components for the purposes of representations, in order to reduce burden. DOE is adopting these provisions in part 429 to allow for testing of certain individual models that can be used as a proxy to represent the performance of equipment with multiple combinations of components. DOE is adopting provisions expressly allowing certain models to be grouped together for the purposes of making representations and allowing the performance of a model without certain optional components to be used as a proxy for models with any combinations of the specified components, even if such components would impact the measured efficiency of a model. Steam/hydronic heat coils are an example of such a component. The efficiency representation for a model with a steam/hydronic heat coil is based on the measured performance of the SPVU as tested without the component installed because the steam/hydronic heat coil is not easily removed from the SPVU for testing.[11]

2. Approach for Exclusion of Certain Components

a. Proposals

Appendix F of AHRI 390–2021 provides discussion of components which would not be considered in representations, and provides instructions, either to neutralize their impact during testing, or for determining representations for individual models with such components based on other individual models that do not include them.

Instead of referencing Appendix F of AHRI 390–2021, DOE tentatively determined in the January 2022 NOPR that it would be necessary to include related provisions in the proposed appendix G1 test procedure and in the proposed representation requirements at 10 CFR 429.43. 87 FR 2490, 2508. DOE noted that this revised approach would provide more detailed direction and clarity between test procedure provisions (*i.e.,* how to test a specific unit) and certification and enforcement provisions (*e.g.,* which model to test). Specifically, DOE proposed to include provisions for certain specific components to limit their impact on measured efficiency during testing. 87 FR 2490, 2507–2508. Additionally, DOE proposed representation requirements in 10 CFR 429.43(a)(4) that explicitly allowed representations for individual models with certain components to be based on testing for individual models without those components—the proposal included a table listing the components for which these provisions would apply (Desiccant Dehumidification Components, Air Economizers, Ventilation Energy Recovery System (''VERS''), Steam/Hydronic Heat Coils, Hot Gas Reheat, Fire/Smoke/Isolation Dampers, Powered Exhaust/Powered Return Air Fans, Hot Gas Bypass). 87 FR 2490, 2507–2508, 2517. Finally, DOE proposed specific product enforcement provisions in 10 CFR 429.134 indicating that DOE would conduct enforcement testing on individual models that don't include the components listed in the aforementioned table, except in certain circumstances. 87 FR 2490, 2507–2508.

b. General Comments

In response to the January 2022 NOPR, Lennox supported DOE's proposal, noting that the approach would allow testing a unit without one of the listed optional features if a manufacturer distributes in commerce an otherwise identical unit without the optional feature. (Lennox, No. 12, p. 3)

AHRI commented their support of the proposed set up and test provisions for specific components. (AHRI, No. 17, p. 12) AHRI also recommended that the DOE Enforcement Policy be modified to exclude SPVUs to prevent confusion (AHRI, Public Meeting Transcript, No. 11, pg. 25 –26) AHRI noted that the STI may need to include instructions for the component. They asserted that it would be important to indicate that efficiency ratings were developed without specific components, if also offered for sale by the manufacturer, even if it is included as a factory-installed option. (AHRI, No. 17, pp. 12–13) No comments received specifically addressed the general restructuring of the provisions in the regulations.

In this final rule, DOE is adopting its proposals in the January 2022 NOPR for exclusion of certain components, with some additional simplifications to further improve clarity. The different aspects of the provisions are described in the following sections.

c. Test Provisions of 10 CFR Part 431, Appendix G1

DOE is adopting test provisions at 10 CFR part 431, appendix G1, section 4, to prescribe how certain components must be configured for testing, as proposed in the January 2022 NOPR. Specifically, DOE is requiring in appendix G1 that steps be taken during unit setup and testing to limit the impacts on the measurement of these components:

- Desiccant Dehumidification Components
- Air Economizers
- Fresh Air Dampers
- Hail Guards
- Power Correction Capacitors
- Ventilation Energy Recovery System (VERS)
- Barometric Relief Dampers
- UV Lights
- Steam/Hydronic Heat Coils
- Hot Gas Reheat
- Sound Traps/Sound Attenuators
- Fire/Smoke/Isolation Dampers

The components are listed and described in table 4.1 in section 4 of the new appendix G1, and test provisions for them are provided in the table.

d. Representation Provisions of 10 CFR 429.43

As discussed, in the January 2022 NOPR, DOE proposed representation requirements in 10 CFR 429.43(a)(4) that explicitly allowed representations for individual models with certain components to be based on testing for individual models without those components—the proposal included a table[12] listing the components for which these provisions would apply (Desiccant Dehumidification Components, Air Economizers, Ventilation Energy Recovery System (VERS), Steam Hydronic Heat Coils, Hot Gas Reheat, Fire/Smoke/Isolation Dampers, Powered Exhaust/Powered Return Air Fans, Sound Traps/Sound Attenuators, Hot Gas Bypass). 87 FR 2490, 2507–2508, 2517. In this final rule, DOE is making two clarifications to the representation requirements as proposed in the January 2022 NOPR.

First, DOE is specifying that the basic model representation must be based on the least-efficient individual model that is a part of the basic model, and clarifying how this long-standing basic model provision interacts with the component treatment in § 429.43 that this final rule adopts. Adoption of this clarification in the regulatory text is consistent with the January 2022 NOPR, in which DOE noted that in some cases, individual models may include more than one of the specified components or there may be individual models within a basic model that include various

[11] Note that in certain cases, as explained further in section III.E.2.d, the representation may have to be based on an individual model with a steam/hydronic coil.

[12] In the January 2022 NOPR, this table was referred to as ''Table 1'', but due to the publication of other test procedure actions, from this point forward, it will be referred to as ''table 4 to paragraph (a)(3)(iii)(A) of 10 CFR 429.43''.

dehumidification components that result in more or less energy use. 87 FR 2490, 2507–2508. In such cases, DOE stated that the represented values of performance must be representative of the individual model with the lowest efficiency found within the basic model. *Id.* DOE believes regulated entities may benefit from clarity in the regulatory text as to how the least efficient individual model within a basic model provision works with the component treatment for SPVUs. The amendments in this final rule explicitly state that the exclusion of the specified components from consideration in determining basic model efficiency in certain scenarios is an exception to basing representations on the least efficient individual model within a basic model. In other words, the components listed in § 429.43 are not being considered as part of the representation under DOE's regulatory framework if certain conditions are met as discussed in the following paragraphs and thus, their impact on efficiency is not reflected in the representation. In this case, the basic model's representation is generally determined by applying the testing and sampling provisions to the least efficient individual model in the basic model that does not have a component listed in § 429.43.

Second, DOE is also clarifying instructions for instances where individual models within a basic model may have more than one of the specified components and there may be no individual model without any of the specified components. DOE is adopting the concept of an ''otherwise comparable model group'' (''OCMG'') instead of using the proposed ''otherwise identical'' provisions. DOE relies on the term ''comparable'' as opposed to ''identical'' to indicate that components that impact energy consumption as measured by the applicable test procedure are the relevant components to consider for the purpose of representations. Differences such as unit color and presence of utility outlets would therefore not warrant separate OCMGs. DOE developed a document of examples to illustrate the approach proposed in this NOPR for determining represented values for SPVUs with specific components, and in particular the OCMG concept. *See* EERE–2017–BT–TP–0020.

An OCMG is a group of individual models within the basic model that do not differ in components that affect energy consumption as measured according to the applicable test procedure other than the specific components listed in table 4 to paragraph (a)(3)(iii)(A) of § 429.43. An OCMG may include individual models with any combination of such specified components, including no specified components, and an OCMG can be one individual model. Because every model within each OCMG is within the definition of the basic model, a basic model can be composed of multiple OCMGs. Each OCMG represents a unique combination of components that affect energy consumption, as measured according to the applicable test procedure, other than the specified components listed in table 4 to paragraph (a)(3)(iii)(A) of § 429.43—this means that a new combination of such components requires the creation of a new OCMG. For example, a manufacturer might include two tiers of control system within the same basic model, in which one of the control systems has sophisticated diagnostics capabilities that require a more powerful control board with a higher wattage input. SPVU individual models with the ''standard'' control system would be part of OCMG A, while individual models with the ''premium'' control system would be part of a different OCMG B, since the control system is a component that affects energy consumption and is not one of the specified exempt components listed in table 4 to paragraph (a)(3)(iii)(A) of § 429.43. However, OCMG A and OCMG B both may include individual models with different combinations of steam/hydronic coils, sound traps, and VERS preheat. Both OCMGs may include any combination of characteristics that do not affect the efficiency measurement, such as paint color.

The OCMG is used to identify which individual models are used to determine a represented value for the basic model. Specifically, only the individual model(s) with the least number (which could be zero) of the specific components listed in table 4 to paragraph (a)(3)(iii)(A) of § 429.43 is considered when identifying the individual model. This clarifies which individual models are exempted from consideration for determination of represented values in the case of an OCMG with multiple specified components and no individual models with zero specific components listed in table 4 to paragraph (a)(3)(iii)(A) of § 429.43. Models with a number of specific components listed in table 4 to paragraph (a)(3)(iii)(A) of § 429.43 greater than the model(s) with the least number in the OCMG are exempted from consideration. In the case that the OCMG includes an individual model with no specific components listed in table 4 to paragraph (a)(3)(iii)(A) of § 429.43, then all individual models in the OCMG with any specified components would be exempted from consideration. Among the remaining non-exempted models, the least efficient individual model across the OCMGs would be used to determine the representation of the basic model. In the case where there are multiple individual models within a single OCMG with the same non-zero least number of specified components, the least efficient of these would be considered.

The use of the OCMG concept results in representations being based on the same individual models as the approach proposed in the January 2022 NOPR, *i.e.,* the represented values of performance are representative of the individual model(s) with the lowest efficiency found within the basic model, excluding certain individual models with the specific components listed in table 4 to paragraph (a)(3)(iii)(A) of § 429.43. However, the approach as adopted in this final rule is structured to more explicitly address individual models with more than one of the specific components listed in table 4 to paragraph (a)(3)(iii)(A) of § 429.43, as well as instances in which there is no comparable model without any of the specified components.

AHRI commented in response to the NOPR that one item already included in the DOE Enforcement Policy for Small, Large, and Very Large, Air-Cooled, Water-Cooled, and Evaporatively-Cooled Commercial Package Air Conditioners and Heat Pumps that should be considered for inclusion is coated coils. They stated that the description of this component in the DOE Enforcement Policy is adequate, but that coated coils should not be specified for test units, as units are always available without coating. (AHRI, No. 17, p. 12)

In response to AHRI's comment that coated coils should be included, DOE is excluding coated coils from the specific components list specified in 10 CFR 429.43 because DOE has tentatively concluded that the presence of coated coils does not result in a significant impact to performance of SPVUs, and, therefore, models with coated coils should be rated based on performance of models with coated coils present (rather than based on performance of an individual model within an OCMG without coated coils).

e. Enforcement Provisions of 10 CFR 429.134

In the January 2022 NOPR DOE sought to address SPVUs that include specified excluded components both in

the requirements for representation (*i.e.,* 10 CFR 429.43) and in the equipment specific enforcement provisions for assessing compliance (*i.e.,* 10 CFR 429.134). 87 FR 2490, 2507–2508.

Instruction on which units to test for the purpose of representations are addressed in 10 CFR 429.43. DOE has determined that including parallel enforcement provisions in 10 CFR 429.134 would be redundant and potentially cause confusion because DOE would select for enforcement only those individual models that are the basis for making basic model representations as specified in 10 CFR 429.43. Therefore, in this final rule DOE is providing the requirements for making representations of SPVU that include the specified components in 10 CFR 429.43, and is not including parallel direction in the enforcement provisions of 10 CFR 429.134 established in this final rule. However, DOE is finalizing the provision that allows enforcement testing of alternative individual models with specific components, if DOE cannot obtain for test the individual models without the components that are the basis of representation.

F. Represented Values

1. Multiple Refrigerants

In the January 2022 NOPR, DOE noted that some commercial package air conditioning and heating equipment may be sold with more than one refrigerant option, and that DOE has identified at least one commercial package air conditioning and heating equipment manufacturer that provides two refrigerant options under the same model number. 87 FR 2490, 2508–2509. DOE noted that the use of a refrigerant that requires different hardware (such as R–407C as compared to R–410A) would represent a different basic model, and according to the current CFR, separate representations of energy efficiency are required for each basic model. DOE also noted that some refrigerants (such as R–422D and R–427A) would not require different hardware, and a manufacturer may consider them to be the same basic model. In the January 2022 NOPR, DOE requested comment on a proposal to specify that a manufacturer must determine the represented values for that basic model based on the refrigerant(s)—among all refrigerants listed on the unit's nameplate—that result in the lowest cooling efficiency. *Id.*

In response to the NOPR, Lennox and AHRI supported DOE's proposal. (Lennox, No. 12, p. 3; AHRI, No. 17, p. 13) The CA IOUs commented that they support the multiple refrigerants proposal. They asserted that this would provide the marketplace with the most conservative assessment of equipment performance, while limiting test and reporting burden for manufacturers. However, they urged DOE to allow optional representations for more efficient refrigerants. The CA IOUs commented that DOE should allow manufacturers the option to publish additional ratings for equipment with different refrigerants and highlight equipment with similar components that can reliably operate with better-performing refrigerants. They commented that the ratings for commercial refrigeration equipment include more than one refrigerant. Finally, they suggested listing each refrigerant's global warming potential alongside the performance information. (CA IOUs, No. 13, p. 4)

In response to the CA IOUs comment concerning optional representations for an SPVU basic model that would reflect individual models using more-efficient refrigerants, the basic model definition for an SPVU requires the same or comparably performing compressor(s) in order for two units to be considered the same basic model. 10 CFR 431.92(3). Therefore, if a manufacturer offers individual models that have different refrigerants necessitating different compressors, then the manufacturer must certify each model that uses a different refrigerant as a distinct basic model number and must determine separate represented values for each basic model. As discussed in the January 2022 NOPR, DOE identified at least one commercial package air conditioning and heating equipment manufacturer that provides two refrigerant options under the same model number. 87 FR 2490, 2508. However, DOE understands that SPVUs are typically designed for use with only a single type of refrigerant and are incompatible with other refrigerants. DOE is not aware of any cases of SPVUs that are designed to operate with interchangeable refrigerants, and the CA IOUs did not identify the existence of any such systems in their comment.

As discussed in section III.E.2 of this final rule, DOE is generally clarifying in 10 CFR 429.43(a)(3)(iii)(A) that representations for a SPVU basic model must be based on the least efficient individual model(s) distributed in commerce within the basic model (with the exception specified in 10 CFR 429.43(a)(3)(iii)(A) for certain individual models with the components listed in table 4 to § 429.43(a)(3)(iii)(A); this list does not include different refrigerants). Therefore, upon further consideration, DOE has determined that the content of the proposal in the January 2022 NOPR regarding multiple refrigerants is included and clarified in the provision adopted at 10 CFR 429.43(a)(3)(iii)(A), and that the refrigerant-specific provisions proposed in the January 2022 NOPR at 10 CFR 429.43(a)(3) would be redundant. As such, in this final rule, DOE is not adopting the refrigerant specific language proposed in the January 2022 NOPR.

In regard to the CA IOUs' suggestion that the global warming potential (''GWP'') of each refrigerant be listed along with the performance information, it is unclear whether this suggestion was intended to propose changes to DOE's representation or certification requirements for SPVUs, or whether this suggestion was directed at manufacturers for inclusion in their marketing materials. The GWP values for refrigerants are determined by the United Nations Environment Programme (UNEP) Intergovernmental Panel on Climate Change (IPCC) and are publicly available.[13] Further, the CA IOUs did not provide any rationale for DOE to include refrigerant GWP in its regulations for SPVUs. Therefore, DOE is not making any changes to the representation or certification requirements for SPVUs related to refrigerant GWP values.

2. Cooling Capacity

For SPVUs, cooling capacity determines equipment class, which in turn determines the applicable energy conservation standard. 10 CFR 431.97. In the January 2022 NOPR, DOE noted that while cooling capacity is a required represented value for SPVUs, DOE does not currently specify provisions for SPVUs regarding how close the represented value of cooling capacity must be to the tested or alternative energy-efficiency determination method (''AEDM'') simulated cooling capacity, or whether DOE will use measured or certified cooling capacity to determine equipment class for enforcement testing. DOE proposed to add to its regulations the following provisions regarding

[13] The IPCC periodically conducts assessment reports that can impact the numerical values of GWP for each refrigerant. Also, the IPCC provides GWP values over different time horizons (*i.e.,* 50, 100, and 500 years) to reflect the relative warming potential of refrigerants compared to CO_2 for the same time spans. The GWP values provided by the fourth assessment report and for the 100-year time horizon ''AR4–100yr'' GWP values are most commonly used in international and inter-agency processes, such as the Kigali Amendment to the Montreal Protocol and the American Innovation and Manufacturing ''AIM'' Act. GWP values from the fourth assessment report can be found at *https://archive.ipcc.ch/publications_and_data/ar4/wg1/en/ch2s2-10-2.html.*

cooling capacity for SPVUs: (1) a requirement that the represented cooling capacity be between 95 percent and 100 percent of the tested or AEDM-simulated cooling capacity; and (2) an enforcement provision stating that DOE would use the mean of measured cooling capacity values from testing, rather than the certified cooling capacity, to determine the applicable standards. 87 FR 2490, 2509.

AHRI supported DOE's proposal that the represented cooling capacity be between 95 percent and 100 percent of the tested or AEDM-simulated cooling capacity. However, AHRI commented that DOE's proposed enforcement provision of using the mean of measured cooling capacity values from testing to determine the applicable standards, rather than the certified cooling capacity, is different from other commercial equipment. (Public Meeting Transcript, No. 11, p. 31)

AHRI recommended DOE apply enforcement provisions similar to those for the enforcement provisions for packaged terminal air conditioners (''PTACs''), which specifies in paragraph (e) of 10 CFR 429.134 that if the certified cooling capacity is found to be ''valid'' based on the 5 percent allowance to the tested mean, the reported certified value of cooling capacity is used in the next steps of decision making rather than just the mean itself. AHRI noted that this five percent allowance is also present today for portable air conditioners, water heaters, and dehumidifiers. AHRI stated that using just the mean of the measurement(s) to determine the applicable standard with which the model must comply is too restrictive and does not follow precedence set by similar products. (AHRI, No. 17, p. 13)

DOE acknowledges the enforcement provisions for PTACs specified in paragraph (e) of 10 CFR 429.134 are different than the enforcement provisions for commercial package air-conditioning and heating equipment. DOE notes that the efficiency standards for PTACs are linearly variable with capacity (*i.e.,* a change in PTAC capacity changes the minimum efficiency required). This is significantly different than for SPVUs, which has standards based on equipment classes that are differentiated based on fixed capacity thresholds. DOE notes that the provisions proposed in the January 2022 NOPR are consistent with the current enforcement provisions for commercial package air-conditioning and heating equipment (*see* paragraph (g) of 10 CFR 429.134), which have similar capacity thresholds for equipment classes and also have fixed efficiency standards within each class. To maintain consistency with the approach used for other commercial air conditioning and heating equipment with equipment classes based on fixed capacity thresholds, DOE is adopting the enforcement provisions specifying that DOE would use the mean of measured cooling capacity values from testing to determine the applicable standards.

G. Effective and Compliance Dates

The effective date for the adopted test procedure amendment will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 360 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1)) To the extent the modified test procedure adopted in this final rule is required only for the evaluation and issuance of updated efficiency standards, compliance with the amended test procedure does not require use of such modified test procedure provisions until the compliance date of updated standards.

H. Test Procedure Costs

In the January 2022 NOPR, DOE tentatively determined that the proposed amended test procedures for SPVUs would be representative of an average use cycle and would not be unduly burdensome for manufacturers to conduct. DOE noted that the proposed test procedure in appendix G for measuring EER and COP would not increase testing costs per unit compared to the current DOE test procedure. 87 FR 2490, 2509.

DOE also noted in the January 2022 NOPR that the proposed test procedure provisions regarding IEER in appendix G1 would not be mandatory unless and until DOE adopts energy conservation standards that specify IEER as the regulatory metric and compliance with such standards is required. Given that most SPVU manufacturers are AHRI members and that DOE is referencing the prevailing industry test procedure, DOE stated that it expects manufacturers will already be testing using the IEER test method. Based on this, DOE determined that the proposed test procedure amendments would not be expected to increase the testing burden on most SPVU manufacturers. Additionally, DOE determined that the test procedure amendments, if finalized, would not require manufacturers to redesign any of the covered equipment, would not require changes to how the equipment is manufactured, and would not impact the utility of the equipment. 87 FR 2490, 2509–2510.

In the January 2022 NOPR, DOE requested comment on its understanding of the impact the test procedure proposals in the NOPR, specifically on DOE's conclusion that manufacturers would not increase testing burden on SPVU manufacturers. 87 FR 2490, 2510. Lennox noted that industry was preparing to transition to AHRI 390–2021, and agreed that the proposed test procedure would not unduly increase test burden as compared to AHRI 390–2021 when fully implemented. (Lennox, No. 12 at p. 3)

Consistent with what DOE determined in the January 2022 NOPR, DOE has determined that by incorporating by reference the revised industry test standard, AHRI 390–2021, the test procedure DOE is establishing (appendices G and G1) is consistent with the industry standard and will not add undue industry test burden or incur any additional tests costs.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to

use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this final 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 final 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 a final regulatory flexibility analysis (FRFA) for any final rule where the agency was first required by law to publish a proposed rule 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 Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.*

DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003.

For manufacturers of SPVU equipment, the SBA considers a business entity to be small business if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. SPVU manufacturers, who produce the equipment covered by this rule, are classified under NAICS code 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category. This employee threshold includes all employees in a business's parent company and any other subsidiaries.

DOE identified manufacturers using DOE's CCD for SPVUs,[14] the California Energy Commission's Modernized Appliance Efficiency Database System (''MAEDbS''),[15] and prior rulemakings. Additionally, DOE used publicly-available information and subscription-based market research tools (*e.g.,* reports from Dun & Bradstreet [16]) to determine headcount, revenue, and geographic presence of the small businesses. DOE screened out companies that do not meet the definition of ''small business'' or are foreign-owned and operated.

As noted in the January 2022 NOPR, DOE initially identified a total of eight companies that manufacture or private label SPVUs in the United States. Of these eight companies, DOE identified two as domestic small businesses. 87 FR 2490, 2511. Based on further analysis, DOE revised its count to five manufacturers of SPVUs, of which one was identified as a domestic small business.

DOE received a comment from AHRI that the following companies could be small business SPVU manufacturers: Bard Manufacturing Company, Marvair, Systemair, Temspec, and United CoolAir. (AHRI, No. 17, pg. 14) DOE identified Bard Manufacturing Company as a domestic small business in its Regulatory Flexibility Analysis. The remaining companies listed by AHRI were not considered in the Regulatory Flexibility Analysis due to the headcount of their business's parent company and any other subsidiaries, due to foreign ownership, or due to the fact that they do not offer equipment that meet the definition of a SPVU.

In this final rule, DOE (1) incorporates by reference AHRI 390–2021, (2) establishes the definitions for single-phase single package vertical air conditioner with cooling capacity less than 65,000 Btu/h'' and ''single-phase single package vertical heat pump with cooling capacity less than 65,000 Btu/h,'' and (3) includes provisions for testing when certain components are present.

Based on review of AHRI 390–2021, DOE determined that the proposed test procedure in appendix G for measuring EER and COP would not increase testing costs per unit compared to the current DOE test procedure. Additionally, DOE determined that the proposed test procedure in appendix G1 for measuring IEER and COP would be unlikely to significantly increase burden, given that most SPVU manufacturers are AHRI members, and that DOE is referencing the prevailing industry test procedure that was established for use in AHRI's certification program. Furthermore, the sole identified small business that manufacturers SPVUs is an AHRI member. Lastly, DOE determined that the amended test procedure would not require manufacturers to redesign any of the covered equipment, would not require changes to how the equipment is manufactured, and would not impact the utility of the equipment.

While DOE assumed that all SPVU manufacturers will be using the industry test procedure, AHRI 390–2021, DOE determined the potential re-rating cost for the small business. This small business would only incur re-rating costs if not using the AHRI 390–2021 test procedure to test their SPVU models. DOE estimated the cost for this small business to re-rate all models to be $30,200 while making use of an AEDM. DOE estimates this to be less than 1 percent of revenue for the small manufacturer.

As noted, DOE has determined that manufacturers would only incur additional testing burden should they not already be testing to current industry practice indicated by AHRI 390–2021. Should the sole small business not be testing to AHRI 390–2021, DOE determined the potential cost impacts on the small business to represent less than 1 percent of annual revenue. Therefore, on the basis of the de minimis compliance burden, DOE certifies that this final rule does not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. DOE will transmit a 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).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of SPVUs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test

[14] DOE's Compliance Certification Database is available at: *www.regulations.doe.gov/ccms* (last accessed April 29, 2022).

[15] California Energy Commission's MAEDbS is available at *cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx* (last accessed April 29, 2022).

[16] Dun & Bradstreet reports are available at: *app.dnbhoovers.com* (last access April 29, 2022).

procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including SPVUs. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for SPVUs. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final 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(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation

will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The modifications to the test procedure for SPVUs adopted in this final rule incorporates testing methods contained in certain sections of the following commercial standards: AHRI 390–2021, ANSI/ASHRAE 37–2009, and ANSI/ASHRAE 41.2–1987 (RA 92). DOE has evaluated these standards and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review). DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

DOE incorporates by reference the following standards:

AHRI 390–2021. Specifically, the test procedure codified by this final rule references sections 3 (except 3.1, 3.2, 3.5, 3.12, and 3.15), 5 (except section 5.8.5), 6 (except 6.1.1, 6.2, 6.3, 6.4, and 6.5), appendices A, D, and E of the industry test method. AHRI 390–2021 is an industry-accepted test procedure for measuring the performance of SPVUs. AHRI 390–2021 is available online at *www.ahrinet.org/search-standards.aspx.*

ANSI/ASHRAE 37–2009. This is an industry-accepted test procedure for measuring the performance of electrically driven unitary air-conditioning and heat pump equipment. ANSI/ASHRAE 37–2009 is available on ANSI's website at *https://webstore.ansi.org/RecordDetail.aspx?sku=ANSI%2FASHRAE+Standard+37-2009.*

ANSI/ASHRAE 41.2–1987 (RA 92). This is an industry-accepted test procedure for consistent measurement procedures for use in the preparation of other ASHRAE standards. Procedures described are used in testing air-moving, air-handling, and air-distribution equipment and components. ANSI/ASHRAE 41.2–1987 (RA 92) is available on ANSI's website at *https://webstore.ansi.org/Standards/ASHRAE/ANSIASHRAE411987RA92.*

The following standards were previously approved for incorporation by reference in the locations where they appear in the regulatory text: AHRI 210/240–2008, AHRI 340/360–2007, AHRI 1230–2010, AHRAE 127–2007, and ISO Standard 13256–1.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, and Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on November 21, 2022, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters

the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 21, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE amends 10 CFR parts 429 and 431 as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 429.4 by:
■ a. Redesignating paragraphs (c)(2) and (3) as paragraphs (c)(3) and (4);
■ b. Adding new paragraph (c)(2);
■ c. Redesignating paragraphs (d) through (f) as paragraphs (e) through (g); and
■ d. Adding new paragraph (d).

The additions read as follows:

§ 429.4 Materials incorporated by reference.

* * * * *

(c) * * *

(2) AHRI Standard 390 (I–P)–2021, (''AHRI 390–2021''), *2021 Standard for Performance Rating of Single Package Vertical Air-conditioners And Heat Pumps,* IBR approved for § 429.134.

* * * * *

(d) *ASHRAE.* The American Society of Heating, Refrigerating and Air-Conditioning Engineers. 180 Technology Parkway NW, Peachtree Corners, GA 30092; (404) 636–8400, *www.ashrae.org.*

(1) ANSI/ASHRAE Standard 37–2009 (''ASHRAE 37–2009''), *Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,* ASHRAE approved June 24, 2009; IBR approved for § 429.134.

(2) ANSI/ASHRAE 41.2–1987 (RA 92) (''ASHRAE 41.2–1987''), *Standard Methods For Laboratory Airflow Measurement,* ANSI reaffirmed April 22, 1992; IBR approved for § 429.134.

* * * * *

■ 3. Amend § 429.43 by adding paragraph (a)(3)(iii) to read as follows:

§ 429.43 Commercial heating, ventilating, air conditioning (HVAC) equipment.

(a) * * *

(3) * * *

(iii) Single package vertical units. When certifying to standards in terms of IEER, the following provisions apply.

(A) For individual model selection:

(*1*) Representations for a basic model must be based on the least efficient individual model(s) distributed in commerce among all otherwise comparable model groups comprising the basic model, except as provided in paragraph (a)(3)(iii)(A)(*2*) of this section for individual models that include components listed in table 4 to this paragraph (a)(3)(iii)(A). For the purpose of this paragraph (a)(3)(iii)(A)(*1*), ''otherwise comparable model group'' means a group of individual models distributed in commerce within the basic model that do not differ in components that affect energy consumption as measured according to the applicable test procedure specified at 10 CFR 431.96 other than those listed in table 4 to this paragraph (a)(3)(iii)(A). An otherwise comparable model group may include individual models distributed in commerce with any combination of the components listed in table 4 (or none of the components listed in table 4). An otherwise comparable model group may consist of only one individual model.

(*2*) For a basic model that includes individual models distributed in commerce with components listed in table 4 to this paragraph (a)(3)(iii)(A), the requirements for determining representations apply only to the individual model(s) of a specific otherwise comparable model group distributed in commerce with the least number (which could be zero) of components listed in table 4 included in individual models of the group. Testing under this paragraph (a)(3)(iii)(A)(*2*) shall be consistent with any component-specific test provisions specified in section 4 of appendix G1 to subpart F of 10 CFR part 431.

TABLE 4 TO PARAGRAPH (a)(3)(iii)(A)—SPECIFIC COMPONENTS FOR SINGLE PACKAGE VERTICAL UNITS

Component	Description
Desiccant Dehumidification Components.	An assembly that reduces the moisture content of the supply air through moisture transfer with solid or liquid desiccants.
Air Economizers	An automatic system that enables a cooling system to supply outdoor air to reduce or eliminate the need for mechanical cooling during mid or cold weather.
Ventilation Energy Recovery System (VERS).	An assembly that preconditions outdoor air entering the equipment through direct or indirect thermal and/or moisture exchange with the exhaust air, which is defined as the building air being exhausted to the outside from the equipment.
Steam/Hydronic Heat Coils	Coils used to provide supplemental heating.
Hot Gas Reheat	A heat exchanger located downstream of the indoor coil that heats the Supply Air during cooling operation using high pressure refrigerant in order to increase the ratio of moisture removal to Cooling Capacity provided by the equipment.
Fire/Smoke/Isolation Dampers	A damper assembly including means to open and close the damper mounted at the supply or return duct opening of the equipment.
Powered Exhaust/Powered Return Air Fans.	A powered exhaust fan is a fan that transfers directly to the outside a portion of the building air that is returning to the unit, rather than allowing it to recirculate to the indoor coil and back to the building. A powered return fan is a fan that draws building air into the equipment.
Sound Traps/Sound Attenuators	An assembly of structures through which the supply air passes before leaving the equipment or through which the return air from the building passes immediately after entering the equipment for which the sound insertion loss is at least 6 dB for the 125 Hz octave band frequency range.
Hot Gas Bypass	A method to adjust the cooling delivered by the equipment in which some portion of the hot high-pressure refrigerant from the discharge of the compressor(s) is diverted from its normal flow to the outdoor coil and is instead allowed to enter the indoor coil to modulate the capacity of a refrigeration circuit or to prevent evaporator coil freezing.

(B) The represented value of cooling capacity must be between 95 percent and 100 percent of the mean of the capacities measured for the units in the sample selected as described in paragraph (a)(1)(ii) of this section, or between 95 percent and 100 percent of the net sensible cooling capacity output simulated by the alternative energy-efficiency determination method (AEDM) as described in paragraph (a)(2) of this section.

(C) Represented values must be based on performance (either through testing or by applying an AEDM) of individual models with components and features that are selected in accordance with section 4 of appendix G1 to subpart F of 10 CFR part 431.

* * * * *

■ 4. Amend § 429.134 by adding paragraph (x) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(x) *Single package vertical air conditioners and heat pumps.* The following provisions apply for assessment and enforcement testing of models subject to standards in terms of IEER.

(1) *Verification of cooling capacity.* The cooling capacity of each tested unit of the basic model will be measured pursuant to the test requirements of appendix G1 to subpart F of 10 CFR part 431. The mean of the measurement(s) will be used to determine the applicable standards for purposes of compliance.

(2) *Specific components.* If a basic model includes individual models with components listed at table 4 to § 429.43(a)(3)(iii)(A) and DOE is not able to obtain an individual model with the least number (which could be zero) of those components within an otherwise comparable model group (as defined in § 429.43(a)(3)(iii)(A)(*1*)), DOE may test any individual model within the otherwise comparable model group.

(3) *Validation of outdoor ventilation airflow rate.* The outdoor ventilation airflow rate in cubic feet per minute (''CFM'') of the basic model will be measured in accordance with ASHRAE 41.2–1987 and Section 6.4 of ASHRAE 37–2009 (both incorporated by reference, see § 429.4). All references to the inlet shall be determined to mean the outdoor air inlet.

(i) The outdoor ventilation airflow rate validation shall be conducted at the conditions specified in Table 3 of AHRI 390–2021 (incorporated by reference, see § 429.4), Full Load Standard Rating Capacity Test, Cooling, except for the following:

The outdoor ventilation airflow rate shall be determined at 0 in. H_2O external static pressure with a tolerance of $-0.00/+0.05$ in. H_2O.

(ii) When validating the outdoor ventilation airflow rate, the outdoor air inlet pressure shall be 0.00 in. H_2O, with a tolerance of $-0.00/+0.05$ in. H_2O when measured against the room ambient pressure.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 5. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 6. Amend § 431.92 by:

■ a. Revising the definitions for ''Integrated energy efficiency ratio, or IEER'', ''Single package vertical air conditioner'', and ''Single package vertical heat pump''; and

■ b. Adding definitions for ''Single-phase single package vertical air conditioner with cooling capacity less than 65,000 Btu/h'' and ''Single-phase single package vertical heat pump with cooling capacity less than 65,000 Btu/h'' in alphabetical order.

The revisions and additions read as follows:

§ 431.92 Definitions concerning commercial air conditioners and heat pumps.

* * * * *

Integrated energy efficiency ratio, or IEER, means a weighted average calculation of mechanical cooling EERs determined for four load levels and corresponding rating conditions, expressed in Btu/watt-hour. IEER is measured per appendix A to this subpart for air-cooled small (≥65,000 Btu/h), large, and very large commercial package air conditioning and heating equipment, measured per appendix D1 to this subpart for variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 Btu/h), and measured per appendix G1 to this subpart for single package vertical air conditioners and single package vertical heat pumps.

* * * * *

Single package vertical air conditioner means:

(1) Air-cooled commercial package air conditioning and heating equipment that—

(i) Is factory-assembled as a single package that—

(A) Has major components that are arranged vertically;

(B) Is an encased combination of cooling and optional heating components; and

(C) Is intended for exterior mounting on, adjacent interior to, or through an outside wall;

(ii) Is powered by a single-or 3-phase current;

(iii) May contain 1 or more separate indoor grilles, outdoor louvers, various ventilation options, indoor free air discharges, ductwork, well plenum, or sleeves; and

(iv) Has heating components that may include electrical resistance, steam, hot water, or gas, but may not include reverse-cycle refrigeration as a heating means; and

(2) Includes single-phase single package vertical air conditioner with cooling capacity less than 65,000 Btu/h, as defined in this section.

Single package vertical heat pump means:

(1) A single package vertical air conditioner that—

(i) Uses reverse-cycle refrigeration as its primary heat source; and

(ii) May include secondary supplemental heating by means of electrical resistance, steam, hot water, or gas; and

(2) Includes single-phase single package vertical heat pump with cooling capacity less than 65,000 Btu/h, as defined in this section.

Single-phase single package vertical air conditioner with cooling capacity less than 65,000 Btu/h means air-cooled commercial package air conditioning and heating equipment that meets the criteria in paragraphs (1)(i) through (iv) of the definition for a single package vertical air conditioner in this section; that is single-phase; has a cooling capacity less than 65,000 Btu/h, and that:

(1) Is weatherized, determined by a model being denoted for ''Outdoor Use'' or marked as ''Suitable for Outdoor Use'' on the equipment nameplate; or

(2) Is non-weatherized and is a model that has optional ventilation air provisions available. When such ventilation air provisions are present on the unit, the unit must be capable of drawing in and conditioning outdoor air for delivery to the conditioned space at a rate of at least 400 cubic feet per minute, as determined in accordance with § 429.134(x)(3) of this chapter, while the equipment is operating with the same drive kit and motor settings used to determine the certified efficiency rating of the equipment (as required for submittal to DOE by § 429.43(b)(4)(xi) of this chapter).

Single-phase single package vertical heat pump with cooling capacity less

than 65,000 Btu/h means air-cooled commercial package air conditioning and heating equipment that meets the criteria in paragraphs (1)(i) and (ii) of the definition for a single package vertical heat pump in this section; that is single-phase; has a cooling capacity less than 65,000 Btu/h, and that:

(1) Is weatherized, determined by a model being denoted for ''Outdoor Use'' or marked as ''Suitable for Outdoor Use'' on the equipment nameplate; or

(2) Is non-weatherized and is a model that has optional ventilation air provisions available. When such ventilation air provisions are present on the unit, the unit must be capable of drawing in and conditioning outdoor air for delivery to the conditioned space at a rate of at least 400 cubic feet per minute, as determined in accordance with § 429.134(x)(3) of this chapter, while the equipment is operating with the same drive kit and motor settings used to determine the certified efficiency rating of the equipment (as required for submittal to DOE by § 429.43(b)(4)(xii) of this chapter).

* * * * *

■ 7. Amend § 431.95 by revising paragraphs (b)(4) and (c)(2) to read as follows:

§ 431.95 Materials incorporated by reference.

* * * * *

(b) * * *

(4) AHRI Standard 390(I–P)–2021 (''AHRI 390–2021''), *2021 Standard for Performance Rating of Single Package Vertical Air-Conditioners and Heat Pumps,* copyright 2021; (AHRI 390–2021), IBR approved for appendices G and G1 to this subpart.

* * * * *

(c) * * *

(2) ANSI/ASHRAE Standard 37–2009 (''ANSI/ASHRAE 37–2009''), *Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,* ASHRAE approved June 24, 2009, IBR approved for § 431.96 and appendices A, B, D1, G, and G1 to this subpart.

* * * * *

■ 8. Amend § 431.96 by:

■ a. Revising paragraph (b)(1);

■ b. Revising table 1 to paragraph (b); and

■ c. Revising paragraph (c).

The revisions read as follows:

§ 431.96 Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps.

* * * * *

(b) * * *

(1) Determine the energy efficiency and capacity of each category of covered equipment by conducting the test procedure(s) listed in table 1 to this paragraph (b) along with any additional testing provisions set forth in paragraphs (c) through (g) of this section and appendices A through G1 to this subpart, that apply to the energy efficiency descriptor for that equipment, category, and cooling capacity. The omitted sections of the test procedures listed in table 1 must not be used. For equipment with multiple appendices listed in table 1, consult the notes at the beginning of those appendices to determine the applicable appendix to use for testing.

* * * * *

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS

Equipment type	Category	Cooling capacity or moisture removal capacity [2]	Energy efficiency descriptor	Use tests, conditions, and procedures [1] in	Additional test procedure provisions as indicated in the listed paragraphs of this section
Small Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled, 3-Phase, AC and HP.	<65,000 Btu/h	SEER and HSPF	AHRI 210/240–2008 (omit section 6.5).	None.
	Air-Cooled AC and HP.	≥65,000 Btu/h and <135,000 Btu/h.	EER, IEER, and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	<65,000 Btu/h	EER	AHRI 210/240–2008 (omit section 6.5).	Paragraphs (c) and (e).
		≥65,000 Btu/h and <135,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
	Water-Source HP	<135,000 Btu/h	EER and COP	ISO Standard 13256–1.	Paragraph (e).
Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP.	≥135,000 Btu/h and <240,000 Btu/h.	EER, IEER and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥135,000 Btu/h and <240,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Very Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP.	≥240,000 Btu/h and <760,000 Btu/h.	EER, IEER and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥240,000 Btu/h and <760,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Packaged Terminal Air Conditioners and Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	Paragraph (g) of this section.	Paragraphs (c), (e), and (g).
Computer Room Air Conditioners.	AC	<65,000 Btu/h	SCOP	ASHRAE 127–2007 (omit section 5.11).	Paragraphs (c) and (e).

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS—Continued

Equipment type	Category	Cooling capacity or moisture removal capacity [2]	Energy efficiency descriptor	Use tests, conditions, and procedures [1] in	Additional test procedure provisions as indicated in the listed paragraphs of this section
		≥65,000 Btu/h and <760,000 Btu/h.	SCOP	ASHRAE 127–2007 (omit section 5.11).	Paragraphs (c) and (e).
Variable Refrigerant Flow Multi-split Systems.	AC	<65,000 Btu/h (3-phase).	SEER	HRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	HP	<65,000 Btu/h (3-phase).	SEER and HSPF	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f)
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	AC and HP	≥65,000 Btu/h and <760,000 Btu/h.	EER and COP	Appendix D to this subpart [3].	None.
		≥65,000 Btu/h and <760,000 Btu/h.	IEER and COP	Appendix D1 to this subpart [3].	None.
Variable Refrigerant Flow Multi-split Systems, Water-source.	HP	<760,000 Btu/h	EER and COP	Appendix D to this subpart [3].	None.
		<760,000 Btu/h	IEER and COP	Appendix D1 to this subpart [2].	None.
Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	Appendix G to this subpart [3].	None.
			EER, IEER, and COP	Appendix G1 to this subpart [3].	None.
Direct Expansion-Dedicated Outdoor Air Systems.	All	<324 lbs. of moisture removal/hr.	ISMRE2 and ISCOP2	Appendix B to this subpart.	None.

[1] Incorporated by reference; see § 431.95.
[2] Moisture removal capacity applies only to direct expansion-dedicated outdoor air systems.
[3] For equipment with multiple appendices listed in this table 1, consult the notes at the beginning of those appendices to determine the applicable appendix to use for testing.

(c) *Optional break-in period for tests conducted using AHRI 210/240–2008, AHRI 1230–2010, and ASHRAE 127–2007.* Manufacturers may optionally specify a ''break-in'' period, not to exceed 20 hours, to operate the equipment under test prior to conducting the test method specified by AHRI 210/240–2008 or ASHRAE 127–2007 (incorporated by reference; see § 431.95). A manufacturer who elects to use an optional compressor break-in period in its certification testing should record this information (including the duration) in the test data underlying the certified ratings that is required to be maintained under 10 CFR 429.71.

* * * * *

Appendix E to Subpart F of Part 431 [Added and Reserved]

■ 9. Add reserved appendix E to subpart F of part 431.

Appendix F to Subpart F of Part 431 [Added and Reserved]

■ 10. Add reserved appendix F to subpart F of part 431.

■ 11. Add appendix G to subpart F of part 431 to read as follows:

Appendix G to Subpart F of Part 431—Uniform Test Method for Measuring the Energy Consumption of Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps

Note: Prior to December 4, 2023, manufacturers must use the results of testing under either this appendix or § 431.96 as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2021, to determine compliance with the relevant standard from § 431.97 as that standard appeared in the January 1, 2021, edition of 10 CFR parts 200–499. On or after December 4, 2023, manufacturers must use the results of testing generated under this appendix to demonstrate compliance with the relevant standard from § 431.97 as that standard appeared in the January 1, 2021, edition of 10 CFR parts 200–499.

Beginning December 4, 2023, if manufacturers make voluntary representations with respect to the integrated energy efficiency ratio (IEER) of single packaged vertical air conditioners and single package vertical heat pumps, such representations must be based on testing conducted in accordance with appendix G1 to this subpart.

For any amended standards for single packaged vertical air conditioners and single package vertical heat pumps based on IEER published after January 1, 2021, manufacturers must use the results of testing under appendix G1 to this subpart to determine compliance. Representations related to energy consumption must be made in accordance with the appropriate appendix that applies (*i.e.,* this appendix or appendix G1) when determining compliance with the relevant standard. Manufacturers may also use appendix G1 to certify compliance with any amended standards prior to the applicable compliance date for those standards.

1. Incorporation by Reference.

DOE incorporated by reference in § 431.95 the entire standard for AHRI 390–2021 and ASHRAE 37–2009. However, only certain enumerated provisions of AHRI 390–2021 and ANSI/ASHRAE 37–2009 are required or excluded as listed in this section 1. To the extent there is a conflict between the terms or provisions of a referenced industry standard and this appendix, the appendix provisions control, followed by AHRI 390–2021, followed by ANSI/ASHRAE 37–2009.

1.1. Only the following provisions of AHRI 390–2021 apply:

(a) Section 3—Definitions (omitting sections 3.1, 3.2, 3.5, 3.12, and 3.15)

(b) Section 5—Test Requirements (omitting section 5.8.5)
(c) Section 6—Rating Requirements (omitting sections 6.1.1 and 6.2 through 6.5)
(d) Appendix A. ''References—Normative''
(e) Appendix D. ''Indoor and Outdoor Air Condition Measurement—Normative''
(f) Appendix E. ''Method of Testing Single Package Vertical Units—Normative''

1.2. All provisions of ANSI/ASHRAE 37–2009 apply except for the following provisions:

(a) Section 1—Purpose
(b) Section 2—Scope
(c) Section 4—Classifications

2. General. Determine cooling capacity (Btu/h) and energy efficiency ratio (EER) for all single package vertical air conditioners and heat pumps and coefficient of performance (COP) for all single package vertical heat pumps, in accordance with the specified sections of AHRI 390–2021 and the specified sections of ANSI/ASHRAE 37–2009. Only identified provisions of AHRI 390–2021 are applicable and certain sections of ANSI/ASHRAE 37–2009 are inapplicable, as set forth in section 1 of this appendix. In addition, the instructions in section 3 of this appendix apply to determining EER and COP. Any subsequent amendment to a referenced document by a standard-setting organization will not affect the test procedure in this appendix, unless and until the test procedure is amended by DOE.

3. Test Conditions. The ''Standard Rating Full Load Capacity Test, Cooling'' conditions for cooling mode tests and ''Standard Rating Full Load Capacity Test, Heating'' conditions for heat pump heating mode tests specified in Table 3 of section 5.8.3 of AHRI 390–2021 shall be used.

3.1. Optional Representations. Representations of COP for single package vertical heat pumps made using the ''Low Temperature Operation, Heating'' condition specified in Table 3 of section 5.8.3 of AHRI 390–2021 are optional and are determined according to the applicable provisions in section 1 of this appendix.

3.2. [Reserved]

■ 12. Add appendix G1 to subpart F of part 431 to read as follows:

Appendix G1 to Subpart F of Part 431—Uniform Test Method for Measuring the Energy Consumption of Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps

Note: Beginning December 4, 2023, if manufacturers make voluntary representations with respect to the integrated energy efficiency ratio (IEER) of single packaged vertical air conditioners and single package vertical heat pumps, such representations must be based on testing conducted in accordance with this appendix.

Manufacturers must use the results of testing under this appendix to determine compliance with any amended standards for single packaged vertical air conditioners and single package vertical heat pumps based on IEER provided in § 431.97 that are published after January 1, 2021. Representations related to energy consumption must be made in accordance with the appropriate appendix that applies (*i.e.,* appendix G to this subpart or this appendix) when determining compliance with the relevant standard. Manufacturers may also use this appendix to certify compliance with any amended standards prior to the applicable compliance date for those standards.

1. Incorporation by Reference

DOE incorporated by reference in § 431.95 the entire standard for AHRI 390–2021 and ASHRAE 37–2009. However, only certain enumerated provisions of AHRI 390–2021 and ANSI/ASHRAE 37–2009 are required or excluded as listed in this section 1. To the extent there is a conflict between the terms or provisions of a referenced industry standard and this appendix, the appendix provisions control, followed by AHRI 390–2021, followed by ANSI/ASHRAE 37–2009.

1.1. Only the following provisions of AHRI 390–2021 apply:

(a) Section 3—Definitions (omitting sections 3.1, 3.2, 3.5, 3.12, and 3.15)
(b) Section 5—Test Requirements (omitting section 5.8.5)
c) Section 6—Rating Requirements (omitting sections 6.1.1 and 6.3 through 6.5)
(d) Appendix A. ''References—Normative''
(e) Appendix D. ''Indoor and Outdoor Air Condition Measurement—Normative''
(f) Appendix E. ''Method of Testing Single Package Vertical Units—Normative''

1.2. All provisions of ANSI/ASHRAE 37–2009 apply except for the following provisions:

(a) Section 1—Purpose
(b) Section 2—Scope
(c) Section 4—Classifications

2. General. Determine cooling capacity (Btu/h) and integrated energy efficiency ratio (IEER) for all single package vertical air conditioners and heat pumps and coefficient of performance (COP) for all single package vertical heat pumps, in accordance with the specified sections of AHRI 390–2021and the specified sections of ANSI/ASHRAE 37–2009. Only identified provisions of AHRI 390–2021 and ANSI/ASHRAE 37–2009 are applicable, as set forth in section 1 of this appendix. In addition, the instructions in section 4 of this appendix apply to determining IEER and COP. Any subsequent amendment to a referenced document by a standard-setting organization will not affect the test procedure in this appendix, unless and until the test procedure is amended by DOE.

3. Test Conditions. The ''Part-Load Standard Rating Conditions'' conditions for cooling mode tests and ''Standard Rating Full Load Capacity Test, Heating'' conditions for heat pump heating mode tests specified in Table 3 of section 5.8.3 of AHRI 390–2021 shall be used.

3.1. Optional Representations. Representations of COP for single package vertical heat pumps made using the ''Low Temperature Operation, Heating'' condition specified in Table 3 of section 5.8.3 of AHRI 390–2021 are optional and are determined according to the applicable provisions in section 1.1 of this appendix.

4. *Set-Up and Test Provisions for Specific Components.* When testing a single package vertical unit (SPVU) that includes any of the features listed in table 4.1 to this appendix, test in accordance with the set-up and test provisions specified in table 4.1 to this appendix.

TABLE 4.1—TEST PROVISIONS FOR SPECIFIC COMPONENTS

Component	Description	Test provisions
Desiccant Dehumidification Components.	An assembly that reduces the moisture content of the supply air through moisture transfer with solid or liquid desiccants.	Disable desiccant dehumidification components for testing.
Air Economizers	An automatic system that enables a cooling system to supply outdoor air to reduce or eliminate the need for mechanical cooling during mid or cold weather.	For any air economizer that is factory-installed, place the economizer in the 100% return position and close and seal the outside air dampers for testing. For any modular air economizer shipped with the unit but not factory-installed, do not install the economizer for testing.
Fresh Air Dampers	An assembly with dampers and means to set the damper position in a closed and one open position to allow air to be drawn into the equipment when the indoor fan is operating.	For any fresh air dampers that are factory-installed, close and seal the dampers for testing. For any modular fresh air dampers shipped with the unit but not factory-installed, do not install the dampers for testing.
Hail Guards	A grille or similar structure mounted to the outside of the unit covering the outdoor coil to protect the coil from hail, flying debris and damage from large objects.	Remove hail guards for testing.

TABLE 4.1—TEST PROVISIONS FOR SPECIFIC COMPONENTS—Continued

Component	Description	Test provisions
Power Correction Capacitors	A capacitor that increases the power factor measured at the line connection to the equipment.	Remove power correction capacitors for testing.
Ventilation Energy Recovery System (VERS).	An assembly that preconditions outdoor air entering the equipment through direct or indirect thermal and/or moisture exchange with the exhaust air, which is defined as the building air being exhausted to the outside from the equipment.	For any VERS that is factory-installed, place the VERS in the 100% return position and close and seal the outside air dampers and exhaust air dampers for testing, and do not energize any VERS subcomponents (*e.g.,* energy recovery wheel motors). For any VERS module shipped with the unit but not factory-installed, do not install the VERS for testing.
Barometric Relief Dampers	An assembly with dampers and means to automatically set the damper position in a closed position and one or more open positions to allow venting directly to the outside a portion of the building air that is returning to the unit, rather than allowing it to recirculate to the indoor coil and back to the building.	For any barometric relief dampers that are factory-installed, close and seal the dampers for testing. For any modular barometric relief dampers shipped with the unit but not factory-installed, do not install the dampers for testing.
UV Lights	A lighting fixture and lamp mounted so that it shines light on the indoor coil, that emits ultraviolet light to inhibit growth of organisms on the indoor coil surfaces, the condensate drip pan, and/other locations within the equipment.	Turn off UV lights for testing.
Steam/Hydronic Heat Coils	Coils used to provide supplemental heating	Test with steam/hydronic heat coils in place but providing no heat.
Hot Gas Reheat	A heat exchanger located downstream of the indoor coil that heats the Supply Air during cooling operation using high pressure refrigerant in order to increase the ratio of moisture removal to Cooling Capacity provided by the equipment.	De-activate refrigerant reheat coils for testing so as to provide the minimum (none if possible) reheat achievable by the system controls.
Sound Traps/Sound Attenuators	An assembly of structures through which the Supply Air passes before leaving the equipment or through which the return air from the building passes immediately after entering the equipment for which the sound insertion loss is at least 6 dB for the 125 Hz octave band frequency range.	Removable sound traps/sound attenuators shall be removed for testing. Otherwise, test with sound traps/attenuators in place.
Fire/Smoke/Isolation Dampers	A damper assembly including means to open and close the damper mounted at the supply or return duct opening of the equipment.	For any fire/smoke/isolation dampers that are factory-installed, set the dampers in the fully open position for testing. For any modular fire/smoke/isolation dampers shipped with the unit but not factory-installed, do not install the dampers for testing.

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S. 1941/P.L. 117–219

Metropolitan Areas Protection and Standardization Act of 2021 (Dec. 5, 2022; 136 Stat. 2271)

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To designate the community-based outpatient clinic of the Department of Veterans Affairs located at 400 College Drive, Middleburg, Florida, as the ''Andrew K. Baker Department of Veterans Affairs Clinic'', and for other purposes. (Dec. 5, 2022; 136 Stat. 2276)

S. 3510/P.L. 117–221

Disaster Resiliency Planning Act (Dec. 5, 2022; 136 Stat. 2277)

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