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Contents

Federal Register

Vol. 86, No. 172

Thursday, September 9, 2021

Agriculture Department
See Animal and Plant Health Inspection Service

Animal and Plant Health Inspection Service
NOTICES
Availability:
Pest Risk Analysis for the Importation of Fresh Mango (Mangifera indica L.) Fruit From Grenada, 50524

Coast Guard
RULES
Safety Zone:
Anacostia River, Washington, DC, 50454–50456
NOTICES
Guidance:
Change 3 to Navigation and Vessel Inspection Circular 24–14 Guidelines On Qualification for STCW Endorsements As Electro-Technical Rating On Vessels Powered By Main Propulsion Machinery Of 750 Kw/1,000 HP or More, 50546
Port Access Route Study:
Northern New York Bight, 50546–50548

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology

Defense Department
NOTICES
Charter Renewal:
Defense Policy Board, 50529–50530

Energy Department
See Southwestern Power Administration

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Illinois; Prevention of Significant Deterioration, 50459–50470
Texas; Clean Air Act Requirements for Nonattainment New Source Review and Emission Statements for the 2015 Ozone National Ambient Air Quality, 50456–50459
Final Approval of State Petroleum Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference:
Tennessee, 50470–50477
National Priorities List, 50477–50483
PROPOSED RULES
Final Approval of State Petroleum Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference:
Tennessee, 50522–50523
National Priorities List, 50515–50522
NOTICES
Transfer of Data:
United States Department of Justice and Parties to Certain Litigation, 50535

Federal Aviation Administration
RULES
Airspace Designations and Reporting Points:
Port Huron, MI, 50453–50454
Airworthiness Directives:
B–N Group Ltd. Airplanes, 50449–50451
Gulfstream Aerospace LP Airplanes, 50451–50453
PROPOSED RULES
Airspace Designations and Reporting Points:
Vicinity of Twentynine Palms, CA, 50493–50495
Airworthiness Directives:
Embraer S.A. (Type Certificate previously held by Empresa Brasileira de Aeronautica S.A.) Airplanes, 50487–50493
The Boeing Company Airplanes, 50485–50487
The Boeing Company Airplanes; Withdrawal, 50484–50485

Federal Bureau of Investigation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Law Enforcement Public Contact Data Collection, 50557–50558

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 50536

Federal Maritime Commission
NOTICES
Agreement Filed, 50536

Federal Motor Carrier Safety Administration
NOTICES
Qualification of Drivers; Exemption Applications:
Vision, 50588–50589

Federal Transit Administration
NOTICES
Funding Opportunity:
FY 2021 American Rescue Plan Additional Assistance, 50590–50594

Food and Drug Administration
PROPOSED RULES
Filing of Color Additive Petition:
Fermentalg, 50495–50496
Filing of Food Additive Petition:
Monaghan Mushrooms Ireland Unlimited Co., 50496
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Generic Clearance for Quantitative Testing for the Development of Food and Drug Administration Communications, 50544–50545
Draft Guidance for Industry; Availability:
International Council for Harmonisation Q12-Implementation Considerations for Food and Drug Administration-Regulated Products; Reopening of the Comment Period, 50539–50540

S12 Nonclinical Biodistribution Considerations for Gene Therapy Products; International Council for Harmonisation, 50536–50538
Environmental Impact Statements; Availability, etc.:
Certain Sunscreen Drug Products for Over-the-Counter Use; Reopening of Comment Period, 50538–50539
Meetings:
Allergenic Products Advisory Committee, 50540–50541
Reconsidering Mandatory Opioid Prescriber Education Through a Risk Evaluation and Mitigation Strategy in an Evolving Opioid Crisis; Public Workshop, 50541–50543

Foreign-Trade Zones Board
NOTICES
Subzone Application:
Getinge Group Logistics Americas LLC; Foreign-Trade Zone 49; Newark, NJ, 50524–50525

Health and Human Services Department
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Production of Material or Provision of Testimony in Response to Demands in Legal Proceedings Among Private Litigants, 50555–50556
Annual Indexing of Basic Statutory Mortgage Limits for Multifamily Housing Programs:
Annual Indexing of Substantial Rehabilitation Threshold, 50554–50555
Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2022, 50548–50554

Industry and Security Bureau
NOTICES
National Defense Stockpile Market Impact Committee Request for Public Comments:
Potential Market Impact of the Proposed Fiscal Year 2023 Annual Materials Plan, 50525–50527

Interior Department
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Steel Concrete Reinforcing Bar from Mexico, 50527–50529

Justice Department
See Federal Bureau of Investigation
See Justice Programs Office

Justice Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
2022 School Crime Supplement to the National Crime Victimization Survey, 50558–50559

Labor Department
See Mine Safety and Health Administration
See Workers Compensation Programs Office

Land Management Bureau
NOTICES
Temporary Closure and Restrictions of Selected Public Lands:
Mohave County, AZ, 50556–50557

Mine Safety and Health Administration
PROPOSED RULES
Safety Program:
Surface Mobile Equipment, 50496–50513

National Credit Union Administration
NOTICES
Funding Opportunity:
Community Development Revolving Loan Fund Grants, 50560–50562

National Institute of Standards and Technology
NOTICES
Meetings:
Visiting Committee on Advanced Technology, 50529

National Institutes of Health
NOTICES
Meetings:
National Institute on Drug Abuse, 50545–50546

Nuclear Regulatory Commission
NOTICES
Meetings:
Post-Shutdown Decommissioning Activities Report; NextEra Energy Duane Arnold, LLC; Duane Arnold Energy Center, 50563–50564

Pipeline and Hazardous Materials Safety Administration
NOTICES
Hazardous Materials:
Applications for New Special Permits, 50594

Presidential Documents
PROCLAMATIONS
Special Observances:
Labor Day (Proc. 10250), 50437–50438
National Historically Black Colleges and Universities Week (Proc. 10249), 50433–50435
EXECUTIVE ORDERS
Education:
White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity Through Historically Black Colleges and Universities; Establishment (EO 14041), 50443–50447
September 11, 2001, Terrorist Attacks; Declassification Reviews of Certain Documents (EO 14040), 50439–50441
ADMINISTRATIVE ORDERS
U.S. Elections, Foreign Interference and Undermining Public Confidence; Continuation of National Emergency (Notice of September 7, 2021), 50599–50602

Securities and Exchange Commission
NOTICES
Meetings:
Small Business Capital Formation Advisory Committee, 50569–50570

Meetings; Sunshine Act, 50586
Self-Regulatory Organizations; Proposed Rule Changes:
Investors Exchange LLC, 50564–50568
Nasdaq PHLX, LLC, 50584–50586
National Securities Clearing Corp., 50569
NYSE Arca, Inc., 50568–50569
The Depository Trust Co., 50570
The Nasdaq Stock Market, LLC, 50570–50583

Southwestern Power Administration
NOTICES
Robert D. Willis Hydropower Project Rate Schedule, 50532–50535
Sam Rayburn Dam Rate Schedule, 50530–50532

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Immigrant Visa and Alien Registration, 50587–50588
Statement Regarding a Lost or Stolen U.S. Passport Book and/or Card, 50586–50587
Culturally Significant Objects Imported for Exhibition:
Andre Kertesz: Postcards from Paris, 50587

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Transit Administration
See Pipeline and Hazardous Materials Safety Administration

Treasury Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Waiver of 60-day Rollover Requirement, 50594–50595

Veterans Affairs Department
PROPOSED RULES
Update and Clarify Regulatory Bars to Benefits Based on Character of Discharge, 50513–50515
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50595–50596
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Annual Report, Remediation Plans and Assessment Questionnaires, 50596–50597
Meetings:
Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities, 50597
Veterans' Advisory Committee on Education, 50596

Workers Compensation Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Statement of Recovery Forms, 50559–50560

Separate Parts In This Issue

Part II
Presidential Documents, 50599–50602

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:
10249 50433
10250 50437

Executive Orders:
14040 50439
14041 50443

Administrative Orders:
Notices:
Notice of September 7, 2021 50601

14 CFR
39 (2 documents) 50449, 50451
71 50453

Proposed Rules:
39 (3 documents) 50484, 50485, 50487
71 50493

21 CFR

Proposed Rules:
73 50495
172 50496

30 CFR

Proposed Rules:
56 50496
57 50496
77 50496

33 CFR
165 50454

38 CFR

Proposed Rules:
3 50513

40 CFR
52 (2 documents) 50456, 50459
281 50470
282 50470
300 50477

Proposed Rules:
281 50522
282 50522
300 50515

Federal Register
Vol. 86, No. 172
Thursday, September 9, 2021

Presidential Documents

Title 3—

The President

Proclamation 10249 of September 3, 2021

National Historically Black Colleges and Universities Week, 2021

By the President of the United States of America

A Proclamation

Since 1837, Historically Black Colleges and Universities (HBCUs) have educated and prepared millions of people to lift up our Nation and make their impact on the world. These essential institutions have been critical engines of opportunity for generations of American families—they are incubators of excellence, helping to shape the story of our Nation and deliver on the promise of a more perfect Union. During National Historically Black Colleges and Universities Week, we celebrate the vital role that HBCUs play in molding Black leaders and ensuring that America continues to move closer to reaching its full potential.

From Delaware State—which has always held a special place in my heart—to more than 100 institutions across the country, HBCU graduates are the bearers of a proud and sacred tradition. It is the tradition of the Reverend Dr. Martin Luther King, Jr., and Thurgood Marshall, of Toni Morrison and Langston Hughes, of Reverend Jesse Jackson and Reverend William Barber. It is the tradition of countless scholars and advocates; leaders of industry, arts, and sciences; and leaders of faith and community. It is the tradition of trailblazers—including the first HBCU graduate elected to the Vice Presidency, Kamala Harris. It is a tradition rooted in a fundamental belief that quality education is a right that belongs to all people—that every single American should have a fair and equal chance to go as far as their God-given talents can take them.

Opposition to that belief has been a stain on our Nation since its founding. After President Lincoln signed the Emancipation Proclamation, Black Americans were still subjected to persistent legal and social discrimination. Laws were enacted to stifle their progress, including laws that denied Black Americans access to the same educational opportunities as white Americans. Across the generations since, progress has been won. Racial segregation of public schools was struck down by the Supreme Court in a case successfully argued by HBCU graduates. The Civil Rights Act of 1964 prohibited discrimination in public accommodations and federally-funded programs. Over time, hearts and minds have been changed. For more than 180 years, HBCUs have been on the forefront of that progress.

Still, the wound—and the reality—of systemic racism remains. We see it in our education system, our labor force, our health care system, our criminal justice system, and in so many other corners of our society. We see it in the COVID–19 pandemic, which revealed and exacerbated longstanding disparities in areas like food security, internet access, and medical care. For Black women and girls, LGBTQ+ Black Americans, and Black Americans with disabilities—we see it compounded with other forms of discrimination and bias. As they have throughout their existence, HBCUs have risen to the occasion to serve their students and communities over the last year and a half—helping to develop breakthrough treatments, hosting life-saving COVID–19 vaccination sites, and nurturing movements for justice and equality.

My Administration stands with HBCUs and is committed to the fundamental American promise they represent: that all of us are created equal and have a right to be treated equally throughout our lives. Too many times throughout our history, we have allowed a narrow, cramped view of that promise to fester—the false idea that America is a zero-sum game of opportunity, where a person can only lift themselves up by holding others down. It is critical that we shed that flawed way of thinking and finally embrace what we know to be true: that when any one of us is held back, we are all held back, and when we lift each other up, we are all lifted up.

That idea—the defining idea of America—is why I issued an Executive Order on my first day in office establishing a whole-of-government approach to equity and racial justice. It is why I have built the most diverse Cabinet in history, why I am appointing Black judges to the Federal judiciary at an historic rate, and why we are continuing to build an Administration that truly looks like America.

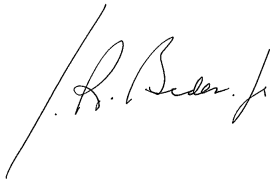
It is also why we will continue to support HBCUs in their vital mission. Imagine how much more creative and innovative America would be if our HBCUs had the same funding and resources as other institutions—allowing young people from every community to compete for the jobs and industries of the future. To help make that a reality, my Administration has proposed approximately $239 million in new institutional aid funding for HBCUs in the Department of Education budget for next year, including $72 million in new discretionary funding for HBCUs. In addition, my Administration has proposed approximately $167 million in new mandatory funding for HBCUs and to provide 2 years of subsidized tuition and expand programs in high-demand fields at HBCUs.

I today signed an Executive Order establishing the White House Initiative on Advancing Educational Equity, Opportunity, and Excellence through Historically Black Colleges and Universities, which will create a Government-wide approach to support the needs of HBCUs and the communities they serve and eliminate systemic barriers impeding HBCU participation in Federal programs.

This is only the beginning of our work to support HBCUs and the remarkable students they empower and grow. This week and every week, we will continue to celebrate and advance the historic and ongoing success of our HBCUs—because we know that their success is America's success.

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 September 5 through September 11, 2021, as National Historically Black Colleges and Universities Week. I call upon educators, public officials, professional organizations, corporations, and all Americans to observe this week with appropriate programs, ceremonies, and activities that acknowledge the countless contributions these institutions and their alumni have made to our country.

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



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Presidential Documents

Proclamation 10250 of September 3, 2021

Labor Day, 2021

By the President of the United States of America

A Proclamation

My father taught me from a young age that a job is about much more than a paycheck. It is about dignity, respect, and your place in the community. It is about being able to look your children in the eye and assure them that things are going to be okay. When Americans go to work each day, they are not just making a living—they are pursuing a life with hope for the future. In doing so, they build, drive, care for, and grow our Nation.

Hard-working Americans are the backbone of our country. As I have often said, the middle class built America—and unions built the middle class. Everything that supports a sustainable middle-class life was made possible by unions, and on Labor Day we honor all those workers—and their enduring movement—that keep our economy moving and make our Nation strong.

I believe that every worker deserves not only a fair wage and benefits—but freedom from discrimination, a safe and healthy workplace, and the respect that comes with a secure retirement as well. That is why my Administration always stands proudly with workers. It is why, in the American Rescue Plan, we gave working people a break—helping workers weather the pandemic, giving middle-class families raising children a historic tax cut, and upholding the promise of a dignified retirement by protecting the hard-earned pensions of millions of American workers and retirees. It is also why I am committed to ensuring that all workers have a free and fair opportunity to organize a union and bargain collectively with their employers. This has been a guiding principle of our Nation since union organizing was explicitly encouraged by the National Labor Relations Act in 1935. But for far too long, that principle has been attacked and neglected.

American workers should make their own decisions—free from coercion and intimidation—about organizing with their co-workers to have a stronger voice in their workplaces, their communities, and their government. That is why I strongly support the Protecting the Right to Organize Act and the Public Service Freedom to Negotiate Act. It is also why I created the Task Force on Worker Organizing and Empowerment, and asked Vice President Kamala Harris and Secretary of Labor Martin Walsh to serve as its chair and vice chair.

After more than a year in which essential workers made extraordinary sacrifices and carried our Nation on their backs, this Labor Day we see more clearly than ever that we must build an economy that responds to the needs and aspirations of working people—an economy that deals everyone in and brings everyone along. The pandemic has also exacerbated and revealed for all to see the places where our Nation has fallen short of its promise to deliver equal opportunity to workers of color and their communities. To help address that long-standing challenge, my Administration is pursuing a comprehensive approach to advancing equity, as illustrated in the Executive Order I signed on my first day in office entitled Advancing Racial Equity and Support for Underserved Communities.

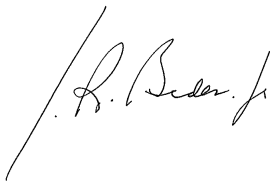
Despite the tremendous progress we have made to advance labor protections and strengthen the voice of workers in the workplace, there is still much more we need to do. As in every generation since Labor Day was first

celebrated in the late 19th century, there are still those who resist Americans' efforts to build and sustain worker power—the engine of our economic growth, the key to our long-term success, and the best defense against corporate abuses of power in workplaces, our economy, and our democracy. Over the years, the Labor Movement has won many battles: establishing the 40-hour work week, integrating workplaces, eliminating child labor, securing health and safety protections for workers, and countless other victories. Workers and their unions prevailed time and time again—but the work continues. We are going to keep fighting to restore power to working families and protect the rights of hard-working Americans and unions. That includes seizing the golden opportunity ahead of us to make the largest investment in nearly a century in American infrastructure, American workers, and good union jobs through the Bipartisan Infrastructure Investment and Jobs Act.

On this Labor Day, we honor the pioneers who stood up for the dignity of working people—leaders like César Chávez, the Reverend Dr. Martin Luther King, Jr., A. Phillip Randolph, John L. Lewis, Samuel Gompers, Frances Perkins, and many more. Let us also remember the tireless voices for working families that we have recently lost, including my friend Richard Trumka. We must recommit ourselves to advancing the historic progress these trailblazers made as we work to deliver a decent life with security, respect, and dignity for all.

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 September 6, 2021, as Labor Day. I call upon all public officials and people of the United States to observe this day with appropriate programs, ceremonies, and activities that honor the energy and innovation of working Americans.

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



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Presidential Documents

Executive Order 14040 of September 3, 2021

Declassification Reviews of Certain Documents Concerning the Terrorist Attacks of September 11, 2001

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

Section 1. *Policy*. Many Americans continue to seek full accountability for the horrific attacks of September 11, 2001 (9/11), including 9/11 survivors and victims' family members. As the 20th anniversary of 9/11 approaches, the American people deserve to have a fuller picture of what their Government knows about those attacks. Although the indiscriminate release of classified information could jeopardize the national security—including the United States Government's efforts to protect against future acts of terrorism—information should not remain classified when the public interest in disclosure outweighs any damage to the national security that might reasonably be expected from disclosure. The significant events in question occurred two decades ago or longer, and they concern a tragic moment that continues to resonate in American history and in the lives of so many Americans. It is therefore critical to ensure that the United States Government maximizes transparency, relying on classification only when narrowly tailored and necessary. Thus, information collected and generated in the United States Government's investigation of the 9/11 terrorist attacks should now be disclosed, except when the strongest possible reasons counsel otherwise.

Sec. 2. *Declassification Reviews*. The Attorney General and the heads of any other executive departments and agencies (agencies) that originated relevant information shall complete declassification reviews:

(a) not later than September 11, 2021, of the Federal Bureau of Investigation (FBI) electronic communication dated April 4, 2016, from the subfile investigation described in chapter V of the 2015 Report of the Congressionally-directed 9/11 Review Commission to the Director of the FBI (subfile investigation), which was identified but withheld in full during discovery in *In re Terrorist Attacks on September 11, 2001*, MDL No. 03–1570 (S.D.N.Y.);

(b) not later than 60 days after the date of this order, of:

(i) all other records that previously were withheld as classified, in full or in part, during discovery in *In re Terrorist Attacks on September 11, 2001*; and

(ii) the 2021 FBI electronic communication closing the subfile investigation;

(c) not later than 120 days after the date of this order, of all interview reports, analytical documents, documents reporting investigative findings, or other substantive records (including phone records and banking records, if any) from the FBI's initial investigation of the 9/11 terrorist attacks—known as the Pentagon/Twin Towers Bombings (PENTTBOM) investigation—that reference the individual subjects of the subfile investigation and may be found through search terms, keyword identifiers, and other diligent means; and

(d) not later than 180 days after the date of this order, of all records from any separate FBI investigation other than the PENTTBOM investigation or the subfile investigation of any individual subjects of the subfile investigation that are relevant to the 9/11 terrorist attacks or to any of the individual subjects' connection to an agency relationship with a foreign government.

Sec. 3. *Standards for Declassification*. (a) Consistent with Executive Order 13526 of December 29, 2009 (Classified National Security Information), the Attorney General or the head of any other agency that originated the information, as the case may be, shall be responsible for conducting the declassification reviews and making declassification determinations for information that originated within their respective agency. Information may remain classified only if it still requires protection in the interest of the national security and disclosure of the information reasonably could be expected to result in damage to the national security. Information shall not remain classified if there is significant doubt about the need to maintain its classified status. Nor shall information remain classified in order to conceal violations of law, inefficiency, or administrative error or to prevent embarrassment to a person, organization, or agency.

(b) Even when information requires continued protection in the interest of the national security, the Attorney General or the head of any other agency that originated the information, as the case may be, should determine, as an exercise of discretion, whether the public interest in disclosure of the information outweighs the damage to the national security that might reasonably be expected from disclosure.

(c) Upon the completion of the declassification reviews under section 2 of this order, the Attorney General and the heads of any other agencies that originated relevant information shall ensure that, as to all information subject to such reviews but not declassified pursuant to such reviews:

(i) such information meets the requirements for classification, in accordance with Executive Order 13526;

(ii) all non-classified information is disentangled from any classified information and, to the extent practicable, made available to the public under section 5 of this order; and

(iii) all information is nonetheless declassified, in accordance with section 3.1 of Executive Order 13526, or any successor order, when the Attorney General or the head of any other agency that originated the information, as the case may be, determines that the United States Government's interest in classification is outweighed by the public's interest in disclosure.

Sec. 4. *Report to the President and the Congressional Intelligence Committees*. Upon completion of each review, the Attorney General, in consultation with the heads of any other agencies that originated relevant information, shall submit to the President, through the Assistant to the President for National Security Affairs, and to the congressional intelligence committees, reports on the results of the declassification reviews completed under section 2 of this order, including a justification for each decision not to declassify information pursuant to such reviews.

Sec. 5. *Public Release*. Upon completion of each review, the Attorney General, in consultation with the heads of any other agencies that originated relevant information, shall make publicly available information declassified as a result of the declassification reviews completed under section 2 of this order, except for information the disclosure of which would materially impair confidential executive branch deliberations.

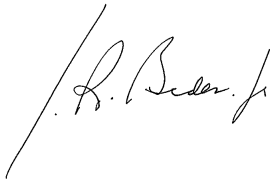
Sec. 6. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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



THE WHITE HOUSE,
September 3, 2021.

[FR Doc. 2021–19578
Filed 9–8–21; 8:45 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 14041 of September 3, 2021

White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity Through Historically Black Colleges and Universities

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to advance equity in economic and educational opportunities for all Americans, including Black Americans, strengthen the capacity of Historically Black Colleges and Universities (HBCUs) to provide the highest-quality education, increase opportunities for these institutions to participate in and benefit from Federal programs, and ensure that HBCUs can continue to be engines of opportunity, it is hereby ordered as follows:

Section 1. *Policy*. HBCUs have a proud history and legacy of achievement. In the face of discrimination against Black Americans by many institutions of higher education, HBCUs created pathways to opportunity and educational excellence for Black students throughout our Nation. That legacy continues. Today, more than 100 HBCUs, located in 19 States, the District of Columbia, and the U.S. Virgin Islands, serve nearly 300,000 students annually. HBCUs vary in size and academic focus and serve a range of diverse students and communities in urban, rural, and suburban settings.

HBCUs play a vital role in providing educational opportunities, scholarly growth, and a sense of community for students. HBCU graduates are barrier-breaking public servants, scientists, artists, lawyers, engineers, educators, business owners, and leaders. For generations, HBCUs have been advancing intergenerational economic mobility for Black families and communities, developing vital academic research, and making our country more prosperous and equitable. HBCUs are proven means of advancement for people of all ethnic, racial, and economic backgrounds, especially Black Americans. HBCUs produce nearly 20 percent of all Black college graduates and 25 percent of Black graduates who earn degrees in the disciplines of science, technology, engineering, and math.

HBCUs' successes have come despite many systemic barriers to accessing resources and opportunities. For example, compared to other higher education institutions, on average HBCUs educate a greater percentage of lower-income, Pell-grant eligible students, while receiving less revenue from tuition and possessing much smaller endowments. Disparities in resources and opportunities for HBCUs and their students remain, and the COVID–19 pandemic has highlighted continuing and new challenges. These challenges include addressing the need for enhanced physical and digital infrastructure in HBCU communities and ensuring equitable funding for HBCUs as compared to other institutions of higher education. The Federal Government must promote a variety of modern solutions for HBCUs, recognizing that HBCUs are not a monolith, and that the opportunities and challenges relevant to HBCUs are as diverse as the institutions themselves and the communities they serve.

It is the policy of my Administration to advance educational equity, excellence, and economic opportunity in partnership with HBCUs, and to ensure that these vital institutions of higher learning have the resources and support to continue to thrive for generations to come.

Sec. 2. *White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity through Historically Black Colleges and Universities*. (a) In furtherance of the policy set out in section 1 of this order, there is established in the Department of Education (Department), the White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity through Historically Black Colleges and Universities (Initiative), led by an Executive Director designated by the President and appointed consistent with applicable law. The Executive Director shall manage the day-to-day operations of the Initiative, in consultation with the Assistant to the President and Director of the White House Office of Public Engagement as appropriate, and coordinate with senior officials across the Executive Office of the President, who shall lend their expertise and advice to the Initiative.

(b) The Initiative, in coordination with senior officials across the Executive Office of the President, shall provide advice to the President on advancing equity, excellence, and opportunity at HBCUs and for the communities they principally serve by coordinating a Government-wide policymaking effort to eliminate barriers HBCUs face in providing the highest-quality education to a growing number of students. The Initiative's recommendations shall include advice on advancing policies, programs, and initiatives that further the policy set out in section 1 of this order.

(i) To support implementation of this Government-wide approach to breaking down systemic barriers for HBCU participation in Federal Government programs, the Director of the Office of Management and Budget and the Assistant to the President for Domestic Policy shall coordinate closely with the Secretary of Education (Secretary), the Assistant to the President and Director of the White House Office of Public Engagement, the Executive Director, and the Chair of the President's Board of Advisors on HBCUs (as established in section 3 of this order) to ensure that the needs and voices of HBCUs, their faculty, staff, students, alumni, and the communities they principally serve are considered in the efforts of my Administration to advance educational equity, excellence, and opportunity.

(ii) The Initiative shall also perform the following specific functions:

(A) supporting implementation of the HBCU Propelling Agency Relationships Towards a New Era of Results for Students Act (Public Law 116–270) (PARTNERS Act);

(B) working closely with the Executive Office of the President on key Administration priorities related to advancing educational equity, excellence, and economic opportunity through HBCUs, in partnership with HBCU leaders, representatives, students, and alumni;

(C) working to break down barriers and expand pathways for HBCUs to access Federal funding and programs, particularly in areas of research and development, innovation, and financial and other support to students;

(D) strengthening the capacity of HBCUs to participate in Federal programs, access Federal resources, including grants and procurement opportunities, and partner with Federal agencies;

(E) advancing and coordinating efforts to ensure that HBCUs can respond to and recover from the COVID–19 pandemic and thoroughly support students' holistic recovery, from academic engagement to social and emotional wellbeing;

(F) developing new and expanding pre-existing national networks of individuals, organizations, and communities to share and implement administrative and programmatic best practices related to advancing educational equity, excellence, and opportunity at HBCUs;

(G) fostering sustainable public-private and philanthropic partnerships as well as private-sector initiatives to promote centers of academic research and program excellence at HBCUs;

(H) strengthening capacity to improve the availability, dissemination, and quality of information about HBCUs and HBCU students for the American public;

(I) partnering with private entities, elementary and secondary education providers, and other stakeholders to build a pipeline for students that may be interested in attending HBCUs, facilitate HBCU modernization, address college affordability, and promote degree attainment;

(J) addressing efforts to promote student success and retention, including college affordability, degree attainment, campus modernization and infrastructure improvements, and the development of a student recognition program for high-achieving HBCU students;

(K) encouraging the development of highly qualified, diverse, culturally responsive educators and administrators reflective of a variety of communities and backgrounds in order to ensure that students have access to educators and administrators who celebrate, cultivate, and comprehend the lived experiences of HBCU students and effectively meet their learning, social, and emotional needs;

(L) establishing clear plans to strengthen Federal recruitment activities at HBCUs to build accessible and equitable pathways into Federal service and talent programs;

(M) meeting regularly with HBCU students, leaders, and representatives to address matters related to the Initiative's mission and functions; and

(N) hosting the National HBCU Week Conference, for HBCU executive leaders, faculty, students, alumni, supporters, and other stakeholders to share information, innovative educational tools and resources, student success models, and ideas for Federal engagement.

(c) The head of each ''applicable agency,'' as defined in section 3(1) of the PARTNERS Act, shall submit to the Secretary, the Executive Director, the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Education and Labor of the House of Representatives, and the President's Board of Advisors on HBCUs (as established in section 3 of this order) an Agency Plan, not later than February 1 of each year, describing efforts to strengthen the capacity of HBCUs to participate or be eligible to participate in the programs and initiatives under the jurisdiction of such applicable agency. The Agency Plans shall meet the requirements established in section 4(d) of the PARTNERS Act.

(i) In addition, the Agency Plan shall specifically address any changes to agency policies and practices that the agency deems necessary or appropriate to ensure that barriers to participation are addressed and removed. Each Agency Plan shall include details on grant and contract funding provided to HBCUs and, where the agency deems necessary or appropriate, describe plans to address disparities in furtherance of the objectives of this order.

(ii) The Executive Director shall monitor and evaluate each agency's progress towards the goals established in its Agency Plan and shall coordinate with each agency to ensure that its Agency Plan includes measurable and action-oriented goals.

(d) There is established an Interagency Working Group, which shall be chaired by the Executive Director and composed of liaisons and representatives designated by the heads of each applicable agency as defined in the PARTNERS Act to help advance and coordinate the work required by this order. Additional members of the Interagency Working Group shall include senior officials from the Office of the Vice President, the White House Domestic Policy Council, the White House Gender Policy Council, the Office of Management and Budget, the White House Office of Science and Technology Policy, the White House Office of Public Engagement, and representatives of other components of the Executive Office of the President, as the Executive Director, in consultation with the Secretary and the Assistant to the President and Director of the White House Office of Public Engagement,

considers appropriate. The Interagency Working Group shall collaborate regarding resources and opportunities available across the Federal Government to increase educational equity and opportunities for HBCUs. The Executive Director may establish subgroups of the Interagency Working Group.

(e) The Department shall provide funding and administrative support for the Initiative and the Interagency Working Group, to the extent permitted by law and within existing appropriations. To the extent permitted by law, including the Economy Act (31 U.S.C. 1535), and subject to the availability of appropriations, other agencies and offices represented on the Interagency Working Group may detail personnel to the Initiative, to assist the Department in meeting the objectives of this order.

(f) To advance shared priorities and policies that advance equity and economic opportunity for underserved communities, the Initiative shall collaborate and coordinate with other White House Initiatives related to equity and economic opportunity.

(g) On an annual basis, the Executive Director shall report to the President through the Secretary, with the support and consultation of the Assistant to the President and Director of the White House Office of Public Engagement as appropriate, on the Initiative's progress in carrying out its mission and function under this order.

Sec. 3. *President's Board of Advisors on Historically Black Colleges and Universities*. (a) There is established in the Department the President's Board of Advisors on Historically Black Colleges and Universities (Board). The Board shall fulfill the mission and functions established in section 5(c) of the PARTNERS Act. The Board shall include sitting HBCU presidents as well as leaders from a variety of sectors, including education, philanthropy, business, finance, entrepreneurship, innovation, science and technology, and private foundations.

(b) The President shall designate one member of the Board to serve as its Chair, and may designate another member of the Board to serve as Vice Chair. The Department shall provide funding and administrative support for the Board to the extent permitted by law and within existing appropriations.

(c) The Board shall be composed of not more than 21 members appointed by the President. The Secretary of Education and Executive Director of the Initiative or their designees shall serve as ex officio members.

(d) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.), may apply to the Board, any functions of the President under that Act, except that of reporting to the Congress, shall be performed by the Chair, in accordance with guidelines issued by the Administrator of General Services.

(e) Members of the Board shall serve without compensation, but may receive travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

Sec. 4. *Administrative Provisions*. (a) This order supersedes Executive Order 13779 of February 28, 2017 (White House Initiative To Promote Excellence and Innovation at Historically Black Colleges and Universities), which is hereby revoked. To the extent that there are other Executive Orders that may conflict with or overlap with the provisions in this order, the provisions in this order supersede those prior Executive Orders on these subjects.

(b) As used in this order, the terms ''Historically Black Colleges and Universities'' and ''HBCUs'' shall mean those institutions listed in 34 C.F.R. 608.2.

(c) The heads of executive departments and agencies shall assist and provide information to the Initiative and Board established in this order, consistent with applicable law, as may be necessary to carry out the functions of the Initiative and the Board.

(d) Each executive department and agency shall bear its own expenses of participating in the Initiative established in this order.

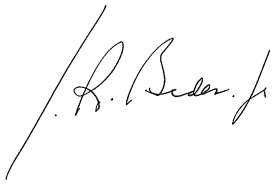
Sec. 5. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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



THE WHITE HOUSE,
September 3, 2021.

[FR Doc. 2021–19579
Filed 9–8–21; 8:45 am]
Billing code 3295–F1–P

Rules and Regulations

Federal Register

Vol. 86, No. 172

Thursday, September 9, 2021

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0502; Project Identifier 2018–CE–043–AD; Amendment 39–21702; AD 2021–18–01]

RIN 2120–AA64

Airworthiness Directives; B–N Group Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for B–N Group Ltd. Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, and BN–2T–4R airplanes. This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as failure of the rudder final drive rod because of cracks in the region of the taper pins. This AD requires repetitively inspecting the rudder final drive rod assembly and replacing the rudder final drive assembly, if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 14, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 14, 2021.

ADDRESSES: For service information identified in this final rule, contact Britten-Norman Aircraft Limited, Commodore House, Mountbatten Business Centre, Millbrook Road East, Southampton SO15 1HY, United Kingdom; phone: + 44 20 3371 4000; fax: + 44 20 3371 4001; email: *info@bnaircraft.com;* website: *https://britten-norman.com/approvals-technical-publications/.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0502.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0502; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the MCAI, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Penelope Trease, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 26805 E 68th Avenue, Denver, CO 80249; phone: (303) 342–1094; email: *penelope.trease@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to B–N Group Ltd. Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, and BN–2T–4R airplanes. The NPRM published in the **Federal Register** on June 25, 2021 (86 FR 33576). The NPRM was prompted by MCAI originated by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA has issued EASA AD 2018–0153, dated July 19, 2018 (referred to after this as ''the MCAI''), to address an unsafe condition on certain B–N Group Ltd. (Britten-Norman Aircraft Ltd., or ''BNA'') Models BN–2, BN–2A, BN–2B, BN–2T, BN–2T–2, BN–2T–2R, and BN–2T–4R airplanes. The MCAI states:

> Occurrences have been reported of failures of the rudder final drive rod, [part number] P/N NB–45–0991. Cracks were found in the region of the taper pins. There is evidence that replacing the taper pins could be a significant factor contributing to the failure of this rod.
>
> This condition, if not detected and corrected, could lead to failure of the affected part, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, BNA issued the applicable SB [service bulletin], providing inspection instructions. Prompted by operator comments, BNA revised the applicable SB (issue 3) to introduce repetitive inspections.
>
> For the reason described above, this [EASA] AD requires repetitive inspections of the affected part and, depending on findings, replacement. This AD also prohibits replacement of taper pins on an affected part. BNA will amend the applicable Maintenance Manuals accordingly.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0502.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs. Paragraphs (g)(3) and (4) of the NPRM have been combined into one paragraph, (g)(3) of the final rule, to make it clear that the action of paragraph (g)(4) of the NPRM is a follow-on action of paragraph (g)(3).

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Britten-Norman Aircraft Limited Service Bulletin Number SB 363, Issue 3, dated May 23, 2018, and Service Bulletin Number SB 364, Issue 3, dated May 23, 2018. For the applicable airplane models identified on each document, this service information contains procedures for repetitively inspecting the rudder final drive rod assembly and replacing the rudder final drive assembly, if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 76 airplanes of U.S. registry. The FAA also estimates that inspecting the rudder final drive assembly will take about 1 work-hour. The average labor rate is $85 per work-hour.

Based on these figures, the FAA estimates the cost of this AD on U.S. operators to be $6,460, or $85 per airplane, each inspection cycle.

In addition, the FAA estimates that any necessary follow-on actions to replace the rudder final drive assembly will take about 5 work-hours and require parts costing $1,200, for a cost of $1,625 per airplane. The FAA has no way of determining the number of airplanes that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–18–01 B–N Group Ltd.: Amendment 39–21702; Docket No. FAA–2021–0502; Project Identifier 2018–CE–043–AD.

(a) Effective Date

This airworthiness directive (AD) is effective October 14, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to B–N Group Ltd. Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, and BN–2T–4R airplanes, all serial numbers, certificated in any category, with a rudder final drive rod part number (P/N) NB–45–0991 installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 2720, Rudder Control System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as failure of the rudder final drive rod because of cracks in the region of the taper pins. The FAA is issuing this AD to detect and correct defects on the rudder final drive rod assembly to prevent failure of the assembly. The unsafe condition, if not addressed, could result in loss of rudder control and reduced airplane control.

(f) Compliance

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

(g) Inspection and Corrective Action

(1) Inspect the rudder final drive rod assembly for loose taper pins, loose end connections, bending, and cracks within the applicable compliance times for your airplane specified in paragraph (g)(1)(i) or (ii) of this AD.

(i) For Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, and BN–2B–27 airplanes, within 100 hours time-in-service (TIS) after the effective date of this AD and thereafter at intervals not to exceed 1,000 hours TIS.

(ii) For Models BN–2T and BN–2T–4R airplanes, within 200 hours TIS after the effective date of this AD and thereafter at intervals not to exceed 1,000 hours TIS.

(2) If a loose taper pin, a loose end connection, any bending, or a crack is found during any inspection required by paragraph (g)(1) of this AD, before further flight, replace the rudder final drive rod assembly by following section 7, Removal and Installation Instructions for Unserviceable Units, of Britten-Norman Service Bulletin Number SB 363, Issue 3, dated May 23, 2018 (SB 363, Issue 3) or Britten-Norman Service Bulletin Number SB 364, Issue 3, dated May 23, 2018 (SB 364, Issue 3), as applicable to your model airplane.

(3) If no loose taper pins, no loose end connections, no bending, and no cracks are found during the initial inspection required by paragraph (g)(1) of this AD, review the airplane maintenance records to determine whether any taper pins have been replaced or reworked on the rudder final drive rod assembly. If a taper pin has ever been replaced or reworked, without exceeding the initial compliance time in paragraph (g)(1)(i) or (ii) of this AD, replace the rudder final drive rod assembly by following section 7, Removal and Installation Instructions for Unserviceable Units, of SB 363, Issue 3 or SB 364, Issue 3, as applicable to your model airplane.

(4) As of the effective date of this AD, do not install a rudder final drive rod assembly P/N NB–45–0991 on any airplane unless:

(i) The rudder final drive rod assembly is unused (zero hours TIS); or

(ii) The taper pins in the rudder final drive rod assembly have never been replaced.

(5) As of the effective date of this AD, do not replace any taper pin on a rudder final drive rod assembly P/N NB–45–0991 installed on any airplane.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information or email: *9-AVS-AIR-730-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(i) Related Information

(1) For more information about this AD, contact Penelope Trease, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 26805 E 68th Avenue, Denver, CO 80249; phone: (303) 342–1094; email: *penelope.trease@faa.gov.*

(2) Refer to European Aviation Safety Agency (EASA) AD 2018–0153, dated July 19, 2018, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2021–0502.

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Britten-Norman Service Bulletin Number SB 363, Issue 3, dated May 23, 2018.

(ii) Britten-Norman Service Bulletin Number SB 364, Issue 3, dated May 23, 2018.

(3) For service information identified in this AD, contact Britten-Norman Aircraft Limited, Commodore House, Mountbatten Business Centre, Millbrook Road East, Southampton SO15 1HY, United Kingdom; phone: + 44 20 3371 4000; fax: + 44 20 3371 4001; email: *info@bnaircraft.com;* website: *https://britten-norman.com/approvals-technical-publications/.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on August 17, 2021.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–19302 Filed 9–8–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0459; Project Identifier MCAI–2021–00129–T; Amendment 39–21697; AD 2021–17–14]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Gulfstream Aerospace LP Model Gulfstream G280 airplanes. This AD was prompted by a report that during full-scale fatigue testing, a crack was found in the area of the attachment of the wing rib 0 to the front spar. This AD requires non-destructive testing on the forward (front) spar vertical stiffener and rib 0 for any cracking, installation of a doubler to the forward (front) spar and rib 0 attachment, and repair if necessary, as specified in a Civil Aviation Authority of Israel (CAAI) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 14, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 14, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the CAAI, P.O. Box 1101, Golan Street, Airport City, 70100, Israel; telephone 972–3–9774665; fax 972–3–9774592; email *aip@mot.gov.il.* You may find this IBR material on the CAAI website at *https://www.caa.gov.il.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0459.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0459; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *Tom.Rodriguez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The CAAI, which is the aviation authority for Israel, has issued CAAI AD I–57–2020–06–01, dated January 27, 2021 (CAAI AD I–57–2020–06–01) (also referred to as the MCAI), to correct an unsafe condition for certain Gulfstream Aerospace LP Model Gulfstream G280 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Gulfstream Aerospace LP Model Gulfstream G280 airplanes. The NPRM published in the **Federal Register** on June 10, 2021 (86 FR 30819). The NPRM was prompted by a report that during full-scale fatigue testing, a crack was found in the area of the attachment of the wing rib 0 to the front spar. The NPRM proposed to require non-destructive testing on the forward (front) spar vertical stiffener and rib 0 for any cracking, installation of a doubler to the forward (front) spar and rib 0 attachment, and repair if necessary, as specified in CAAI AD I–57–2020–06–01.

The FAA is issuing this AD to address any cracking at the area of the wing rib 0 to the front spar, which could affect the structural integrity of the wing. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive Comments

The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

CAAI AD I–57–2020–06–01 specifies procedures for non-destructive testing (high frequency, mid frequency, and bolt hole eddy current inspections; and a liquid (dye) penetrant inspection) for cracking on the forward (front) spar vertical stiffener and rib 0, installation of a doubler to the forward (front) spar and rib 0 attachment, and repair if necessary. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 23 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
80 work-hours × $85 per hour = $6,800*	$400	$7,200 *	$165,600 *

* If the actions are accomplished during 4C Check.

The FAA has received no definitive data on which to base the cost estimates for the repair specified in this AD.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ *39.13* [Amended]

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

2021–17–14 Gulfstream Aerospace LP: Amendment 39–21697; Docket No. FAA–2021–0459; Project Identifier MCAI–2021–00129–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 14, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Gulfstream Aerospace LP Model Gulfstream G280 airplanes, certificated in any category, as identified in The Civil Aviation Authority of Israel (CAAI) AD I–57–2020–06–01, dated January 27, 2021 (CAAI AD I–57–2020–06–01).

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by a report that during full-scale fatigue testing, a crack was found in the area of the attachment of the wing rib 0 to the front spar. The FAA is issuing this AD to address any cracking at the area of the wing rib 0 to the front spar, which could affect the structural integrity of the wing.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, CAAI AD I–57–2020–06–01.

(h) Exception to CAAI AD I–57–2020–06–01

Where CAAI AD I–57–2020–06–01 requires compliance ''not later than 5,000 flight cycles,'' this AD requires compliance before the accumulation of 5,000 total flight cycles since the date of issuance of the original Israeli airworthiness certificate or the date of issuance of the original Israeli export certificate of airworthiness.

(i) No Reporting Requirement

Although the service information referenced in CAAI AD I–57–2020–06–01 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs

for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(k) Related Information

For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St. Des Moines, WA 98198; telephone and fax 206–231–3226; email *Tom.Rodriguez@faa.gov.*

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) The Civil Aviation Authority of Israel (CAAI) AD I–57–2020–06–01, dated January 27, 2021.

(ii) [Reserved]

(3) For CAAI AD I–57–2020–06–01, contact CAAI, P.O. Box 1101, Golan Street, Airport City, 70100, Israel; telephone 972–3–9774665; fax 972–3–9774592; email *aip@mot.gov.il.* You may find this CAAI AD on the CAAI website at *https://www.caa.gov.il.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St. Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on August 12, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–19389 Filed 9–8–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0235; Airspace Docket No. 21–AGL–18]

RIN 2120–AA66

Revocation of Class E Airspace; Port Huron, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class E surface airspace at St. Clair County International Airport, Port Huron, MI. This action is the result of an airspace review caused by the decommissioning of the Remote Communications Outlet (RCO) frequency at St. Clair County International Airport.

DATES: Effective 0901 UTC, December 2, 2021. 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 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 24797; May 10, 2021) for Docket No. FAA–2021–0235 to revoke the Class E Surface Airspace at the St. Clair County International Airport, Port Huron, MI. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 revokes the Class E surface airspace at St. Clair County International Airport, Port Huron, MI, as it is no longer needed.

This action is the result of an airspace review caused by the decommissioning of the RCO, which provides navigation information for the instrument procedures this airport.

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

Regulatory Notices and Analyses

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

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 6002 Class E Surface Airspace.

* * * * *

AGL MI E2 Port Huron, MI [Revoked]

St. Clair County International Airport, MI
(Lat. 42°54′40″ N, long. 82°31′44″ W)

Issued in Fort Worth, Texas, on September 1, 2021.

Martin A. Skinner,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2021–19275 Filed 9–8–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0710]

RIN 1625–AA00

Safety Zone; Anacostia River, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Anacostia River. The safety zone is needed to protect personnel, vessels, and the marine environment on these navigable waters near Washington, DC, on September 4, 2021, and September 17, 2021, from potential hazards during fireworks displays occuring after Washington Nationals baseball games. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Maryland-National Capital Region or a designated representative.

DATES: This rule is effective without actual notice from September 9, 2021 until 11 p.m. on September 17, 2021. For the purposes of enforcement, actual notice will be used from 8 p.m. on September 4, 2021, until September 9, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0710 in the ''SEARCH'' box and click ''SEARCH.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST3 Melissa Kelly, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410–576–2596, email *Melissa.C.Kelly@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

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 and contrary to the public interest to do so. We must establish this safety zone by September 4, 2021, to protect the public from hazards associated with the fireworks events. Hazards include explosive materials, dangerous projectiles, and falling debris. The fireworks fall out zone extends across the navigable channel.

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

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port, Maryland-National Capital Region (COTP) has determined that potential hazards associated with the fireworks to be used in the September 4, 2021, and September 17, 2021, displays will be a safety concern for anyone near the fireworks barges. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 8 p.m. on September 4, 2021, through 11 p.m. on September 17, 2021. The safety zone will be enforced from 8 p.m. to 11 p.m. on September 4, 2021, and from 8 p.m. to 11 p.m. on September 17, 2021. The safety zone

covers all navigable waters of the Anacostia River within 600 feet of the fireworks barge in approximate position latitude 38°52′14.29″ N, longitude 077°00′12.00″ W, located near Nationals Park in Washington, DC. The size of the zone and duration of the rule are intended to protect personnel, vessels, and the marine environment in these navigable waters before, during, and after the scheduled fireworks displays. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

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, duration, and time-of-day of the safety zone, which will impact a small designated area of the Anacostia River for 2 hours during evening hours when vessel traffic is normally low. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will be enforced for 6 hours that will prohibit entry within a portion of the Anacostia River. It is categorically excluded from further review under paragraph L60(a) of 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 call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0710 to read as follows:

§ 165.T05–0710 Safety Zone; Anacostia River, Washington, DC

(a) *Location.* The following area is a safety zone: All navigable waters of the Anacostia River within 600 feet of the fireworks barge in approximate position latitude 38°52′14.29″ N, longitude 077°00′12.00″ W, located near Nationals Park, in Washington, DC. These coordinates are based on datum NAD 83.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing the safety zone described in paragraph (a) of this section.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 8 p.m. to 11 p.m. on September 4, 2021, and from 8 p.m. to 11 p.m. on September 17, 2021.

Dated: September 2, 2021.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2021–19426 Filed 9–8–21; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2020–0166; FRL–8893–02–R6]

Air Plan Approval; Texas; Clean Air Act Requirements for Nonattainment New Source Review and Emission Statements for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving the portions of a State Implementation Plan (SIP) revision submitted by the State of Texas that describes how CAA requirements for Nonattainment New Source Review (NNSR) and emission statements are met in the Dallas-Fort Worth (DFW), Houston-Galveston-Brazoria (HGB), and Bexar County ozone nonattainment areas for the 2015 Ozone National Ambient Air Quality Standards (NAAQS).

DATES: This rule is effective on October 12, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2020–0166. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Todd, EPA Region 6 Office, Infrastructure and Ozone Section, 214–665–2156, *todd.robert@epa.gov.* The EPA Region 6 office is closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our February 11, 2021 proposal (86 FR 9041). In that document we proposed to approve portions of a SIP revision submitted by the State of Texas on June 24, 2020, that describes how CAA requirements for NNSR and emission statements are met in the DFW, HGB, and Bexar County ozone nonattainment areas for the 2015 ozone NAAQS.

We received comments on our proposal, from several commenters. Our responses to the comments follow.

II. Response to Comments

Comment: Two commenters pointed out that the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated portions of the 2018 rule implementing the 2015 Ozone NAAQS that allowed inter-precursor trading of pollutants.[1] One commenter stated that according to a Texas Commission on Environmental Quality (TCEQ) guidance document, EPA's approval of inter-precursor trade (IPT) is presumed unless EPA disapproves the trade during the public comment period. The commenter also stated that EPA cannot rely on previous approvals of the State's NNSR program to meet current requirements.

Response: While the D.C. Circuit has rendered a judgment vacating the portion of EPA's NNSR EPA regulation that allows inter-precursor trading to meet the offset requirements for ozone, the ozone inter-precursor trading component in the Texas NNSR program regulations is no longer operative for ozone and thus does not preclude approval of this SIP revision that otherwise satisfies NNSR requirements. The court held that the IPT provision for ozone in EPA's NNSR regulation was contrary to the CAA because ''[t]he plain language in the statute . . . requires that increased [volatile organic compound] VOC emissions be offset with reductions in VOC, and the same is true for ozone in most circumstances.''[2] Following the court's decision, EPA notified TCEQ in a letter dated June 17, 2021, that the EPA can no longer approve any IPT requests for ozone under procedures in the Texas SIP rules that require that TCEQ submit such trades to EPA for approval. In a response to EPA dated June 25, 2021, TCEQ confirmed that its NNSR inter-precursor trading provisions cannot function without EPA's approval of trades, and the State has not approved any IPT requests for ozone without the prior approval of EPA.[3] In its June 25,

[1] *Sierra Club* v. *EPA,* 985 F.3d 1055 (D.C. Cir. 2021).

[2] *Sierra Club,* 985 F.3d at 1060–61.

[3] The text of each letter is available in the docket to this action.

2021, letter, TCEQ also stated that its regulations otherwise continue to meet the NNSR program requirements in EPA's regulations at 40 CFR 51.1565 without the operation of the IPT provisions for ozone. EPA agrees with that assessment, as the NNSR offset requirement for ozone may be satisfied under the Texas regulations with offsets for each individual ozone precursor, without trading NO_X for VOC or vice-versa. Since the IPT portion of the Texas regulations is no longer operative for ozone precursors, these provisions do not preclude EPA from approving the Texas NNSR program regulations that otherwise meet the SIP requirements for marginal nonattainment areas under the 2015 ozone NAAQS. EPA's approval finalized via this action does not include TCEQ's IPT provisions for ozone.

EPA does not agree with the commenter that EPA's approval of an inter-precursor trade would be presumed under the Texas SIP unless EPA disapproved the trade during the comment period. EPA's previous approval of certain SIP provisions related to IPTs included only Texas regulations on that subject. EPA did not at any time approve the state guidance document described by the commenter as part of the federally approved SIP. Nothing in the previously-approved regulations establishes a presumption of EPA approval of an inter-precursor trade if EPA does not communicate its disapproval during a relevant public notice and comment period. EPA's inability to approve IPT trades for ozone because of the court decision is sufficient to render the Texas IPT provisions inoperative for ozone.

As stated in our proposal, NNSR permitting program requirements specific to marginal ozone nonattainment areas are reflected in section 182(a)(2)(C), and further defined in 40 CFR part 51, subpart I. EPA and states may rely on previously approved SIP provisions to meet these NNSR requirements, so long as the State provides a SIP revision certifying that the existing SIP requirements are sufficient to meet the requirements of the new classification as is being done here. As stated in our proposal, a more stringent NNSR requirement than the marginal requirements under the 2015 standard currently applies in the DFW and HGB areas as both areas are classified serious nonattainment for the 2008 ozone standard.

Comment: One commenter believes that the State and EPA did not adequately take climate change into consideration when forming air quality standards and the future effects of increased average temperatures on ozone concentrations.

Response: We appreciate the commenter's concern and attention to climate change. However, the climate change related issues raised by the commenter are beyond the scope of our current action which is limited to whether the State's emission statement provisions and nonattainment new source review program, currently in their SIP, meet the requirements set out by the CAA and associated EPA regulations. This action does not set, revise, or form any air quality standards. We refer the commenter to Executive Order 14008 of January 27, 2021, and EPA's web page on climate change. (See *https://www.epa.gov/climate-change*).

Comment: One commenter stated that EPA's 2015 Ozone NAAQS is significantly higher than the World Health Organization's recommendation of 50 parts per billion.

Response: We appreciate the commenter's concerns related to ozone pollution. However, the level of the NAAQS is beyond the scope of our current action. EPA follows a separate and specific CAA process to set and review the NAAQS, including ozone. See 80 FR 65292 (Oct. 26, 2015) as well as CAA sections 108 and 109. That process is beyond the scope of our current action. We refer the commenter to the EPA's ozone air quality standards web page for more information. (See *https://www.epa.gov/ground-level-ozone-pollution*).

Comment: One commenter stated that the City of San Antonio is not adequately funding its pollution control plan.

Response: We appreciate the commenter's concerns over funding and implementation of air programs. Although somewhat unclear, EPA is reading the comment in regard to the adequacy of funding for local, voluntary pollution control programs as opposed to the State's ability to carry out the SIP. As such, this comment is beyond the scope of this action.

Comment: Two commenters expressed concerns over consumer use of fragrant laundry related products. One commenter asked to eliminate dryer sheets and chemically scented laundry detergents because such products contain harmful chemicals that are contributing to the depletion of ozone. Another commenter stated that consumer use of fragrant laundry products, such as dryer sheets, other laundry chemicals, and personal care products affect air quality and suggested that the EPA should hold the manufacturers of these products accountable. Further, the commenter stated that residential use of such laundry products by a larger sector of residential dwellings is not a small source of VOC emissions. The commenter stated that these are a source of chemical irritants and that consumers should switch to more environmentally friendly products. Lastly, the commenter asked EPA to implement restrictions at the consumer level, if it had authority to do so.

Response: We appreciate the concerns raised by these commenters. However, such concerns are beyond the scope of this action. This action only pertains to CAA NNSR and emissions statement requirements for facilities in the DFW, HGB, and Bexar County ozone nonattainment areas for the 2015 Ozone NAAQS. As stated in our proposal, the NNSR program applies to the construction of new major sources or major modifications of existing sources of NO_X or VOC in an area that is designated nonattainment for the ozone NAAQS. The NNSR requirements for Marginal ozone nonattainment areas apply to facilities with the potential to emit 100 tons per year of NO_X or VOC. The emissions statement requirement applies to the State in regard to certain stationary sources of NO_X and/or VOC emissions. CAA section 182(a)(3)(B). States may choose to inventory emissions from ''any class or category of stationary sources which emit less than 25 tons per year of'' VOC and/or NO_X via use of emission factors provided by EPA and compiled and reported for the National Emissions Inventory (NEI) every three years. *Id.* The last NEI was produced for the year 2017. Further, it is beyond the scope of this action to implement restrictions on consumer products.

Comment: One commenter stated that Texas is emitting significantly more carbon dioxide (CO_2) per capita than New York and implied this is not appropriate. The commenter also raised questions concerning the impact of our action on the State's economy and automotive industry in particular.

Response: We appreciate the commenter's concern and attention to CO_2 emissions and economic impact of regulatory actions. However, CO_2 related issues, including the economic impact of CO_2 regulation on the automotive industry, are beyond the scope of our current action explained above. The NNSR and emission statement rules requirements are implemented for the control of ozone and apply to NO_X and VOCs as these pollutants are precursors to ozone formation. These Clean Air Act requirements do not apply to CO_2 emissions. We refer the commenter to

Executive Order 14008 of January 27, 2021, and EPA's web page on climate change. (See *https://www.epa.gov/climate-change*).

III. Final Action

We are approving portions of a SIP revision submitted by the State of Texas on June 24, 2020, that describes how CAA requirements for NNSR, and emission statements are met in the DFW, HGB, and Bexar County ozone nonattainment areas for the 2015 ozone NAAQS.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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 action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 31, 2021.

David Gray,

Acting Regional Administrator, Region 6.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

■ 2. In § 52.2270(e), the second table titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding the entry ''Nonattainment New Source Review and Emission Statement Requirements for the 2015 Ozone NAAQS'' at the end of the table to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Comments
*	*	*	*	*
Nonattainment New Source Review and Emission Statement Requirements for the 2015 Ozone NAAQS.	Dallas-Fort Worth, Houston Galveston-Brazoria, and Bexar County Ozone Nonattainment Areas.	June 24, 2020	September 9, 2021, [Insert **Federal Register** citation].	

* * * * *

[FR Doc. 2021–19156 Filed 9–8–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2020–0501, EPA–R05–OAR–2020–0502, EPA–R05–OAR–2020–0503; FRL–8919–02–R5]

Air Plan Approval; Illinois; Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Illinois State Implementation Plan (SIP) that were submitted by the Illinois Environmental Protection Agency (IEPA) on September 22, 2020, and amended on November 5, 2020, and March 3, 2021. These revisions implement new preconstruction permitting regulations for certain new or modified sources of air pollution in attainment and unclassifiable areas under the Prevention of Significant Deterioration (PSD) program of the Clean Air Act (CAA). EPA is also transferring to IEPA responsibility for administering existing PSD permits that EPA previously issued to sources in Illinois, and for processing any PSD permit actions related to such permits.

DATES: This final rule is effective on October 12, 2021.

ADDRESSES: EPA has established dockets for this action under Docket ID Nos. EPA–R05–OAR–2020–0501, EPA–R05–OAR–2020–0502, and EPA–R05–OAR–2020–0503. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone David Ogulei, Environmental Engineer, at (312) 353–0987 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: David Ogulei, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–0987, *ogulei.david@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. Background.
II. Summary of EPA Analysis.
III. What comments did we receive on the proposed rule?
IV. What action is EPA taking?
V. Incorporation by Reference.
VI. Statutory and Executive Order Reviews.

I. Background

Section 110(a)(2)(C) of the CAA requires that each SIP include a program to provide for the regulation of the construction and modification of stationary sources within the areas covered by the SIP. We refer to these as the New Source Review (NSR) provisions. They consist primarily of: (1) A permit program as required by part C of subsection I of the CAA, PSD, as necessary to assure that national ambient air quality standards (NAAQS) are achieved; (2) a permit program as required by part D of subsection I of the CAA, Plan Requirements for Nonattainment Areas, as necessary to assure that NAAQS are attained and maintained in ''nonattainment areas'' (known as ''nonattainment NSR''), and (3) a permit program for minor sources and minor modifications of major sources as required by section 110(a)(2)(C) of the CAA. Specific plan requirements for an approvable PSD SIP are provided in sections 160–169 of the CAA and the implementing regulations at 40 CFR 51.166. The requirements applicable to SIP requirements for nonattainment areas are provided in sections 171–193 of the CAA and the implementing regulations at 40 CFR 51.165. The Federal PSD requirements at 40 CFR 52.21 apply through Federal Implementation Plans (FIPs) in states without a SIP-approved PSD program.

The PSD SIP requirements apply to new major sources or major modifications at existing major stationary sources for pollutants where the area the source is located has been designated as ''attainment'' or ''unclassifiable'' with respect to the NAAQS under section 107(d) of the CAA. Under section 160 of the CAA, the purposes of the PSD program are to: (1) Protect public health and welfare; (2) preserve, protect and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value; (3) ensure that economic growth will occur in a manner consistent with the preservation of existing clean air resources; (4) assure that emissions from any source in any State will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for any other State; and (5) assure that any decision to permit increased air pollution in any area to which the PSD program applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decision making process.

Before a PSD permit can be issued, the stationary source must demonstrate that the new major source or major modification will be equipped with the Best Available Control Technology (BACT) for all po11utants regulated under the PSD program that are emitted in significant amounts, and that increased emissions from the project will not result in a violation of the NAAQS or applicable ambient air quality increments. *See* CAA section 165.

Because Illinois does not currently have a SIP-approved PSD program, PSD permits in Illinois have been issued under a FIP incorporating the requirements of 40 CFR 52.21. Prior to April 7, 1980, EPA was solely responsible for, and operated, the PSD permitting program in Illinois. However, since April 7, 1980, IEPA has issued PSD permits under a delegation agreement with EPA that authorizes IEPA to implement the FIP. *See* 46 FR 9580 (Jan. 29, 1981) (1980 Delegation Agreement). Under a November 16, 1981 amendment to the 1980 Delegation Agreement,[1] IEPA also has the authority to amend or revise any PSD permit issued by EPA under the FIP. Thus, all PSD permits issued in Illinois are currently considered Federal permits; and PSD permits issued after April 7, 1980, are enforceable by Illinois and EPA since they were issued under both Illinois and EPA authority.

On September 22, 2020, IEPA submitted to EPA a request to revise the Illinois SIP to establish a SIP-approved PSD program in Illinois. Specifically, IEPA requested that EPA incorporate

[1] A copy of this amendment to the delegation agreement is available in the docket for this action.

into the SIP the following: (1) Amendments to Title 35 Illinois Administrative Code (35 Ill. Adm. Code) Part 203, Major Stationary Source Construction and Modification; (2) new regulations at 35 Ill. Adm. Code Part 204, Prevention of Significant Deterioration; (3) amendments to 35 Ill. Adm. Code Part 211, Definitions and General Provisions;[2] and (4) amendments to 35 Ill. Adm. Code Part 252, Public Participation in the Air Pollution Control Permit Program. The amendments to 35 Ill. Adm. Code Parts 203 and 211 update these rules to refer to permitting pursuant to 35 Ill. Adm. Code Part 204, as well as to 40 CFR 52.21. These amendments to 35 Ill. Adm. Code Parts 203 and 211 involve regulations that EPA has previously approved into the Illinois SIP for purposes of other provisions of the CAA (excluding the PSD program). *See* 40 CFR 52.720(c). On November 5, 2020, IEPA submitted additional information clarifying how it intends to implement specific provisions identified by EPA, and how it plans to correct any typographical errors or omissions that EPA identified in its October 22, 2020 review of IEPA's September 2020 submittal. Additionally, on March 3, 2021, IEPA submitted a request to withdraw a portion of the submitted amendments, 35 Ill. Adm. Code 252.301, from approval into the SIP. This provision applies to EPA's review of title V permits issued by IEPA.

On April 28, 2021, EPA issued a notice of proposed rulemaking (proposed rule) in which we proposed to find that IEPA's proposed regulations and amendments meet the requirements of sections 160–169 of the CAA and the implementing regulations at 40 CFR 51.166. *See* 86 FR 22372. We explained in the preamble to the proposed rule that, with a few exceptions, IEPA's PSD regulations at 35 Ill. Adm. Code Part 204 and 35 Ill. Adm. Code Part 252 largely mirror the Federal regulations at 40 CFR 52.21 and 40 CFR part 124, respectively. We proposed to approve IEPA's PSD regulations contained in 35 Ill. Adm. Code Parts 204 and 252 to apply statewide, except in Indian reservations. For the facilities in Indian reservations in the State, and any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, the PSD FIP incorporating 40 CFR 52.21 would continue to apply and EPA would retain responsibility for issuing permits affecting such sources.

In this final action, EPA finds that IEPA's regulations at 35 Ill. Adm. Code Part 204 and the amendments to 35 Ill. Adm. Code Parts 203, 211 and 252 meet the requirements of sections 160–169 of the CAA and the minimum program requirements of 40 CFR 51.166. EPA is therefore approving these regulations and amendments into the Illinois SIP and is codifying this approval in the Federal regulations at 40 CFR 52.720. Upon the effective date of this approval, PSD permits issued by IEPA will be issued under state authority and will no longer be considered Federal actions. However, such PSD permits will continue to be federally enforceable as defined at 40 CFR 51.166(b)(17).

This action also transfers to IEPA responsibility for administering existing PSD permits that EPA previously issued to sources in Illinois pursuant to the FIP, and for processing any PSD permit actions related to such permits.

II. Summary of EPA Analysis

A. Procedural Requirements

For the reasons discussed in the proposed rule, EPA finds that IEPA has satisfied the procedural requirements for a SIP submittal as set forth in 40 CFR 51.102, 51.103 and 40 CFR part 51, appendix V.

B. 35 Ill. Adm. Code Part 203 (Major Stationary Source Construction and Modification)

For the reasons discussed in the proposed rule, EPA is approving IEPA's amendments to 35 Ill. Adm. Code Part 203. The amendments update certain provisions in this regulation such that they refer to permits issued under 40 CFR 52.21 or 35 Ill. Adm. Code Part 204, Illinois' new regulation for a state PSD permitting program. Specifically, EPA is approving amendments to 35 Ill. Adm. Code 203.207(a), (c)(2), (c)(3), (c)(5), (c)(6), (e) and (f). Accordingly, upon the effective date of this final action, IEPA will issue PSD permits under 35 Ill. Adm. Code Part 204, but permits previously issued under 40 CFR 52.21 will continue to be effective unless rescinded or otherwise rendered invalid.

C. 35 Ill. Adm. Code Part 204

Under 40 CFR 51.166(a)(7)(iv), each SIP shall contain the specific provisions of 40 CFR 51.166(a)(7)(iv)(*a*) through (*f*). EPA will approve deviations from these provisions only if the State specifically demonstrates that the submitted provisions are more stringent than, or at least as stringent, in all respects as the corresponding provisions in 40 CFR 51.166(a)(7)(iv)(*a*) through (*f*). Additionally, 40 CFR 51.166(b) requires that all SIPs shall use the definitions in 40 CFR 51.166(b) for the purposes of 40 CFR 51.166 and that deviations from the wording of those definitions will be approved only if the State specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding definitions in 40 CFR 51.166(b).

EPA finds that IEPA's PSD regulation is more stringent than, or at least as stringent, in all respects as the corresponding provisions in 40 CFR 51.166. While IEPA has submitted provisions that differ in some respects from the provisions in 40 CFR 51.166, as discussed in detail in the proposed rule,[3] we find that those differences do not render IEPA's regulation less stringent than the corresponding Federal language at 40 CFR 51.166.

D. 35 Ill. Adm. Code Part 211 (Definitions and General Provisions)

In the proposed rule, EPA proposed to approve amendments to 35 Ill. Adm. Code Part 211 that updated certain provisions in this regulation such that they refer to permits issued under 40 CPR 52.21 or 35 Ill. Adm. Code Part 204. Specifically, EPA proposed to approve amendments to 35 Ill. Adm. Code 211.7150(b) and (d), with a state effective date of September 4, 2020. On June 16, 2021, EPA approved into the Illinois SIP a more recent version of this regulation, with a state effective date of October 20, 2020. *See* 86 FR 31920. The October 20, 2020 version of 35 Ill. Adm. Code Part 211, as EPA approved on June 16, 2021, contains the changes that IEPA requested in its September 22, 2020 submittal for this action. Therefore, EPA is not acting on this portion of the submittal in this action.

E. 35 Ill. Adm. Code Part 252 (Public Participation)

For the reasons discussed in the proposed rule, EPA is approving into the SIP IEPA's regulations at 35 Ill. Adm. Code Part 252, except 35 Ill. Adm. Code 252.301. EPA finds that IEPA's amendments to 35 Ill. Adm. Code Part 252 meet the CAA requirements for public participation for the PSD program as set forth in 40 CFR 51.161 and 51.166(q), and are substantially identical to the public participation

[2] IEPA's September 2020 submittal also addressed Illinois' Infrastructure SIP requirements under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J) of the CAA for all of the following NAAQS: 2008 lead, 2010 nitrogen dioxide, 1997 ozone, 2008 ozone, 2015 ozone, 1997 particulate matter with aerodynamic diameter less than 2.5 microns ($PM_{2.5}$), 2006 $PM_{2.5}$, 2012 $PM_{2.5}$, and 2010 sulfur dioxide. This action does not address the infrastructure SIP portion of IEPA's submittal. EPA plans to address those requirements in a separate action.

[3] *See* 86 FR 22374–22380.

requirements in 40 CFR part 124 that are pertinent to the currently-applicable FIP incorporating 40 CFR 52.21. EPA is not including in its final approval 35 Ill. Adm. Code 252.301 because IEPA withdrew this provision from its submittal, and it is not a required element of a PSD SIP.

F. Personnel, Funding, and Authority

Section 110(a)(2)(E)(i) of the CAA requires states to have adequate personnel, funding, and authority under state law to carry out a SIP. EPA finds that IEPA has authority under state law to issue PSD permits. Specifically, sections 9.l(d)(l) and (2) of the Illinois Environmental Policy Act (Illinois Act), 415 ILCS 5/9.l(d)(l) and (2), specify that no person shall violate any provisions of sections 111, 112, 165, or 173 of the CAA, as now or hereafter amended, or the implementing Federal regulations; or construct, install, modify or operate any equipment, building, facility, source or installation which is subject to regulation under sections 111, 112, 165, or 173 of the CAA, as now or hereafter amended, except in compliance with the requirements of such sections and Federal regulations adopted pursuant thereto. The Illinois Act further specifies that no such action shall be undertaken without a permit granted by IEPA whenever a permit is required pursuant to the Illinois Act or the implementing state regulations, or section 111, 112, 165, or 173 of the CAA or implementing Federal regulations, or in violation of any conditions imposed by such permit. Consistent with the Illinois Act, 35 Ill. Adm. Code 204.820 and 204.850 require that a source may construct or operate any source or modification subject to PSD permitting only after obtaining an approval to construct or PSD permit. IEPA would have the ability to rescind such PSD permit under 35 Ill. Adm. Code 204.1340.

As discussed in the proposed rule, and in response to comments below, EPA finds that IEPA has provided the necessary assurances that it has adequate personnel and funding to implement PSD permitting activities in Illinois, including an adequate number of full-time construction permit staff and revenue stream from permit fees to administer a PSD program in Illinois.

G. EPA Oversight Authority

In approving state NSR rules into SIPs, EPA has a responsibility to ensure that all states properly implement their SIP-approved preconstruction permitting programs. Accordingly, EPA will conduct appropriate oversight to ensure that permits issued by IEPA are consistent with the requirements of the CAA, Federal regulations, and the SIP.

EPA's authority to oversee NSR permit program implementation is set forth in sections 113 and 167 of the CAA. For example, section 167 authorizes EPA to issue administrative orders, initiate civil actions, or take whatever other action may be necessary to prevent the construction or modification of a major stationary source that does not ''conform to the requirements of'' the PSD program. Section 113(a)(1) of the CAA provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan. Likewise, section 113(a)(5) of the CAA provides for administrative orders and civil actions whenever EPA finds that a state ''is not acting in compliance with'' any requirement or prohibition of the CAA regarding the construction of new sources or modification of existing sources.

Under 40 CFR 51.166(a)(4), IEPA is obligated to review the continued adequacy of its approved SIP ''on a periodic basis and within 60 days of such time as information becomes available that an applicable increment is being violated.''

III. What comments did we receive on the proposed rule?

Our proposed rule provided a 30-day public comment period. *See* 86 FR at 22372. During the comment period, which closed on May 28, 2021, we received both adverse and supportive comments. We received comments in support of our proposed rule from the Illinois Environmental Regulatory Group. We received adverse consolidated comments from Earthjustice, Environmental Law & Policy Center, and Sierra Club. We respond to the adverse comments in this section.

Comment: The commenters assert that EPA cannot approve Illinois' PSD program into the SIP because IEPA has not provided necessary assurances that it will have adequate personnel, funding, and authority under State law to carry out the SIP, as required by section 110(a)(2)(E) of CAA. The commenters allege that IEPA has for many years been understaffed and under-resourced to handle its existing volume of regulatory obligations. Citing findings by EPA (including by the Office of Inspector General (OIG)) and other studies, the commenters argue that: (1) IEPA's title V program has longstanding funding and permit processing issues, including a title V permit backlog above EPA's recommended level as recently as 2017, suggesting the same issues will arise with the PSD program; (2) IEPA staff has declined since 1980 (and by nearly 50% in the Bureau of Air during the period 2003–2018); (3) there is no general fund appropriation for IEPA; and (4) delays of permit appeals at the Illinois Pollution Control Board (IPCB) suggest personnel and funding issues in that body, which would delay resolution of PSD permit appeals. The commenters allege that IEPA has not demonstrated that the staffing and resource shortages already plaguing it have been resolved, nor has it shown that IEPA or the IPCB have the sufficient staff and resources necessary to equip them to implement the PSD program. The commenters also assert that funding and staffing shortfalls place a disproportionate burden on Environmental Justice (EJ) communities by delaying the review and enforcement of noncompliance with permits for sources that are disproportionately located in EJ communities. As a result, the commenters assert that authorizing IEPA to administer the PSD program would be inconsistent with IEPA's and EPA's EJ obligations.

EPA Response: EPA acknowledges that IEPA, like many other permitting authorities, has seen staff and funding decline over the years due to reduced legislative budget allocations, facility shutdowns (particularly by large emitters such as coal-fired power plants), and other factors. However, we disagree with the commenters' assertion that IEPA has not met its burden to provide the necessary assurances that it will have adequate personnel and funding under State law to administer a SIP-approved PSD program in Illinois.[4] While CAA section 110(a)(2)(E) requires each state to provide necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP, it does not mandate a specific methodology for EPA to use when evaluating the adequacy of resources to implement the SIP. *See* 76 FR 42549, 42554 (July 19, 2011). The scope of this action is limited to determining whether the Illinois SIP meets certain infrastructure requirements of CAA section 110(a)(2)(E) with respect to funding and personnel for purposes of implementing the approved SIP. As discussed in the proposed rule, IEPA has issued PSD permits under the delegation agreement with EPA since 1980, and the staff of engineers and air

[4] The commenters provided no evidence to contest EPA's finding that IEPA has provided necessary assurances that it will have adequate *authority* under State law to carry out the SIP.

quality modelers who supported IEPA in its issuance of PSD permits under the delegation agreement will continue to support IEPA's issuance of PSD permits under a SIP-approved PSD program. In its submittal, IEPA stated it currently has nine full time construction permit engineers that perform construction permit activities, and that it has an adequate revenue stream from permit fees to support such activities. The commenters have not provided information that would rebut these statements from IEPA's submittal; rather, commenters provide information that is not relevant to approval of Illinois' PSD program, or that otherwise does not support commenters' allegations of inadequate personnel or funding for IEPA to implement the PSD program.

EPA's evaluation of Illinois' submittal with respect to funding and personnel is based, in part, upon various sources of funding available to the state, state statutes and rules pursuant to CAA section 110(a)(2), and IEPA's fulfillment of grant obligations. CAA section 105 grants provide monies to help support the foundation of the state's air quality program, including air monitoring, enforcement, and SIP development. States are required to provide matching monies to receive their grant, and EPA evaluates the performance of the State each year. As of fiscal year 2020, Illinois has satisfactorily completed its air program obligations as called for under the CAA section 105 grant, including meeting specific measures related to NSR program implementation and maintenance of an EPA-approved statewide air quality surveillance network required by section 110(a)(2)(B) of the CAA.

To the extent the commenters address the adequacy of personnel or funding for Illinois' title V program, they are addressing issues that are subject to statutory and regulatory evaluation that are beyond the scope of this rulemaking. CAA section 110(a)(2) falls under title I of the CAA and governs the implementation, maintenance, and enforcement of the NAAQS through the SIP. CAA section 110 and 40 CFR part 51 provide mechanisms for programmatic remedies with respect to the SIP. Title I also addresses NSR preconstruction permits for new or modified minor and major sources. The title V program, by contrast, governs operating permits for existing sources and is addressed by CAA sections 502 through 507. Any evaluation of the title V program and any consequent programmatic remedies must be done pursuant to CAA section 502 and 40 CFR part 70.

Title V programs are generally not part of the SIP, and thus are not part of the requirements of CAA section 110(a)(2); moreover, CAA section 502(b)(3) requires not only that title V program fees cover the reasonable direct and indirect costs of developing and administering the title V program, but also requires that the fees be used only to cover those costs. *See* 76 FR 43906, 43910 (July 22, 2011) and 79 FR 62042, 62045 (Oct. 16, 2014). Due to the distinct and self-administering nature of the title V program, we disagree that alleged flaws in Illinois' title V program would prevent EPA from approving a SIP submittal under CAA section 110(a)(2).[5]

Commenters rely on a 2019 study of funding and staffing issues at the IEPA, including in the Bureau of Air, to suggest that the decline in IEPA staff since 1980 would compromise implementation of an approved Illinois PSD program.[6] We noted earlier in this section the specific staff allocation that IEPA made in its submittal for implementing the PSD program. In addition, since the 2019 study was published, staff in IEPA's Bureau of Air has increased from 157 to an estimated 167 (with 190 targeted for FY 2021), and the enacted appropriation for the Bureau of Air has increased from $88,964,000 in FY 2019 to $140,825,800 in FY 2020 (with $156,808,200 proposed for FY 2021).[7]

If, in the future, EPA determines that Illinois does not have adequate personnel or funding to carry out its SIP, or for any other reason fails to meet any requirement of its approved SIP, then EPA may exercise its authority pursuant to CAA sections 110(a)(2)(E), 179, or 110(k)(5) to impose sanctions and other remedies on the State as allowed by the CAA. The action that EPA is taking here does not limit EPA's authority pursuant to those CAA sections. *See also* 77 FR 58955, 58957–8 (Sept. 25, 2012).

With respect to the concerns regarding the IPCB, the commenters have provided no information for EPA to conclude that personnel or funding shortfalls have contributed to delays in IPCB permit appeal proceedings. There are many factors that could have resulted in lengthy permit appeal proceedings (including filing of motions for delays by the appellant or responding party). One such factor, discussed in EPA's 2017 Review, was that the IPCB formerly would stay title V permits in their entirety during an appeals process.[8] In 2010, Illinois enacted legislation allowing the IPCB to stay the effectiveness of any or all uncontested conditions of a title V permit if the IPCB determines that the uncontested conditions would be affected by its review of contested conditions. *See* 415 ILCS 5/40.2(f). As a result of this legislation, as well as IEPA's efforts to resolve appeals and issue affected permits, the number of unresolved appeals has decreased significantly since 2005.

Finally, EPA is committed to advancing EJ and incorporating equity considerations into all aspects of our work, including ongoing development of practices to better assess and consider impacts to pollution-burdened communities in our analysis, permitting, and enforcement activities. At this time EPA does not have, nor did commenters provide, information that would suggest that approval of Illinois' PSD program has the potential to result in disproportionately high and adverse human health or environmental impacts on vulnerable populations or overburdened communities; however, EPA is also not currently in a position to make a determination to this effect. As we work to define EJ best practices at EPA, we will continue to work with IEPA and other stakeholders to ensure that robust analyses are conducted to assess the full EJ implications of siting individual facilities in communities already overburdened by pollution.

Comment: The commenters object to IEPA removing the requirement that limits on the potential to emit (PTE) taken to avoid major NSR must be ''federally enforceable''; IEPA would instead require such limits to be ''federally enforceable or legally and practicably enforceable by a state or local air pollution control agency.'' 35

[5] In criticizing Illinois' title V program, commenters rely in part on EPA's Review of Illinois Environmental Protection Agency's New Source Review and Title V Permit Programs (Sept. 2017) (the ''2017 Review''). That review noted several improvements in IEPA's processing of PSD permits, including that it had been ''issuing all PSD permits within 180 days of receiving a complete application, well within the timeframe required by EPA's rules'' and had ''entered into the [RACT/BACT/LAER Clearinghouse] all BACT/LAER determinations for issued and effective permits.'' 2017 Review at 5, 7.

[6] *See* Mark Templeton *et al., Protecting the Illinois EPA's Health, so that It Can Protect Ours* (Nov. 2019), *available at https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1000&context=abrams.*

[7] *See* Ill. Office of Mgmt. & Budget, Exec. Office of the Governor, Ill. State Operating Budget, Fiscal Year 2021, *available at https://www2.illinois.gov/sites/budget/Documents/Budget%20Book/FY2021-Budget-Book/Fiscal-Year-2021-Operating-Budget-Book.pdf.* This is consistent with EPA's previous finding that ''IEPA has made improvements to its permit issuance timeliness through various efforts, including . . . additional staffing.'' 2017 Review at 11.

[8] *See* 2017 Review at 21.

Ill. Adm. Code 204.560 (definition of ''potential to emit''). The commenters assert that, if accepted into the SIP, this would allow IEPA to issue minor NSR permits without public notice and an opportunity for public comment because a source could be minor solely on the basis of State-enforceable restrictions on PTE. Specifically, the commenters assert that the Illinois rules governing the categories of permits subject to public comment before issuance (35 Ill. Adm. Code 252.104 and 252.201) include sources that would be major sources except for their federally enforceable restrictions, but do not include sources that would be major except for state or locally enforceable restrictions. This, the commenters allege, means that IEPA could issue permits establishing PTE limits without public notice and an opportunity for comment. The commenters allege that eliminating the requirement for an opportunity for public comment on draft PTE limits would violate EPA's minor NSR regulations at 40 CFR 51.161.

EPA Response: We disagree with the commenters. First, as discussed in the proposed rule, IEPA's proposed revision of the PTE definition at 35 Ill. Adm. Code 204.560 is consistent with past court decisions and related EPA guidance that establish that the term ''potential to emit'' must encompass all legally enforceable emission limitations that restrict a source's emissions. In *Chemical Manufacturers Association* v. *EPA,* 70 F. 3d 637 (D.C. Cir. 1995) and *National Mining Association* v. *EPA,* 59 F.3d 1351, 1362–63 (D.C. Cir. 1995), the term ''federally enforceable'' was vacated in the definition of PTE (*e.g.,* 40 CFR 51.166(b)(4)), and in subsequent memoranda, EPA stated it interpreted the term ''federally enforceable'' to mean ''federally enforceable *or* legally and practicably enforceable by a state or local air pollution control agency'' (emphasis added).[9] The memoranda reiterate EPA's earlier guidance on permit conditions restricting potential to emit that are enforceable as a practical matter. For example, practicable enforceability for a source-specific permit means that the permit's provisions must, at a minimum: (1) Be technically accurate and identify which portions of the source are subject to the limitation; (2) specify the time period for the limitation (hourly, daily, monthly, and annual limits such as rolling annual limits); (3) be independently enforceable and describe the method to determine compliance, including appropriate monitoring, recordkeeping, and reporting; (4) be permanent; and (5) include a legal obligation to comply with the limit.[10] IEPA's PTE definition is consistent with the relevant court decisions and EPA's interpretation of those decisions, requiring the limits to be ''federally enforceable or legally and practicably enforceable by a state or local air pollution control agency.'' It is therefore appropriate for Illinois to use that phrase in place of ''federally enforceable'' alone.

Second, although Illinois' notice and comment procedures for synthetic minor NSR sources are beyond the scope of this action, IEPA cannot avoid notice and comment on a synthetic minor NSR permit for a source that has taken State-enforceable restrictions on PTE. Under CAA section 110(a)(2)(C), State minor NSR programs approved under the SIP, and the permits issued thereunder, are always federally enforceable. *See also* 40 CFR 52.23 and CAA section 113(b)(1).[11] Under 35 Ill. Adm. Code 252.104 and 252.201, in addition to providing public notice for major NSR and title V permit actions, IEPA must provide public notice for the planned issuance of the following minor NSR permits: Permits for the construction of a source or a modification of a source that would constitute a new major stationary source or a major modification of a major stationary source, if the source or modification were not accompanied by contemporaneous emissions decreases or if federally enforceable significant restrictions were not placed on the source or modification by the permit; permits to operate sources that contain federally enforceable conditions, including permits that exclude sources from the applicability of the permitting requirements described in 35 Ill. Adm. Code 252.104(a)(1), (a)(2) or (a)(5); and permits for the construction of a source of public interest or emission units of public interest at a source, the criteria for which are outlined in 35 Ill. Adm. Code 252.104(b). Thus, as relevant to synthetic minor NSR permits, IEPA's regulations do not provide any exemption from public notice and comment for permits for new sources or modifications that would be major sources or major modifications but accept enforceable restrictions on PTE such that the new source or modification becomes a minor source. Consistent with CAA section 110(a)(2)(C), the PTE definition in 40 CFR 51.166(b)(4) and IEPA's public participation requirements at 35 Ill. Adm. Code 252.104(a)(3), (a)(6) and 252.201(a), permits for such sources or modifications must be public noticed regardless of the new level of allowable emissions (after taking into account the federally enforceable restrictions on emissions or any contemporaneous emissions decreases). For these reasons, IEPA cannot avoid notice and comment on synthetic minor NSR permits for sources accepting only State-enforceable restrictions on PTE.

Although not a condition of this approval, EPA expects IEPA to implement the PTE definition in a manner that is consistent with the courts' decisions, IEPA's PTE definition in 35 Ill. Adm. Code 204.560 and the public participation requirements in 35 Ill. Adm. Code 252.104 and 252.201, and EPA rules as discussed above. IEPA's enforcement program must continue to provide sufficient incentive for sources to comply with permit limits. Permit limits must be enforceable as a practical matter (*i.e.,* practicably enforceable), and PTE limits must be subjected to appropriate public notice and comment consistent with 40 CFR 51.161 and IEPA's SIP-approved public participation regulations. If, in the future, IEPA does not implement its PTE definition consistent with its SIP-approved regulations or the CAA and its implementing regulations (including, but not limited to, not public noticing PTE limits or establishing limits that are not practicably enforceable), EPA could find that IEPA has failed to adequately administer or enforce its PSD program and may take action to notify IEPA of such a finding as authorized by sections 110(a)(2)(E), 179, or 110(k)(5) of the CAA.

Further, in response to a recent report by the OIG regarding EPA's oversight of synthetic minor permits, EPA has committed to identifying state, local, and tribal agencies whose program regulations, including but not limited to, minor NSR and federally enforceable state operating permit program

[9] *See, e.g.,* Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit at 3–4 (Jan. 22, 1996), *available at https://www.epa.gov/sites/default/files/2015-07/documents/pottoemi.pdf.*

[10] *See* Memorandum entitled, ''Guidance on Limiting Potential to Emit in New Source Permitting,'' from Terrell F. Hunt, Associate Enforcement Counsel, Office of Enforcement and Compliance Assurance (OECA), and John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to EPA Regional Offices (Jun. 13, 1989), and Memorandum entitled, ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act),'' from John Seitz, Director, OAQPS and Robert I. Van Heuvelen, Director, ORE to Regional Air Directors (Jan. 25, 1995).

[11] *See also* Federal Enforceability of State's Existing Minor New Source Review (NSR) Programs (Nov. 2, 1994), available at *https://www.epa.gov/nsr/federal-enforceability-states-existing-minor-new-source-review-nsr-programs.*

regulations and corresponding practices, do not meet the public participation requirements contained in the applicable EPA regulations, *e.g.,* 40 CFR 51.161.[12] For the identified agencies, EPA expects to take appropriate corrective steps, which may include constructive, informal, and formal engagement with those agencies.

IV. What action is EPA taking?

A. Scope of EPA Action

EPA is approving revisions to the Illinois SIP that IEPA submitted on September 22, 2020 and amended on November 5, 2020, and March 3, 2021. These revisions implement the PSD preconstruction permitting regulations for certain new or modified sources in attainment and unclassifiable areas. Currently, the PSD program in Illinois is operated under the FIP incorporating 40 CFR 52.21. EPA is approving IEPA's PSD regulations contained in 35 Ill. Adm. Code Parts 204 and 252 to apply statewide, except in Indian reservations.

EPA is excluding from the scope of this final approval all Indian reservations in the State, and any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. For the facilities in these geographic areas, the PSD FIP incorporating 40 CFR 52.21 will continue to apply and EPA will retain responsibility for issuing permits affecting such sources.

B. Rules Approved and Incorporated by Reference Into the SIP

EPA approves into the Illinois SIP at 40 CFR 52.720, the following regulations: 35 Ill. Adm. Code 203.207 ''Major Modification of a Source'' and 35 Ill. Adm. Code Part 204 ''Prevention of Significant Deterioration,'' effective September 4, 2020; and 35 Ill. Adm. Code Part 252 ''Public Participation in the Air Pollution Control Program'', except 35 Ill. Adm. Code sections 252.301 and 252.401, effective June 10, 2020.

C. Transfer of Authority for Existing EPA-Issued PSD Permits

Since April 7, 1980, IEPA has had full delegation to implement the PSD permitting program under the FIP. 46 FR 9580 (Jan. 29, 1981). Thus, PSD permits issued by IEPA on or after April 7, 1980, were issued under both state and EPA authority. Prior to delegation of the PSD permitting program to IEPA on April 7, 1980, EPA issued several PSD permits for sources in Illinois.[13] In an April 14, 1982 amendment to the terms of the 1980 delegation agreement, EPA delegated to IEPA the authority to amend or to revise any permits that had been previously issued by EPA.

In this action, EPA is granting IEPA authority to fully administer the PSD program with respect to those sources under IEPA's permitting jurisdiction that have existing PSD permits issued solely by EPA on or before April 7, 1980. This includes authority to conduct general administration of these existing permits, authority to process and issue any subsequent PSD permit actions relating to such permits (*e.g.,* modifications, amendments, or revisions of any nature), and authority to enforce such permits. IEPA has demonstrated adequate authority to enforce and modify these permits.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Illinois Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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 action and other required information to the U.S. Senate,

[12] *See https://www.epa.gov/system/files/documents/2021-07/_epaoig_20210708-21-p-0175.pdf.*

[13] EPA issued at least 18 such permits; however, some of the affected facilities may no longer exist. The full listing of these facilities is available in the docket for this action.

the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule 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).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 30, 2021.

Cheryl Newton,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.720, the table in paragraph (c) is amended by:

■ a. Revising the entry ''203.207'' under the heading ''Subpart B: Major Stationary Sources in Nonattainment Areas''.

■ b. Adding, in alphanumeric order after the entry ''203.801'':

■ i. The headings ''Part 204: Prevention of Significant Deterioration'' and ''Subpart A: General Provisions'' and the entries ''204.100'', ''204.110'', and ''204.120'';

■ ii. The heading ''Subpart B: Definitions'' and the entries ''204.200'', ''204.210'', ''204.220'', ''204.230'', ''204.240'', ''204.250'', ''204.260'', ''204.270'', ''204.280'', ''204.290'', ''204.300'', ''204.310'', ''204.320'', ''204.330'', ''204.340'', ''204.350'', ''204.360'', ''204.370'', ''204.380'', ''204.390'', ''204.400'', ''204.410'', ''204.420'', ''204.430'', ''204.440'', ''204.450'', ''204.460'', ''204.470'', ''204.480'', ''204.490'', ''204.500'', ''204.510'', ''204.520'', ''204.530'', ''204.540'', ''204.550'', ''204.560'', ''204.570'', ''204.580'', ''204.590'', ''204.600'', ''204.610'', ''204.620'', ''204.630'', ''204.640'', ''204.650'', ''204.660'', ''204.670'', ''204.680'', ''204.690'', ''204.700'', and ''204.710'';

■ iii. The heading ''Subpart C: Major Stationary Sources in Attainment and Unclassifiable Areas'' and the entries ''204.800'', ''204.810'', ''204.820'', ''204.830'', ''204.840'', ''204.850'', and ''204.860'';

■ iv. The heading ''Subpart D: Increment'' and the entries ''204.900'', ''204.910'', ''204.920'', and ''204.930'';

■ v. The heading ''Subpart E: Stack Heights'' and the entry ''204.1000'';

■ vi. The heading ''Subpart F: Requirements for Major Stationary Sources and Major Modifications in Attainment and Unclassifiable Areas'' and the entries ''204.1100'', ''204.1110'', ''204.1120'', ''204.1130'', and ''204.1140'';

■ vii. The heading ''Subpart G: Additional Requirements for Class I Areas'' and the entry ''204.1200'';

■ viii. The heading ''Subpart H: General Obligations of the Illinois Environmental Protection Agency'' and the entries ''204.1300'', ''204.1310'', ''204.1320'', ''204.1330'', and ''204.1340'';

■ ix. The heading ''Subpart I: Nonapplicability Recordkeeping and Reporting'' and the entry ''204.1400'';

■ x. The heading ''Subpart J: Innovative Control Technology'' and the entry ''204.1500''; and

■ xi. The heading ''Subpart K: Plantwide Applicability Limitation'' and the entries ''204.1600'', ''204.1610'', ''204.1620'', ''204.1630'', ''204.1640'', ''204.1650'', ''204.1660'', ''204.1670'', ''204.1680'', ''204.1690'', ''204.1700'', ''204.1710'', ''204.1720'', ''204.1730'', ''204.1740'', ''204.1750'', ''204.1760'', ''204.1770'', ''204.1780'', ''204.1790'', ''204.1800'', ''204.1810'', ''204.1820'', ''204.1830'', ''204.1840'', ''204.1850'', ''204.1860'', ''204.1870'', ''204.1880'', ''204.1890'', ''204.1900'', and ''204.1910''.

■ c. Removing the heading ''Part 252: Public Participation in the Air Pollution Permit Program for Major Sources in Nonattainment Areas'' and adding the heading ''Part 252: Public Participation in the Air Pollution Control Permit Program'' in its place.

■ d. Revising the entries ''252.101'', ''252.102'', and ''252.103''.

■ e. Adding entries ''252.104'', ''252.105'', and ''252.106'' in numerical order.

■ f. Revising entries ''252.201'', ''252.202'', ''252.203'', and ''252.204''.

■ g. Adding entries ''252.205'', ''252.206'', ''252.207'', ''252.208'', ''252.209'', ''252.210'', and ''252.211'' in numerical order.

The additions and revisions read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	*
Part 203: Major Stationary Sources Construction and Modification				
*	*	*	*	*
Subpart B: Major Stationary Sources in Nonattainment Areas				
*	*	*	*	*
203.207	Major Modification of a Source.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES—Continued

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	*
Part 204: Prevention of Significant Deterioration Subpart A: General Provisions				
204.100	Incorporations by Reference.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.110	Abbreviations and Acronyms.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.120	Severability	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
Subpart B: Definitions				
204.200	Definitions	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.210	Actual Emissions	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.220	Adverse Impact on Visibility.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.230	Allowable Emissions	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.240	Baseline Actual Emissions.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.250	Baseline Area	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.260	Baseline Concentration	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.270	Begin Actual Construction	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.280	Best Available Control Technology (BACT).	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.290	Building, Structure, Facility, or Installation.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.300	Clean Coal Technology	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.310	Clean Coal Technology Demonstration Project.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.320	Commence	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.330	Complete	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.340	Construction	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.350	Dispersion Technique	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.360	Electric Utility Steam Generating Unit.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.370	Emissions Unit	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.380	Excessive Concentration	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.390	Federal Land Manager	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.400	Federally Enforceable	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.410	Fugitive Emissions	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.420	Good Engineering Practice.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.430	Greenhouse Gases (GHGs).	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.440	High Terrain	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.450	Indian Reservation	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.460	Indian Governing Body	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.470	Innovative Control Technology.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES—Continued

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
204.480	Low Terrain	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.490	Major Modification	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.500	Major Source Baseline Date.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.510	Major Stationary Source	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.520	Minor Source Baseline Date.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.530	Nearby	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.540	Necessary Preconstruction Approvals or Permits.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.550	Net Emissions Increase	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.560	Potential to Emit	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.570	Prevention of Significant Deterioration (PSD) Permit.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.580	Process Unit	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.590	Project	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.600	Projected Actual Emissions.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.610	Regulated NSR Pollutant	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.620	Replacement Unit	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.630	Repowering	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.640	Reviewing Authority	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.650	Secondary Emissions	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.660	Significant	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.670	Significant Emissions Increase.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.680	Stack in Existence	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.690	Stationary Source	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.700	Subject to Regulation	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.710	Temporary Clean Coal Technology Demonstration Project.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
Subpart C: Major Stationary Sources in Attainment and Unclassifiable Areas				
204.800	Applicability	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.810	Source Information	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.820	Source Obligation	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.830	Permit Expiration	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.840	Effect of Permits	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.850	Relaxation of a Source-Specific Limitation.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.860	Exemptions	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES—Continued

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
Subpart D: Increment				
204.900	Ambient Air Increments	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.910	Ambient Air Ceilings	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.920	Restrictions on Area Classifications.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.930	Redesignation	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
Subpart E: Stack Heights				
204.1000	Stack Heights	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
Subpart F: Requirements for Major Stationary Sources and Major Modifications in Attainment and Unclassifiable Areas				
204.1100	Control Technology Review.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1110	Source Impact Analysis	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1120	Air Quality Models	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1130	Air Quality Analysis	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1140	Additional Impact Analyses.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
Subpart G: Additional Requirements for Class I Areas				
204.1200	Additional Requirements for Sources Impacting Federal Class I Areas.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
Subpart H: General Obligations of the Illinois Environmental Protection Agency				
204.1300	Notification of Application Completeness to Applicants.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1310	Transmittal of Application to USEPA.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1320	Public Participation	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1330	Issuance Within One Year of Submittal of Complete Application.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1340	Permit Rescission	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
Subpart I: Nonapplicability Recordkeeping and Reporting				
204.1400	Recordkeeping and Reporting Requirements for Certain Projects at Major Stationary Sources.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
Subpart J: Innovative Control Technology				
204.1500	Innovative Control Technology.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
Subpart K: Plantwide Applicability Limitation				
204.1600	Applicability	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1610	Definitions	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1620	Actuals PAL	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES—Continued

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
204.1630	Allowable Emissions	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1640	Continuous Emissions Monitoring System (CEMS).	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1650	Continuous Emissions Rate Monitoring System (CERMS).	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1660	Continuous Parameter Monitoring System (CPMS).	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1670	Lowest Achievable Emission Rate (LAER).	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1680	Major Emissions Unit	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1690	Plantwide Applicability Limitation (PAL).	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1700	PAL Effective Date	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1710	PAL Effective Period	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1720	PAL Major Modification	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1730	PAL Permit	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1740	PAL Pollutant	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1750	Predictive Emissions Monitoring System (PEMS).	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1760	Reasonably Achievable Control Technology (RACT).	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1770	Significant Emissions Unit	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1780	Small Emissions Unit	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1790	Permit Application Requirements.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1800	General Requirements for Establishing PAL.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1810	Public Participation Requirements.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1820	Setting the 10-Year Actuals PAL Level.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1830	Contents of the PAL Permit.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1840	Effective Period and Reopening a PAL Permit.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1850	Expiration of a PAL	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1860	Renewal of a PAL	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1870	Increasing the PAL During the PAL Effective Period.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1880	Monitoring Requirements	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1890	Recordkeeping Requirements.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1900	Reporting and Notification Requirements.	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	
204.1910	Transition Requirements	9/4/2020	September 9, 2021, [Insert **Federal Register** citation].	

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES—Continued

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	*
Part 252: Public Participation in the Air Pollution Control Permit Program Subpart A: Introduction				
252.101	Purpose	6/10/2020	September 9, 2021, [Insert **Federal Register** citation].	
252.102	Abbreviations and Acronyms.	6/10/2020	September 9, 2021, [Insert **Federal Register** citation].	
252.103	Definitions	6/10/2020	September 9, 2021, [Insert **Federal Register** citation].	
252.104	Applicability	6/10/2020	September 9, 2021, [Insert **Federal Register** citation].	
252.105	Application for a PSD Permit.	6/10/2020	September 9, 2021, [Insert **Federal Register** citation].	
252.106	Consolidation	6/10/2020	September 9, 2021, [Insert **Federal Register** citation].	
Subpart B: Procedures for Public Review				
252.201	Notice and Opportunity to Comment.	6/10/2020	September 9, 2021, [Insert **Federal Register** citation].	
252.202	Draft Permit	6/10/2020	September 9, 2021, [Insert **Federal Register** citation].	
252.203	Project Summary, Statement of Basis, or Fact Sheet.	6/10/2020	September 9, 2021, [Insert **Federal Register** citation].	
252.204	Availability of Documents	6/10/2020	September 9, 2021, [Insert **Federal Register** citation].	
252.205	Opportunity for Public Hearing.	6/10/2020	September 9, 2021, [Insert **Federal Register** citation].	
252.206	Procedures for Public Hearings.	6/10/2020	September 9, 2021, [Insert **Federal Register** citation].	
252.207	Obligation to Raise Issues and Provide Information During the Public Comment Period for PSD Permits.	6/10/2020	September 9, 2021, [Insert **Federal Register** citation].	
252.208	Reopening of the Public Comment Period for PSD Permits.	6/10/2020	September 9, 2021, [Insert **Federal Register** citation].	
252.209	Issuance of a Final PSD Permit Decision.	6/10/2020	September 9, 2021, [Insert **Federal Register** citation].	
252.210	Response to Comments for a Final PSD Permit Decision.	6/10/2020	September 9, 2021, [Insert **Federal Register** citation].	
252.211	Administrative Record for a Final PSD Permit Decision.	6/10/2020	September 9, 2021, [Insert **Federal Register** citation].	
*	*	*	*	*

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■ 3. In § 52.738, revise paragraphs (a) and (b) to read as follows:

§ 52.738 Significant deterioration of air quality.

(a) The requirements of sections 160 through 165 of the Clean Air Act are met, except for sources seeking permits to locate in Indian reservations within the State of Illinois, and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.

(b) The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Illinois for sources seeking permits to locate in Indian reservations or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.

* * * * *

[FR Doc. 2021–19234 Filed 9–8–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 281 and 282

[EPA–R04–UST–2020–0614; FRL–8817–01–R4]

Tennessee: Final Approval of State Petroleum Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The State of Tennessee (Tennessee or State) has applied to the Environmental Protection Agency (EPA) for final approval of revisions to its Petroleum Underground Storage Tank Program (Petroleum UST Program) under subtitle I of the Resource Conservation and Recovery Act (RCRA). Pursuant to RCRA, the EPA is taking direct final action, subject to public comment, to approve revisions to the Petroleum UST Program. The EPA has reviewed Tennessee's revisions and has determined that these revisions satisfy all requirements needed for approval. In addition, this action also codifies the EPA's approval of Tennessee's revised Petroleum UST Program and incorporates by reference those provisions of the State statutes and regulations that the EPA has determined meet the requirements for approval.

DATES: This rule is effective November 8, 2021, unless the EPA receives adverse comment by October 12, 2021. If the EPA receives adverse comment, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 8, 2021.

ADDRESSES: Submit your comments by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Email: smith.wg@epa.gov.* Include the Docket ID No. EPA–R04–UST–2020–0614 in the subject line of the message.

Instructions: Submit your comments, identified by Docket ID No. EPA–R04–UST–2020–0614, via the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *https://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 whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit: *https://www.epa.gov/dockets/commenting-epa-dockets.*

Out of an abundance of caution for members of the public and our staff, the public's access to the EPA Region 4 Offices is by appointment only to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov* or via email. The EPA encourages electronic comment submittals, but if you are unable to submit electronically or need other assistance, please contact Winston Smith, the contact listed in the **FOR FURTHER INFORMATION CONTACT** provision below. The index to the docket for this action and all documents that form the basis of this codification and associated publicly available docket materials are available for review on the *https://www.regulations.gov* website. The EPA encourages electronic reviewing of these documents, but if you are unable to review these documents electronically, please contact Winston Smith to schedule an appointment to view the documents at the Region 4 Offices. Interested persons wanting to examine these documents should make an appointment at least two weeks in advance. EPA Region 4 requires all visitors to adhere to the COVID–19 protocol. Please contact Winston Smith for the COVID–19 protocol requirements for your appointment.

Please also contact Winston Smith 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 on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

FOR FURTHER INFORMATION CONTACT: Winston Smith, RCRA Programs and Cleanup Branch, Land, Chemicals, and Redevelopment Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; Phone number: (404) 562–9467; email address: *smith.wg@epa.gov.* Please contact Winston Smith by phone or email for further information.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to Tennessee's Petroleum Underground Storage Tank Program

A. Why are revisions to state UST programs necessary?

States that have received final approval from the EPA under section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain a UST program that is no less stringent than the Federal program. When the EPA revises the regulations that govern the UST program, states must revise their programs to comply with the updated regulations and submit these revisions to the EPA for approval. Most commonly, states must change their programs because of changes to the EPA's regulations in title 40 of the Code of Federal Regulations (CFR) part 280. States can also initiate changes on their own to their UST programs and these changes must then be approved by the EPA.

B. What decision has the EPA made in this rule?

On October 15, 2018, in accordance with 40 CFR 281.51(a), Tennessee submitted a complete program revision application (State Application) seeking approval of changes to its Petroleum UST Program. The program revisions addressed in the State Application correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 state program approval (SPA) regulations (2015 Federal Revisions). As required by 40 CFR 281.20, the State Application contains the following: A transmittal letter from the Governor requesting approval; a description of the program and operating procedures; a demonstration of the State's procedures to ensure adequate enforcement; a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency; an Attorney General's Statement; and copies of all relevant State statutes and regulations. The EPA has reviewed the State Application and has determined that the revisions to Tennessee's Petroleum UST Program are no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the Tennessee Petroleum UST Program continues to provide adequate enforcement of compliance. Therefore, the EPA grants Tennessee final approval to operate its Petroleum UST Program with the revisions described in the State Application, and as outlined below. As the Tennessee UST program is a partially approved program, this approval covers petroleum underground

storage tanks only and does not include hazardous substance underground storage tanks under subtitle I of RCRA. The Tennessee Department of Environment and Conservation (TDEC) is the lead implementing agency for the Petroleum UST Program in Tennessee.

C. What is the effect of this approval on the regulated community?

Section 9004(b) of RCRA, 42 U.S.C. 6991c(b), as amended, allows the EPA to approve state UST programs to operate in lieu of the Federal program. With this approval, the changes described in the State Application will become part of the approved State Petroleum UST Program, and therefore will be federally enforceable. Tennessee will continue to have primary enforcement authority and responsibility for its Petroleum UST Program. This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already in effect in the State of Tennessee and are not changed by this action. This action merely approves the existing State regulations as meeting the 2015 Federal Revisions and rendering them federally enforceable.

D. Why is the EPA using a direct final rule?

The EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action, and we anticipate no adverse comment. Tennessee addressed all comments it received during its comment period when the rules and regulations being considered in this document were proposed at the State level.

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

Along with this direct final rule, the EPA is simultaneously publishing a separate document in the ''Proposed Rules'' section of this **Federal Register** that serves as the proposal to approve the State's Petroleum UST Program revisions and provides an opportunity for public comment. If the EPA receives comments that oppose this approval, the EPA will withdraw this direct final rule by publishing a document in the **Federal Register** before it becomes effective. The EPA will make any further decision on approval of the State Application after considering all comments received during the comment period. The EPA will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has Tennessee previously been approved?

On September 1, 1996, Tennessee submitted a complete State program approval application seeking approval of its Petroleum UST Program under subtitle I of RCRA. Tennessee did not request approval of the underground storage tank program for hazardous substances. Effective January 19, 1999, the EPA granted final approval for Tennessee to administer its Petroleum UST Program in lieu of the Federal UST program (63 FR 63793, Nov. 17, 1998). Effective July 27, 1999, the EPA incorporated by reference and codified the federally approved Tennessee Petroleum UST Program (64 FR 28927, May 28, 1999). As a result of the EPA's approval, these provisions became subject to the EPA's corrective action, inspection, and enforcement authorities under RCRA sections 9003(h), 9005, and 9006, 42 U.S.C. 6991b(h), 6991d, and 6991e, and other applicable statutory and regulatory provisions.

G. What changes is the EPA approving with this action and what standards do we use for review?

In order to be approved, each state program revision application must meet the general requirements in 40 CFR 281.11 (General Requirements), and the specific requirements in 40 CFR part 281, subpart B (Components of a Program Application), subpart C (Criteria for No Less Stringent), and subpart D (Adequate Enforcement of Compliance).

As more fully described below, the State has made changes to its Petroleum UST Program to reflect the 2015 Federal Revisions. These changes are included in Tennessee's UST Rules at Tenn. Comp. R. & Regs. 0400–18–01–.01 to .17, effective October 13, 2018. The EPA is approving the State's changes because they are no less stringent than the Federal UST program, and because the revised Tennessee Petroleum UST Program will continue to provide for adequate enforcement of compliance as required by 40 CFR 281.11(b) and part 281, subparts C and D, after this approval.

TDEC continues to be the lead implementing agency for the Petroleum UST Program in Tennessee. TDEC has broad statutory and regulatory authority to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases, under the Tennessee Petroleum Underground Storage Tank Act (the UST Act) of 1988, Tenn. Code Ann. sections 68–215–101 to 68–215–204 (2018), and the Tennessee UST Rules at Tenn. Comp. R. & Regs. 0400–18–01–.01 to .17 (2018).

The following State authorities provide authority for compliance monitoring as required by 40 CFR 281.40: Tenn. Code Ann. sections 68–215–107(e)(1) through (4) and 68–215–123; and Tenn. Comp. R. & Regs. 0400–18–01–.03(2).

The following State authorities provide authority for enforcement response as required by 40 CFR 281.41: Tenn. Code Ann. sections 68–215–106(c), (e), and (f), 68–215–107(b), (c), (d), (e)(5), and (e)(6), 68–215–114, 68–215–116, 68–215–118, 68–215–119, 68–215–121, 68–215–122, and 4–5–313; and Tenn. Comp. R. & Regs. 0400–18–01–.09(17) and 0400–18–01–.15.

The following State authorities provide authority for enabling public participation in the State enforcement process, including citizen intervention and the submission of complaints, as required by 40 CFR 281.42: Tenn. Code Ann. sections 68–215–121(e), 68–215–123, 4–5–308(a) through (c), and 4–5–310; and Tenn. Comp. R. & Regs. 0400–18–01–.06(11). Further, through a Memorandum of Agreement between TDEC and the EPA, effective October 12, 2018, the State maintains procedures for receiving and ensuring proper consideration of information about violations submitted by the public, and TDEC will not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation.

Pursuant to 40 CFR 281.43, the State is required to provide authority for enabling the sharing of information in the State files obtained or used in the administration of the State Petroleum UST Program with the EPA. Through a Memorandum of Agreement between TDEC and the EPA, effective October 12, 2018, the State agrees to furnish the EPA, upon request, any information in State files obtained or used in the administration of the State Petroleum UST Program. Further, the following State authorities provide authority for enabling the sharing of information in the State files obtained or used in the administration of the State Petroleum UST Program with the EPA as required by 40 CFR 281.43: Tenn. Code Ann. section 68–215–108 and Tenn. Comp. R. & Regs. 0400–18–01–.01(5)(e).

To qualify for final approval, revisions to a state's UST program must be no less stringent than the 2015 Federal Revisions. In the 2015 Federal Revisions, the EPA addressed UST systems deferred in the 1988 UST regulations, and added, among other things: New operation and maintenance requirements; secondary containment

requirements for new and replaced tanks and piping; operator training requirements; and a requirement to ensure UST system compatibility before storing certain biofuel blends. In addition, the EPA removed past deferrals for emergency generator tanks, field constructed tanks, and airport hydrant systems. Tennessee adopted all of the required 2015 Federal Revisions at Tenn. Comp. R. & Regs. 0400–18–01–.01 to .17 (2018).

As part of the State Application, the Tennessee Attorney General has certified that the State regulations provide for adequate enforcement of compliance and meet the no less stringent criteria in 40 CFR part 281, subparts C and D. The EPA is relying on this certification, in addition to the analysis submitted by the State, in approving the State's changes.

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

States may enact laws that are more stringent than their Federal counterparts. *See* RCRA section 9008, 42 U.S.C. 6991g. When an approved state program includes requirements that are considered more stringent than those required by Federal law, the more stringent requirements become part of the federally approved program in accordance with 40 CFR 281.12(a)(3)(i). The EPA has determined that some of Tennessee's regulations are considered more stringent than the Federal program, and upon approval, they will become part of the federally approved State Petroleum UST Program and therefore federally enforceable.

In addition, states may enact laws which are broader in scope than their Federal counterparts in accordance with 40 CFR 281.12(a)(3)(ii). State requirements that go beyond the scope of the Federal program are not part of the federally approved program and the EPA cannot enforce them. Although these requirements are enforceable by the State in accordance with Tennessee law, they are not Federal RCRA requirements. The EPA considers the following State requirements to be broader in scope than the Federal program and therefore not part of the federally approved State Petroleum UST Program:

Statutory Broader in Scope Provisions

i. Tenn. Code Ann. section 68–215–103(17)(A)(iii) and (iv), as to the definition of ''Responsible party,'' insofar as these provisions include entities other than owners and operators, as these terms are defined in 40 CFR 280.12.

ii. Tenn. Code Ann. section 68–215–104(3), insofar as it refers to the payment of fees associated with the Petroleum UST Program.

iii. Tenn. Code Ann. section 68–215–104(4), insofar as it refers to reimbursement from Tennessee's Petroleum Underground Storage Tank Fund (State Fund).

iv. Tenn. Code Ann. section 68–215–106(a)(6), insofar as it places notification requirements on persons other than owners and operators, as these terms are defined in 40 CFR 280.12.

v. Tenn. Code Ann. section 68–215–109, insofar as it establishes annual tank fees and provides for promulgation of regulations regarding these fees.

vi. Tenn. Code Ann. section 68–215–110(b) through (h), insofar as these provisions provide for the creation of the State Fund and environmental assurance fee.

vii. Tenn. Code Ann. section 68–215–111, insofar as it provides criteria for the qualified expenditure of funds, requirements for fund eligibility, and promulgation of regulations regarding the State Fund.

viii. Tenn. Code Ann. section 68–215–115, insofar as it provides the procedures for the State to recover its costs for investigation, identification, containment, or clean up of a particular site.

ix. Tenn. Code Ann. section 68–215–125, insofar as it prohibits the State Fund from being considered an insurance company or a member of the Tennessee Insurance Guaranty Association.

x. Tenn. Code Ann. section 68–215–129, insofar as it provides criteria for cleanup contracts and reimbursement from the State Fund.

Regulatory Broader in Scope Provisions

i. Tenn. Comp. R. & Regs. 0400–18–01–.01(4)1.(iii) and (iv), as to the definition for ''Responsible party,'' insofar as these provisions include entities other than owners and operators, as these terms are defined in 40 CFR 280.12.

ii. Tenn. Comp. R. & Regs. 0400–18–01–.02(1)(a)2., insofar as it requires owners to submit annual tank fees as part of the notification requirement.

iii. Tenn. Comp. R. & Regs. 0400–18–01–.02(4)(c)6.(ii)(II)IV., insofar as it refers to tank fees and late penalties.

iv. Tenn. Comp. R. & Regs. 0400–18–01–.04(1)(e), insofar as it requires inspection of dispensers.

v. Tenn. Comp. R. & Regs. 0400–18–01–.05(1)(b) and (c), insofar as these provisions contain requirements for coverage and reimbursement from the State Fund.

vi. Tenn. Comp. R. & Regs. 0400–18–01–.06(2)(b)1., as to the text ''The fund shall not reimburse the owner, operator, and/or other responsible party of [the] petroleum UST system for the cost of generating duplicate data,'' insofar as this text pertains to the State Fund.

vii. Tenn. Comp. R. & Regs. 0400–18–01–.06(3)(f), insofar as it provides eligibility requirements for the State Fund.

viii. Tenn. Comp. R. & Regs. 0400–18–01–.06(7)(c), insofar as it provides for reimbursement from the State Fund.

ix. Tenn. Comp. R. & Regs. Appendix 0400–18–01–.07–A, as to the text ''transport and'' in (4)(a) and (4)(e), insofar as these provisions pertain to the transportation of a tank.

x. Tenn. Comp. R. & Regs. 0400–18–01–.08(5)(a) and (b), insofar as these provisions establish eligibility requirements for the State Fund.

xi. Tenn. Comp. R. & Regs. 0400–18–01–.09(1) through (16), insofar as these provisions regulate disbursements, coverage, and fund eligibility regarding the State Fund and provide for approval of corrective action contractors and recovery of State costs.

xii. Tenn. Comp. R. & Regs. 0400–18–01–.10, insofar as it establishes a system and schedule for the collection of fees under the UST Act.

xiii. Tenn. Comp. R. & Regs. 0400–18–01–.12(3), insofar as it establishes eligibility requirements for the State Fund.

xiv. Tenn. Comp. R. & Regs. 0400–18–01–.12(4), insofar as it pertains to the payment of annual tank fees.

II. Codification

A. What is codification?

Codification is the process of placing citations and references to a state's statutes and regulations that comprise a state's approved UST program into the CFR. The EPA codifies its approval of state programs in 40 CFR part 282 and incorporates by reference state statutes and regulations that the EPA can enforce, after the approval is final, under sections 9005 and 9006 of RCRA, and any other applicable statutory provisions. The incorporation by reference of the EPA-approved state programs in the CFR should substantially enhance the public's ability to discern the status of the approved state UST programs and state requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the approved program in each state.

B. What is the history of codification of Tennessee's Petroleum UST Program?

In 1999, the EPA incorporated by reference and codified Tennessee's approved Petroleum UST Program at 40 CFR 282.92 (64 FR 28927, May 28, 1999). Through this action, the EPA is amending 40 CFR 282.92 to incorporate by reference and codify Tennessee's revised Petroleum UST Program.

C. What codification decisions is the EPA making in this rule?

In this rule, the EPA is finalizing regulatory text that incorporates by reference the federally approved Tennessee Petroleum UST Program, including the revisions made to the Petroleum UST Program based on the 2015 Federal Revisions. In accordance with the requirements of 1 CFR 51.5, the EPA is incorporating by reference Tennessee's statutes and regulations as described in the amendments to 40 CFR part 282 set forth below. These documents are available through *https://www.regulations.gov.* This codification reflects the State Petroleum UST Program that will be in effect at the time the EPA's approval of the revisions to the Tennessee Petroleum UST Program addressed in this direct final rule becomes final. If, however, the EPA receives substantive comment on the proposed rule, the EPA will withdraw this direct final rule and this codification will not take effect. The EPA will consider all comments and will make a decision on program approval and codification in a future final rule. By codifying the approved Tennessee Petroleum UST Program and by amending the CFR, the public will more easily be able to discern the status of the federally approved requirements of the Tennessee Petroleum UST Program.

Specifically, in 40 CFR 282.92(d)(1)(i), the EPA is incorporating by reference the EPA-approved Tennessee Petroleum UST Program. Section 282.92(d)(1)(ii) identifies the State's statutes and regulations that are part of the approved State Petroleum UST Program, although not incorporated by reference for enforcement purposes, unless they impose obligations on the regulated entity. Section 282.92(d)(1)(iii) identifies the State's statutory and regulatory provisions that are broader in scope or external to the State's approved Petroleum UST Program and therefore not incorporated by reference. Section 282.92(d)(2) through (5) reference the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, Program Description, and Memorandum of Agreement, which are part of the State Application and part of the Petroleum UST Program under subtitle I of RCRA.

D. What is the effect of the EPA's codification of the federally approved Tennessee Petroleum UST Program on enforcement?

The EPA retains the authority under sections 9003(h), 9005, and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d, and 6991e, and other applicable statutory and regulatory provisions, to undertake corrective action, inspections, and enforcement actions, and to issue orders in approved states. If the EPA determines it will take such actions in Tennessee, the EPA will rely on Federal sanctions, Federal inspection authorities, and other Federal procedures rather than the State analogs. Therefore, the EPA is not incorporating by reference Tennessee's procedural and enforcement authorities, although they are listed in 40 CFR 282.92(d)(1)(ii).

E. What State provisions are not part of the codification?

As discussed in section I.H. above, some provisions of the State's Petroleum UST Program are not part of the federally approved State Petroleum UST Program because they are broader in scope than the Federal UST program. Where an approved state program has provisions that are broader in scope than the Federal program, those provisions are not a part of the federally approved program. As a result, State provisions which are broader in scope than the Federal program are not incorporated by reference for purposes of enforcement in part 282. *See* 40 CFR 281.12(a)(3)(ii). In addition, provisions that are external to the state UST program approval requirements, but included in the State Application, are also being excluded from incorporation by reference in part 282. For reference and clarity, 40 CFR 282.92(d)(1)(iii) lists the Tennessee statutory and regulatory provisions which are broader in scope than the Federal program or external to State UST program approval requirements. These provisions are, therefore, not part of the approved UST Program that the EPA is codifying. Although these provisions cannot be enforced by the EPA, the State will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order (E.O.) Reviews

The EPA's actions merely approve and codify Tennessee's revised Petroleum UST Program requirements pursuant to RCRA section 9004, and do not impose additional requirements other than those imposed by State law. For that reason, these actions:

- Are not significant regulatory actions and have been exempted from review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not ''significant regulatory actions'' under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Are not subject to the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with RCRA;
- Do not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994); and
- Do not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. The rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

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. The 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). This final action will be effective November 8, 2021.

List of Subjects in 40 CFR Parts 281 and 282

Environmental protection, Administrative practice and procedure, Hazardous substances, Incorporation by reference, Indian country, Petroleum, Reporting and recordkeeping requirements, State program approval, Underground storage tanks.

Authority: This action is issued under the authority of sections 2002(a), 7004(b), 9004, 9005, and 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6974(b), 6991c, 6991d, and 6991e.

Dated: August 30, 2021.

John Blevins,

Acting Regional Administrator, Region 4.

For the reasons set forth in the preamble, the EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

■ 1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

■ 2. Revise § 282.92 to read as follows:

§ 282.92 Tennessee State-Administered Program.

(a) *History of the approval of Tennessee's program.* The State of Tennessee (Tennessee or State) is approved to administer and enforce a petroleum underground storage tank (UST) program in lieu of the Federal program under subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's Petroleum Underground Storage Tank Program (Petroleum UST Program), as administered by the Tennessee Department of Environment and Conservation (TDEC), was approved by the EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. The EPA approved the Tennessee Petroleum UST Program on November 17, 1998, and it was effective on January 15, 1999. A subsequent program revision was approved by the EPA and became effective November 8, 2021.

(b) *Enforcement authority.* Tennessee has primary responsibility for administering and enforcing its federally approved Petroleum UST Program. However, the EPA retains the authority to exercise its corrective action, inspection, and enforcement authorities under sections 9003(h), 9005, and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d, and 6991e, as well as under any other applicable statutory and regulatory provisions. The EPA also retains all authority to operate the hazardous substance underground storage tank program.

(c) *Retention of program approval.* To retain program approval, Tennessee must revise its approved Petroleum UST Program to adopt new changes to the Federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Tennessee obtains approval for revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) *Final approval.* Tennessee has final approval for the following elements of its Petroleum UST Program submitted to the EPA and approved effective January 15, 1999, and the program revisions approved by the EPA effective on November 8, 2021.

(1) *State statutes and regulations*—(i) *Incorporation by reference.* The Tennessee materials cited in this paragraph (d)(1)(i) and listed in appendix A to this part, are incorporated by reference as part of the Petroleum UST Program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may access copies of the Tennessee statutes and regulations that are incorporated by reference in this paragraph (d)(1)(i) from the Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks, William R. Snodgrass Tennessee Tower, 12th Floor, 312 Rosa L. Parks Ave., Nashville, TN 37243; Phone number: (615) 532–0730; website: *https://www.tn.gov/environment/program-areas/ust-underground-storage-tanks/ust/act-rules-and-policies.html.* You may inspect all approved material at the EPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303; Phone number: (404) 562–9900; or the National Archives and Records Administration (NARA), email: *fedreg.legal@nara.gov;* website: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(A) ''Tennessee Statutory Requirements Applicable to the Petroleum Underground Storage Tank Program,'' dated May 11, 2021.

(B) ''Tennessee Regulatory Requirements Applicable to the Petroleum Underground Storage Tank Program,'' dated May 11, 2021.

(ii) *Legal basis.* The EPA considered the following statutes and regulations which provide the legal basis for the State's implementation of the Petroleum UST Program, but these provisions do not replace Federal authorities. Further, these provisions are not being incorporated by reference, unless the provisions place requirements on regulated entities.

(A) *Tennessee Petroleum Underground Storage Tank Act (the UST Act) of 1988, Tenn. Code Ann. sections 68–215–101 to 68–215–204 (2018).* (*1*) Section 68–215–106(c), (e), and (f), insofar as these provisions provide for delivery prohibition and enforcement of the Petroleum UST Program.

(*2*) Section 68–215–106(d), insofar as it provides for criminal prosecution under the UST Act.

(*3*) Section 68–215–107(a), insofar as it establishes authority over the placement and storage of petroleum substances in underground storage tanks, release prevention, release detection, release correction, closure, and post-closure care of petroleum underground storage tanks in Tennessee.

(*4*) Section 68–215–107(b), insofar as it provides for the issuance of orders to enforce the Petroleum UST Program.

(*5*) Section 68–215–107(c) and (d), insofar as these provisions identify specific authorities for release response and corrective actions, including in response to an imminent and substantial danger.

(*6*) Section 68–215–107(e), insofar as it identifies specific authorities for compliance monitoring and enforcement.

(*7*) Section 68–215–107(f), insofar as it provides for the promulgation of regulations for the implementation of the Petroleum UST Program.

(*8*) Section 68–215–107(g)(1), insofar as it provides evaluation considerations for the State's approval of a cleanup plan.

(*9*) Section 68–215–108, insofar as it provides for the protection of ''proprietary'' information and sharing of information in the files obtained or used in the administration of the Petroleum UST Program with the EPA.

(*10*) Section 68–215–114, insofar as it provides for the issuance and enforcement of correction orders; and establishes liability costs for responsible parties.

(*11*) Section 68–215–116, insofar as it provides for an assessment of penalties under the UST Act.

(*12*) Section 68–215–117, insofar as it provides for immunity from liability under the UST Act in certain circumstances.

(*13*) Section 68–215–118, insofar as it identifies authorities for enforcement response, specifically authority over governmental entities, under the UST Act.

(*14*) Section 68–215–119, insofar as it identifies authorities for enforcement response and provides for review of orders and appeal of any determination by the Tennessee Department of Environment and Conservation (TDEC) under the UST Act.

(*15*) Section 68–215–120, insofar as it provides for criminal prosecution under the UST Act.

(*16*) Section 68–215–121, insofar as it identifies authorities for enforcement response and public participation, provides for assessment of civil penalties and damages, and establishes third-party intervention under the UST Act.

(*17*) Section 68–215–122, insofar as it identifies authorities for enforcement response and provides for injunctions as a legal remedy under the UST Act.

(*18*) Section 68–215–123, insofar as it identifies specific authorities for compliance monitoring and public participation and provides for any person to submit a complaint against any person for violating the UST Act.

(*19*) Section 68–215–126, insofar as it establishes authority in relation to local laws or regulations.

(*20*) Section 68–215–127, insofar as it establishes authority over releases of petroleum from underground storage tanks and creates the soil and groundwater classification and cleanup criteria.

(B) *Tennessee's Underground Storage Tank Regulations, Tenn. Comp. R. & Regs. 0400–18–01–.01 to .17 (2018).* (*1*) 0400–18–01–.01(5)(e), insofar as it provides for the State's sharing of information with the EPA.

(*2*) 0400–18–01–.03(2), insofar as it identifies specific authorities for compliance monitoring and provides for reporting and maintenance of records.

(*3*) 0400–18–01–.06(11), insofar as it provides for public participation in the corrective action process.

(*4*) 0400–18–01–.08(20) and (21), insofar as these provisions provide procedures governing the forfeiture of financial assurance and release of financial assurance mechanism documents.

(*5*) 0400–18–01–.09(17), insofar as it provides for assessment of civil penalties for failure to comply with orders issued under the UST Act.

(*6*) 0400–18–01–.11, insofar as it provides for appeal of any determination by TDEC under the provisions of Tennessee's Underground Storage Tank Regulations, procedures for contested cases, and the State Administrative Procedures Act.

(*7*) 0400–18–01–.15, insofar as it identifies specific authorities for enforcement response and delivery prohibition requirements.

(C) *Tennessee's Uniform Administrative Procedures Act, Part 3—Contested Cases, Tenn. Code Ann. sections 4–5–301 to 4–5–325 (2018).* (*1*) Section 4–5–308(a) through (c), insofar as these provisions identify authorities for public participation and provide for the filing of pleadings, briefs, motions, and other documents.

(*2*) Section 4–5–310, insofar as it identifies authorities for public participation and provides for intervention in contested case proceedings.

(*3*) Section 4–5–313, insofar as it identifies authorities for enforcement response and provides procedures for contested cases.

(iii) *Other provisions not incorporated by reference.* The following statutory and regulatory provisions applicable to the Tennessee Petroleum UST Program are broader in scope than the Federal program or external to the State UST program approval requirements. Therefore, these provisions are not part of the approved Petroleum UST Program and are not incorporated by reference in this section:

(A) *Tennessee Petroleum Underground Storage Tank Act (the UST Act) of 1988, Tenn. Code Ann. sections 68–215–101 to 68–215–204 (2018).* (*1*) Section 68–215–102 is external insofar as it contains the State's public policy for regulating underground storage tanks.

(*2*) Section 68–215–103(17)(A)(iii) and (iv), as to the definition of ''Responsible party,'' insofar as these provisions include entities other than owners and operators, as these terms are defined in 40 CFR 280.12.

(*3*) Section 68–215–104(3), insofar as it refers to the payment of fees associated with the Petroleum UST Program.

(*4*) Section 68–215–104(4), insofar as it refers to reimbursement from Tennessee's Petroleum Underground Storage Tank Fund (State Fund).

(*5*) Section 68–215–106(a)(6), insofar as it places notification requirements on persons other than owners and operators, as these terms are defined in 40 CFR 280.12.

(*6*) Section 68–215–106(b)(1) and (2) are external insofar as these provisions contain obligations on the State agency, not a regulated entity.

(*7*) Section 68–215–109, insofar as it establishes annual tank fees and provides for promulgation of regulations regarding these fees.

(*8*) Section 68–215–110(b) through (h), insofar as these provisions provide for the creation of the State Fund and environmental assurance fee.

(*9*) Section 68–215–111, insofar as it provides criteria for the qualified expenditure of funds, requirements for fund eligibility, and promulgation of regulations regarding the State Fund.

(*10*) Section 68–215–115, insofar as it provides the procedures for the State to recover its costs for investigation, identification, containment, or cleanup of a particular site.

(*11*) Section 68–215–125, insofar as it prohibits the State Fund from being considered an insurance company or a member of the Tennessee Insurance Guaranty Association.

(*12*) Section 68–215–129, insofar as it provides criteria for cleanup contracts and reimbursement from the State Fund.

(B) *Tennessee's Underground Storage Tank Regulations, Tenn. Comp. R. & Regs. 0400–18–01–.01 to .17 (2018).* (*1*) 0400–18–01–.01(4)1.(iii) and (iv), as to the definition for ''Responsible party,'' insofar as these provisions include entities other than owners and operators, as these terms are defined in 40 CFR 280.12.

(*2*) 0400–18–01–.01(5)(a) through (d) are external insofar as these provisions contain obligations on the State agency with respect to proprietary information, not a regulated entity.

(*3*) 0400–18–01–.02(1)(a)2., insofar as it requires owners to submit annual tank fees as part of the notification requirement.

(*4*) 0400–18–01–.02(4)(c)6.(ii)(II)IV., insofar as it refers to tank fees and late penalties.

(*5*) 0400–18–01–.04(1)(e), insofar as it requires inspection of dispensers.

(*6*) 0400–18–01–.05(1)(b) and (c), insofar as these provisions contain requirements for coverage and reimbursement from the State Fund.

(*7*) 0400–18–01–.06(2)(b)1., as to the text ''The fund shall not reimburse the

owner, operator, and/or other responsible party of [the] petroleum UST system for the cost of generating duplicate data,'' insofar as this text pertains to the State Fund.

(*8*) 0400–18–01–.06(3)(f), insofar as it provides eligibility requirements for the State Fund.

(*9*) 0400–18–01–.06(7)(c), insofar as it provides for reimbursement from the State Fund.

(*10*) Appendix 0400–18–01–.07–A, as to the text ''transport and'' in (4)(a) and (4)(e), insofar as these provisions pertain to the transportation of a tank.

(*11*) 0400–18–01–.08(5)(a) and (b), insofar as these provisions establish eligibility requirements for the State Fund.

(*12*) 0400–18–01–.09(1) through (16), insofar as these provisions regulate disbursements, coverage, and fund eligibility regarding the State Fund and provide for approval of corrective action contractors and recovery of State costs.

(*13*) 0400–18–01–.09(18) is external insofar as it pertains to the severability of the rule.

(*14*) 0400–18–01–.10, insofar as it establishes a system and schedule for the collection of fees under the UST Act.

(*15*) 0400–18–01–.12(3), insofar as it establishes eligibility requirements for the State Fund.

(*16*) 0400–18–01–.12(4), insofar as it pertains to the payment of annual tank fees.

(*17*) 0400–18–01–.14 is external insofar as it contains record retention obligations on the State agency, not a regulated entity.

(2) *Statement of legal authority.* The Attorney General's Statement, signed on October 3, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The ''Demonstration of Adequate Enforcement Procedures'' submitted on October 15, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted on October 15, 2018, though not incorporated by reference, are referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 4 and TDEC, signed by the EPA Regional Administrator on October 12, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

■ 3. Amend appendix A to part 282 by revising the entry for Tennessee to read as follows:

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Tennessee

(A) The statutory provisions include:

Tennessee Petroleum Underground Storage Tank Act (the UST Act) of 1988, Tenn. Code Ann. sections 68–215–101 to 68–215–204 (2018):

68–215–101 Short Title.

68–215–103 Definitions, except (17)(A)(iii) and (iv).

68–215–104 Prohibitions, except (3) and (4).

68–215–105 Minimum standards.

68–215–106 Notice; certificates and certification; except (a)(6), (b)(1), (b)(2), and (c) through (f).

68–215–107 Supervision; orders; enforcement; rules and regulations; except (a) through (g)(1).

68–215–110 Fund; environmental assurance fee; except (b) through (h).

68–215–112 Repealed.

68–215–113 Repealed.

68–215–124 Exemptions.

68–215–128 Obsolete.

68–215–130 Repealed.

68–215–201 Definitions.

68–215–202 Ownership of petroleum site or petroleum underground storage tank or property on which a petroleum site or petroleum underground tank is located.

68–215–203 Operation prior to and after foreclosure.

68–215–204 Participation in the management.

(B) The regulatory provisions include:

Tennessee's Underground Storage Tank Regulations, Tenn. Comp. R. & Regs. 0400–18–01–.01 to .17 (2018):

0400–18–01–.01 Program Scope, Definitions, and Proprietary Information Applicability; except (4)1.(iii) and (iv) of the definition for ''Responsible party'' and (5).

0400–18–01–.02 UST Systems: Installation and Operation; except (1)(a)2. and (4)(c)6.(ii)(II)IV.

0400–18–01–.03 Notifications, Reporting, and Record Keeping.

0400–18–01–.04 Release Detection; except (1)(e).

0400–18–01–.05 Release Reporting, Investigation, and Confirmation; except (1)(b) and (c).

0400–18–01–.06 Petroleum Release Response, Remediation, and Risk Management; except for the text ''The fund shall not reimburse the owner, operator, and/or other responsible party of petroleum UST system for the cost of generating duplicate data'' in (2)(b)1. Also, except (3)(f), (7)(c), and (11)(b) and (c).

0400–18–01–.07 Out-of-Service UST Systems and Closure; as to Appendix 0400–18–01–.07–A, except for the text ''transport and'' in (4)(a). Also, except (4)(e).

0400–18–01–.08 Financial Responsibility; except (5)(a), (5)(b), (20), and (21).

0400–18–01–.12 Indicia of Ownership; except (3) and (4).

0400–18–01–.13 Reserved.

0400–18–01–.16 Certified Operator Program.

0400–18–01–.17 UST Systems with Field-Constructed Tanks and Airport Hydrant Systems.

(C) Copies of the Tennessee statutes and regulations that are incorporated by reference are available from the Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks, William R. Snodgrass Tennessee Tower, 12th Floor, 312 Rosa L. Parks Ave., Nashville, TN 37243; Phone number: (615) 532–0730; website: *https://www.tn.gov/environment/program-areas/ust-underground-storage-tanks/ust/act-rules-and-policies.html.*

* * * * *

[FR Doc. 2021–19339 Filed 9–8–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–OLEM–2020–0394, 0395, 0396 and 0397; FRL–8887–01–OLEM]

National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''the EPA'' or ''the agency'') in determining which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds four sites to the General Superfund section of the NPL.

DATES: The document is effective on October 12, 2021.

ADDRESSES: Contact information for the EPA Headquarters:

• Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue NW; William Jefferson Clinton Building West, Room 3334, Washington, DC 20004, 202/566–0276.

The contact information for the regional dockets is as follows:

• Holly Inglis, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; 617/918–1413.

• James Desir, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4342.

• Lorie Baker (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3HS12, Philadelphia, PA 19103; 215/814–3355.

• Sandra Bramble, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW, Mailcode 9T25, Atlanta, GA 30303; 404/562–8926.

• Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.

• Michelle Delgado-Brown, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1201 Elm Street, Suite 500, Mailcode SED, Dallas, TX 75270; 214/665–3154.

• Kumud Pyakuryal, Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mailcode SUPRSTAR, Lenexa, KS 66219; 913/551–7956.

• Victor Ketellapper, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303/312–6578.

• Eugenia Chow, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD 6–1, San Francisco, CA 94105; 415/972–3160.

• Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Suite 155, Mailcode 12–D12–1, Seattle, WA 98101; 206/890–0591.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (703) 603–8852, email: *jeng.terry@epa.gov,* Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mailcode 5204P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
- A. What are CERCLA and SARA?
- B. What is the NCP?
- C. What is the National Priorities List (NPL)?
- D. How are sites listed on the NPL?
- E. What happens to sites on the NPL?
- F. Does the NPL define the boundaries of sites?
- G. How are sites removed from the NPL?
- H. May the EPA delete portions of sites from the NPL as they are cleaned up?
- I. What is the Construction Completion List (CCL)?
- J. What is the Sitewide Ready for Anticipated Use measure?
- K. What is state/tribal correspondence concerning NPL Listing?

II. Availability of Information to the Public
- A. May I review the documents relevant to this final rule?
- B. What documents are available for review at the EPA Headquarters docket?
- C. What documents are available for review at the EPA regional dockets?
- D. How do I access the documents?
- E. How may I obtain a current list of NPL sites?

III. Contents of This Final Rule
- A. Additions to the NPL
- B. What did the EPA do with the public comments it received?

IV. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs
- C. Paperwork Reduction Act (PRA)
- D. Regulatory Flexibility Act (RFA)
- E. Unfunded Mandates Reform Act (UMRA)
- F. Executive Order 13132: Federalism
- G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- J. National Technology Transfer and Advancement Act (NTTAA)
- K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- L. Congressional Review Act

I. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, the EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. The EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a

release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by the EPA (the ''General Superfund section'') and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities section''). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody or control, although the EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which the EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), the EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. On January 9, 2017 (82 FR 2760), a subsurface intrusion component was added to the HRS to enable the EPA to consider human exposure to hazardous substances or pollutants and contaminants that enter regularly occupied structures through subsurface intrusion when evaluating sites for the NPL. The current HRS evaluates four pathways: Ground water, surface water, soil exposure and subsurface intrusion, and air. As a matter of agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Each state may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each state as the greatest danger to public health, welfare or the environment among known facilities in the state. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- The EPA determines that the release poses a significant threat to public health.
- The EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

The EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with a permanent remedy, taken instead of or in addition to removal actions'' (40 CFR 300.5).) However, under 40 CFR 300.425(b)(2), placing a site on the NPL ''does not imply that monies will be expended.'' The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the ''Jones Co. Plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.,* where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination; and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. plant site,'' does not imply that the Jones Company is responsible for the contamination located on the plant site.

EPA regulations provide that the remedial investigation (''RI'') ''is a process undertaken . . . to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the feasibility study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known

boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted previously, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

The EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that the EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment and taking of remedial measures is not appropriate.

H. May the EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, the EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the Construction Completion List (CCL)?

The EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) the EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.,* institutional controls); or (3) the site qualifies for deletion from the NPL. For more information on the CCL, see the EPA's internet site at *https://www.epa.gov/superfund/construction-completions-national-priorities-list-npl-sites-number.*

J. What is the Sitewide Ready for Anticipated Use measure?

The Sitewide Ready for Anticipated Use measure represents important Superfund accomplishments and the measure reflects the high priority the EPA places on considering anticipated future land use as part of the remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, Office of Solid Waste and Emergency Response (OSWER) 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *https://www.epa.gov/superfund/about-superfund-cleanup-process#reuse.*

K. What is state/tribal correspondence concerning NPL listing?

In order to maintain close coordination with states and tribes in the NPL listing decision process, the EPA's policy is to determine the position of the states and tribes regarding sites that the EPA is considering for listing. This consultation process is outlined in two memoranda that can be found at the following website: *https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing.*

The EPA has improved the transparency of the process by which state and tribal input is solicited. The EPA is using the web and where appropriate more structured state and tribal correspondence that: (1) Explains the concerns at the site and the EPA's rationale for proceeding; (2) requests an explanation of how the state intends to address the site if placement on the NPL is not favored; and (3) emphasizes the transparent nature of the process by informing states that information on their responses will be publicly available.

A model letter and correspondence between the EPA and states and tribes where applicable, is available on the EPA's website at *https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing.*

II. Availability of Information to the Public

A. May I review the documents relevant to this final rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at the EPA headquarters and in the EPA regional offices.

An electronic version of the public docket is available through *https://www.regulations.gov* (see table below for docket identification numbers). Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facilities identified in section II.D.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, state	Docket ID No.
Cherokee Zinc—Weir Smelter	Weir, KS	EPA–HQ–OLEM–2020–0394
Billings PCE	Billings, MT	EPA–HQ–OLEM–2020–0395
Pioneer Metal Finishing Inc	Franklinville, NJ	EPA–HQ–OLEM–2020–0396
Northwest Odessa Groundwater	Odessa, TX	EPA–HQ–OLEM–2020–0397

B. What documents are available for review at the EPA Headquarters docket?

The headquarters docket for this rule contains the HRS score sheets, the documentation record describing the information used to compute the score, a list of documents referenced in the documentation record for each site and any other information used to support the NPL listing of the site.

C. What documents are available for review at the EPA regional dockets?

The EPA regional dockets contain all the information in the headquarters docket, plus the actual reference documents containing the data principally relied upon by the EPA in calculating or evaluating the HRS score. These reference documents are available only in the regional dockets.

D. How do I access the documents?

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for the headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Please contact the regional dockets for hours. For addresses for the headquarters and regional dockets, see **ADDRESSES** section in the beginning portion of this preamble.

E. How may I obtain a current list of NPL sites?

You may obtain a current list of NPL sites via the internet at *https://www.epa.gov/superfund/national-priorities-list-npl-sites-site-name* or by contacting the Superfund docket (see contact information in the beginning portion of this document).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds the following four sites to the General Superfund section of the NPL. These sites are being added to the NPL based on an HRS score of 28.50 or above.

GENERAL SUPERFUND SECTION

State	Site name	City/county
KS	Cherokee Zinc—Weir Smelter	Weir.
MT	Billings PCE	Billings.
NJ	Pioneer Metal Finishing Inc	Franklinville.
TX	Northwest Odessa Groundwater	Odessa.

B. What did the EPA do with the public comments it received?

The EPA reviewed all comments received on the sites in this rule and responded to all relevant comments. The EPA is adding four sites to the NPL in this final rule. All four sites were proposed for addition to the NPL on September 3, 2020 (85 FR 54970).

The EPA received two comments on the proposal of the Cherokee Zinc-Weir Smelter site. One of the commenters indicated that they would like to see liability for cleanup assigned at the listing stage and questions the addition of liability concerns to the Superfund NPL process. Liability is not considered in evaluating a site under the HRS. The NPL serves primarily as an informational tool for use by the EPA in identifying those sites that appear to present a significant risk to public health or the environment. Listing a site on the NPL does not reflect a judgment on the activities of the owner(s) or operator(s) of a site. It does not require those persons to undertake any action, nor does it assign any liability to any person. This position, stated in the legislative history of CERCLA, has been explained more fully in the **Federal Register** (48 FR 40658, September 8, 1983, and 53 FR 23988, June 24, 1988). In addition to the comment regarding liability, there was one comment that is not related to the proposal of the site.

The EPA received one comment on the Billings PCE site regarding the site address and description of the site. The commenter asserted that the site address appeared limited to the Big Sky Linen facility despite the multiple possible sources identified in supporting material. The commenter stated that the EPA should revise the HRS documentation record and the site summary to reflect the multiple possible sources of contamination associated with the site. The EPA has revised the street address for the Billings PCE site at promulgation to the intersection of 3rd St. W and Miles Ave., Billings, Montana, the approximate center of the area of observed exposure. The EPA has also revised the HRS documentation record at promulgation to include the new site address.

Additionally, while not commented on, the EPA noted that the trichloroethylene benchmark concentrations shown in HRS documentation record Table 17 contain truncated values and are inconsistent with those documented in Reference 2 of the HRS supporting documentation. The EPA has revised the HRS documentation record at promulgation to: Include the corrected benchmark concentrations in Table 17; remove from Table 17 3 samples whose trichloroethylene concentrations fall below the corrected benchmarks; and adjust the Level I concentrations, Level II concentrations, and population factor values and targets factor category value accordingly. Based on these corrections, the subsurface intrusion component score and HRS site score remain unchanged.

The EPA received one comment on the Pioneer Metal Finishing Inc site expressing concern for environmental justice and air pollution impacts on minority communities but did not express support or opposition to listing the site.

The EPA received two comments supporting the listing of the Northwest Odessa Groundwater site, with one commenter expressing concerns regarding the health impacts of the plume and the other expressing concern that the groundwater plume is spreading and impacting nearby mixed commercial and residential areas. One additional comment was a duplicate of the comment submitted on the Pioneer Metal Finishing Inc site.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This rule does not contain any information collection requirements that require approval of the OMB.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local, or tribal governments or the private sector. Listing a site on the NPL does not itself impose any costs. Listing does not mean that the EPA necessarily will undertake remedial action. Nor does listing require any action by a private party, state, local or tribal governments or determine liability for response costs. Costs that arise out of site responses result from future site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL.

F. Executive Order 13132: Federalism

This final rule does not have federalism implications. It 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.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because this action itself is procedural in nature (adds sites to a list) and does not, in and of itself, provide protection from environmental health and safety risks. Separate future regulatory actions are required for mitigation of environmental health and safety risks.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. As discussed in Section I.C. of the preamble to this action, the NPL is a list of national priorities. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance as it does not assign liability to any party. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Provisions of the CRA or section 305 of CERCLA may alter the effective date of this regulation. Under 5 U.S.C. 801(b)(1), a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802. Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983), and *Bd. of Regents of the University of Washington* v. *EPA,* 86 F.3d 1214,1222 (D.C. Cir. 1996), cast the validity of the legislative veto into question, the EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, the EPA will publish a document of clarification in the **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 31, 2021.

Barry N. Breen,

Acting Assistant Administrator, Office of Land and Emergency Management.

For the reasons set out in the preamble, title 40, chapter I, part 300, of the Code of Federal Regulations is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of appendix B to part 300 is amended by adding the entries for ''KS,'' ''Cherokee Zinc—Weir Smelter'', ''MT,'' ''Billings PCE'', ''NJ,'' ''Pioneer Metal Finishing Inc'', and ''TX'', ''Northwest Odessa Groundwater'' in alphabetical order by state to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
* *	* *	* *	*
KS	Cherokee Zinc—Weir Smelter	Weir.	
* *	* *	* *	*
MT	Billings PCE	Billings.	
* *	* *	* *	*
NJ	Pioneer Metal Finishing Inc	Franklinville.	
* *	* *	* *	*
TX	Northwest Odessa Groundwater	Odessa.	
* *	* *	* *	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

* * * * *

[FR Doc. 2021–19193 Filed 9–8–21; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 86, No. 172

Thursday, September 9, 2021

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0255; Project Identifier AD–2020–01282–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: The FAA is withdrawing a notice of proposed rulemaking (NPRM) that proposed to adopt a new airworthiness directive (AD) that would have applied to certain The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. The NPRM was prompted by reports that very high frequency (VHF) radio frequencies transfer between the active and standby windows of the tuning control panel (TCP) without flightcrew input. The NPRM would have required updating the TCP operational software (OPS) and performing a software configuration check. Since issuance of the NPRM, the FAA determined that the TCP OPS version specified in the NPRM does not correct the unsafe condition. The FAA intends to propose new rulemaking to require updated software. Accordingly, the NPRM is withdrawn.

DATES: The FAA is withdrawing the proposed rule published on April 7, 2021 (86 FR 17993) as of September 9, 2021.

ADDRESSES:

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0255; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD action, any comments received, and other information. The street address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frank Carreras, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3539; email: *frank.carreras@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued an NPRM that proposed to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. The NPRM was published in the **Federal Register** on April 7, 2021 (86 FR 17993). The NPRM was prompted by reports that very high frequency (VHF) radio frequencies transfer between the active and standby windows of the tuning control panel (TCP) without flightcrew input.

The NPRM proposed to require updating the TCP OPS and performing a software configuration check. The proposed actions were intended to address uncommanded frequency changes, which could result in missed air traffic control communications such as amended clearances and critical instructions for changes to flight path, and consequent loss of safe separation between aircraft, collision, or runway incursion.

Actions Since the NPRM Was Issued

Since issuance of the NPRM the FAA determined that the TCP OPS version specified in the NPRM does not correct the unsafe condition. The manufacturer is developing a new version of the software which will better address the unsafe condition. Required development and testing of the new software results in scheduled availability of the revised service information by June 2022. In light of these changes, the FAA intends to propose further rulemaking.

Withdrawal of the NPRM constitutes only such action. The withdrawal does not preclude the FAA from further rulemaking on this issue or commit the FAA to any course of action in the future.

Comments

The FAA received comments on the NPRM from three commenters. The following presents the comments received on the NPRM and the FAA's response to the comment.

Boeing asked that the FAA delay issuance of the final rule until the next TCP OPS revision. Boeing stated that based on additional fleet reports, it has concluded that the OPS version specified in Boeing Alert Requirements Bulletin B787–81205–SB230041–00 RB, Issue 002, dated September 14, 2020, and specified in the NPRM, does not adequately address the ''TCP VHF Uncommanded Frequency Change'' issue. Boeing is continuing to evaluate fleet reports and is will address the cause of the additional findings in the next TCP OPS revision. The FAA agrees that the NPRM will not address the unsafe condition. When appropriate service information is developed, approved, and available, the FAA intends to propose new rulemaking to require the updated software.

American Airlines requested that the FAA revise paragraph (g) of the proposed AD to allow later FAA-approved software. The FAA agrees with the request, but because the FAA is withdrawing the NPRM, the request is no longer necessary.

The Air Line Pilots Association (ALPA) supported the NPRM.

FAA's Conclusions

Upon further consideration, the FAA has determined that the NPRM does not adequately address the identified unsafe condition. Accordingly, the FAA is withdrawing the NPRM.

Regulatory Findings

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule. This action therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

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

The Withdrawal

■ Accordingly, the notice of proposed rulemaking (NPRM) (Docket No. FAA–2021–0255), which was published in the

Federal Register on April 7, 2021 (86 FR 17993), is withdrawn.

Issued on August 31, 2021.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–19355 Filed 9–8–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0685; Project Identifier AD–2021–00432–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2020–21–17, which applies to all The Boeing Company Model 757 airplanes. AD 2020–21–17 requires repetitive inspections for skin cracking and shim migration at the upper link drag fittings, diagonal brace cracking, and fastener looseness; and applicable on-condition actions. Since the FAA issued AD 2020–21–17, a determination has been made that the compliance times for certain groups are not adequate. This proposed AD would retain the requirements of AD 2020–21–17 with reduced compliance times for certain airplane groups. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 25, 2021.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0685.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0685; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: David Truong, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5224; fax: 562–627–5210; email: *david.truong@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0685; Project Identifier AD–2021–00432–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to David Truong, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5224; fax: 562–627–5210; email: *david.truong@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2020–21–17, Amendment 39–21290 (85 FR 79418, December 10, 2020) (AD 2020–21–17), for all The Boeing Company Model 757 airplanes. AD 2020–21–17 was prompted by reports of bolt rotation in the engine drag fitting joint and fastener heads; an inspection of the fastener holes revealed that cracks were found in the skin, and certain inspections revealed multiple cracks found in the drag fitting at fastener holes. AD 2020–21–17 requires repetitive inspections for skin cracking and shim migration at the upper link drag fittings, diagonal brace cracking, and fastener looseness; and applicable on-condition actions. The agency issued AD 2020–21–17 to address cracking in the wing upper skin and forward drag fittings, which could lead to a compromised upper link and reduced structural integrity of the engine strut.

Actions Since AD 2020–21–17 Was Issued

Since the FAA issued AD 2020–21–17, a determination has been made that the compliance times for group 3 and 4 airplanes are not adequate. An operator reported that during performance of the inspections required by AD 2020–21–17, the wing upper skin panel was found cracked at hole #2. The airplane had 19,432 total flight cycles and was a group 3 airplane (Model 757–200 airplane with Rolls-Royce engines and non-cold worked skin). Therefore, because of similar airplane

configurations, the compliance times for group 3 and 4 airplanes have been reduced to maintain structural integrity of the airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 2, dated March 1, 2021. This service information specifies procedures for repetitive general visual and detailed inspections for loose fasteners, skin cracking, and shim migration at the upper link drag fittings, and for cracking in the diagonal brace and diagonal brace fittings; repetitive open-hole high frequency eddy current inspections for cracking of the fastener holes and loose bolt holes; and applicable on-condition actions. On-condition actions include installing the upper link and upper link pins; replacing drag fittings; installing bolts, washers, and nuts; performing a torque check of fasteners on the affected shims; trimming affected shims and applying chemical conversion coating on the shims, fillet seal, and drag fittings; and repairing cracks, migrated shims, mistorqued bolts, and loose fasteners.

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

Proposed AD Requirements in This NPRM

Although this proposed AD does not explicitly restate the requirements of AD 2020–21–17, this proposed AD would retain all of the requirements of AD 2020–21–17. Those requirements are referenced in the service information identified previously, which, in turn, is referenced in paragraph (g) of this proposed AD. This proposed AD would reduce the compliance times for certain airplanes. This proposed AD would require accomplishing the actions specified in the service information already described, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0685.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 450 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Repetitive HFEC inspections	85 work-hours × $85 per hour = $7,225 per inspection cycle.	$0	$7,225 per inspection cycle.	$3,251,250 per inspection cycle.

The FAA has received no definitive data on which to base the cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2020–21–17, Amendment 39–21290 (85 FR 79418, December 10, 2020), and

■ b. Adding the following new AD:

The Boeing Company: Docket No. FAA–2021–0685; Project Identifier AD–2021–00432–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 25, 2021.

(b) Affected ADs

This AD replaces AD 2020–21–17, Amendment 39–21290 (85 FR 79418, December 10, 2020) (AD 2020–21–17).

(c) Applicability

This AD applies to all The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by reports of bolt rotation in the engine drag fitting joint and fastener heads and cracks found in the skin of the fastener holes, and the need to reduce the compliance time for certain groups. The FAA is issuing this AD to address cracking in the wing upper skin and forward drag fittings, which could lead to a compromised upper link and reduced structural integrity of the engine strut, and possible separation of a strut and engine from the airplane during flight.

(f) Compliance

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

(g) New Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 2, dated March 1, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 2, dated March 1, 2021.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 757–57A0073, Revision 2, dated March 1, 2021, which is referred to in Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 2, dated March 1, 2021.

(h) Exceptions to Service Information Specifications

(1) Where Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 2, dated March 1, 2021 uses the phrase ''the Original Issue date of Requirements Bulletin 757–57A0073 RB,'' this AD requires using September 10, 2018 (the effective date of AD 2018–16–05, Amendment 39–19345 (83 FR 38250, August 6, 2018)).

(2) Where the ''Effectivity'' paragraph and the Condition and Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 2, dated March 1, 2021, uses the phrase ''the Revision 1 date of Requirements Bulletin 757–57A0073 RB date of this service bulletin,'' this AD requires using January 14, 2021 (the effective date of AD 2020–21–17).

(3) Where the ''Effectivity'' paragraph and the Condition and Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 2, dated March 1, 2021, uses the phrase ''the Revision 2 date of Requirements Bulletin 757–57A0073 RB,'' this AD requires using the effective date of this AD.

(4) Where Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 2, dated March 1, 2021, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraph (g) of this AD, except for the open-hole high frequency eddy current inspections at fastener locations 11–18, if those actions were performed before the effective date of this AD using Boeing Alert Requirements Bulletin 757–57A0073 RB, dated July 14, 2017.

(2) This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 1, dated August 1, 2019. This service information is not incorporated by reference in this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2020–21–17 are approved as AMOCs for the corresponding provisions of Boeing Alert Requirements Bulletin 757–57A0073 RB, Revision 2, dated March 1, 2021, that are required by paragraph (g) of this AD.

(k) Related Information

(1) For more information about this AD, contact David Truong, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5224; fax: 562–627–5210; email: *david.truong@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on August 12, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–19460 Filed 9–8–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1073; Project Identifier MCAI–2020–01303–A]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. (Type Certificate Previously Held by Empresa Brasileira de Aeronáutica S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2020–12–08, which applies to all Embraer S.A. Model EMB–505 airplanes. AD 2020–12–08 requires inspections of the mass-balance weights of the elevators, ailerons, and rudder (flight control surfaces) and their attachment parts, and corrective actions if necessary, and revising the airworthiness limitation section of the maintenance manual or instructions for continued airworthiness to incorporate new airworthiness limitations. Since AD 2020–12–08 was issued, the FAA has determined that new applicable airplane serial numbers and new criteria for the replacement of affected parts must be required in order to address the unsafe condition. This proposed AD would retain the actions required by AD 2020–12–08 and would require, for certain airplanes, cleaning and weighing certain mass-balances and installation or replacement, as applicable; and for certain other mass-balances for certain airplanes, replacement of those mass-balances. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 25, 2021.

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

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

For service information identified in this NPRM, contact Phenom Maintenance Support, Avenida Brigadeiro Faria Lima, 2170, P.O. Box 36/2, São José dos Campos, 12227–901, Brazil; *phone:* +55 12 3927 1000; *email: phenom.reliability@embraer.com.br; website: https://www.embraer.com.br/en-US/Pages/home.aspx.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1073; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the MCAI, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2020–1073; Project Identifier MCAI–2020–01303–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2020–12–08, Amendment 39–21143 (85 FR 36312, June 16, 2020) (AD 2020–12–08), for Embraer S.A. (type certificate previously held by Empresa Brasileira de Aeronáutica S.A.) Model EMB–505 airplanes, all serial numbers. AD 2020–12–08 was prompted by reports of corrosion in the mass-balance weights of the flight control surfaces and a determination that new airworthiness limitations are necessary. AD 2020–12–08 was based on mandatory continuing airworthiness information (MCAI) issued by the Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil. ANAC issued Brazilian Emergency AD No. 2020–01–01, dated January 9, 2020, to address the unsafe condition on all Embraer S.A. Model EMB–505 airplanes.

AD 2020–12–08 requires, for certain serial-numbered airplanes, inspecting the mass-balance weights of the flight control surfaces and their attachment parts for corrosion and fragmentation, and corrective actions if necessary, including sending inspection results to Embraer. For all airplanes, AD 2020–12–08 requires revising the airworthiness limitation section of the maintenance manual or instructions for continued airworthiness to incorporate new airworthiness limitations.

The FAA issued AD 2020–12–08 to address corrosion in the mass-balance weights of the flight control surfaces. The unsafe condition, if not addressed, could result in loss of mass or the detachment of the mass-balance weights, resulting in an unbalanced control surface, which could lead to flutter and loss of airplane control.

Actions Since AD 2020–12–08 Was Issued

Since the FAA issued AD 2020–12–08, ANAC superseded Brazilian Emergency AD No. 2020–01–01, dated January 9, 2020, and issued Brazilian AD No. 2020–09–01, dated September 8, 2020 (referred to after this as ''the MCAI''). The MCAI states:

> It has been found the occurrence of corrosion in the mass-balance weights of the control surfaces. The corrosion may lead to loss of mass or detachment of the mass-balance weights, resulting in an unbalance control surface, which, in conjunction with certain flight conditions, could lead to flutter and possible loss of airplane control.
>
> Since this condition may occur in other airplanes of the same type and affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this [ANAC] AD in the indicated time limit.
>
> After [ANAC] EAD 2020–01–01 was released, a reassessment of the unsafe condition by Embraer and, subsequently, the SB 505–55–0004, revisions 0 and 1, dated March 25th, 2020 and June 24, 2020, respectively, expanding the list of affected aircraft serial numbers (S/Ns) as well as inserting more restrictive criteria to determine the replacement of affected P/Ns.
>
> Therefore, this [ANAC] AD retains the requirements of [ANAC] EAD 2020–01–01, which is superseded, and incorporates new applicable aircraft S/Ns and new criteria for the replacement of affected P/Ns.

You may examine the MCAI at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1073.

Comments on AD 2020–12–08

The FAA issued AD 2020–12–08 as a final rule; request for comments. The FAA received comments on AD 2020–12–08 from Flexjet LLC (Flexjet), an individual, and two anonymous commenters.

Flexjet and an anonymous commenter requested that AD 2020–12–08 allow credit for previous actions using

Embraer Alert Service Bulletin SB505–55–A004, Revision 5, dated December 12, 2019 (SB505–550A004 R5), as that service bulletin is not listed in paragraph (l) of AD 2020–12–08 (''Credit for Previous Actions'' paragraph).

The FAA notes that the actions of AD 2020–12–08 must be done in accordance with SB505–55A004 R5. Paragraph (f) of AD 2020–12–08 requires compliance ''unless already done.'' Thus, AD 2020–12–08 already allows operators to take credit for using SB505–55A004 R5 if done before the effective date of the AD.

Flexjet and an anonymous commenter requested AD 2020–12–08 include Embraer Service Bulletin SB505–55–0004, dated March 24, 2020 (SB505–55–0004), as this service bulletin addresses the worldwide fleet.

The FAA agrees. SB505–55–0004 includes additional actions, which are required by ANAC AD No. 2020–09–01, dated September 8, 2020. This proposed AD would include those additional requirements.

The individual commenter noted that SB505–55–0004, SB505–55A004 R5, and Embraer Alert Service Bulletin SB505–55–A004, Revision 06, dated March 25, 2020, apply to different ranges of serial numbers and requested the FAA clarify the correct serial numbers for AD 2020–12–08.

AD 2020–12–08 applies to all Model EMB–505 airplanes, regardless of serial number. However, only those airplanes with a serial number in SB505–55A004 R5 are required to do the actions in paragraphs (h) and (k) of AD 2020–12–08.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Embraer Alert Service Bulletin SB505–55–A004, Revision 06, dated March 25, 2020. This service information specifies procedures for inspecting the mass-balance weights of the flight control surfaces and their respective attachment parts for corrosion and fragmentation, and performing corrective actions on certain serial-numbered Model EMB–505 airplanes. Corrective actions include installation of a stainless steel mass-balance, replacement of the mass-balance, and replacement of attachment parts.

The FAA also reviewed Embraer Service Bulletin SB505–55–0004, Revision 01, dated June 24, 2020. This service information specifies procedures, for certain airplanes, for cleaning and weighing the elevator, aileron, and rudder mass-balances, and installing or replacing the mass-balances (includes replacing attachment parts), as applicable, and for certain elevator mass-balances for certain airplanes, replacing those elevator mass-balances (includes replacing attachment parts).

Embraer has also issued Alert Service Bulletin SB505–55–A004, Revision 5, dated December 12, 2019, which the Director of the Federal Register approved for incorporation by reference as of July 1, 2020 (85 FR 36312, June 16, 2020).

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

Other Related Service Information

Embraer has issued Embraer Service Bulletin SB505–55–0004, dated March 25, 2020. The actions specified in Embraer Service Bulletin SB505–55–0004, dated March 25, 2020, are the same as those specified in Embraer Alert Service Bulletin SB505–55–0004, Revision 01, dated June 24, 2020; however, Embraer Alert Service Bulletin SB505 55–0004, Revision 01, dated June 24, 2020, was issued to add serial-numbered airplanes to the effectivity. No additional work is required for airplanes on which Embraer Service Bulletin SB505–55–0004, dated March 25, 2020, has been accomplished.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would retain the actions required by AD 2020–12–08 and would require, for certain airplanes, cleaning and weighing the elevator, aileron, and rudder mass-balances, and installation or replacement, as applicable of the mass-balances. This proposed AD would also remove the reporting required by AD 2020–12–08.

For the retained requirement to revise the airworthiness limitations section (ALS) of the existing maintenance manual or instructions for continued airworthiness in paragraph (i) of this proposed AD, the FAA notes the inspection tasks are part of Chapter 5 of the aircraft maintenance manual—Part III—scheduled maintenance requirements. This proposed AD would require these tasks as new airworthiness limitations.

Differences Between This Proposed AD and the Service Information

Embraer Alert Service Bulletin SB505–55–A004, Revision 5, dated December 12, 2019; and Revision 06, dated March 25, 2020, contain procedures for inspecting for the integrity of the mass-balance weights of flight control surfaces and their attachment parts. This proposed AD would not include that requirement.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 392 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained inspections from AD 2020-12-08.	9 work-hours × $85 per hour = $765	$100	$865	$339,080.
Retained ALS revision from AD 2020–12–08.	1 work hour × 85 per hour = $85	$0	$85	$33,320.
New cleaning, weighing, and replacement.	Up to 130 work-hours × $85 per hour = Up to $11,050.	Up to $18,118	Up to $29,168	Up to $11,433,856.

The FAA estimates the following costs to do any necessary installations or replacements that would be required based on the results of the inspections and weighing. The FAA has no way of determining the number of aircraft that might need these actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Action	Labor cost	Parts cost	Cost per product
Installation or replacement	Up to 129 work-hours × $85 per hour = Up to $10,965	Up to $18,118	Up to $29,083

The FAA has included all known costs in this cost estimate. According to the manufacturer, however, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2020–12–08, Amendment 39–21143 (85 FR 36312, June 16, 2020); and

■ b. Adding the following new airworthiness directive:

Embraer S.A. (Type Certificate previously held by Empresa Brasileira de Aeronáutica S.A.): Docket No. FAA–2020–1073; Project Identifier MCAI–2020–01303–A.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by October 25, 2021.

(b) Affected ADs

This AD replaces AD 2020–12–08, Amendment 39–21143 (85 FR 36312, June 16, 2020) (AD 2020–12–08).

(c) Applicability

This AD applies to Embraer S.A. (type certificate previously held by Empresa Brasileira de Aeronáutica S.A.) Model EMB–505 airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5520, Elevator Structure; 5540, Rudder Structure; and 5751, Ailerons.

(e) Unsafe Condition

This AD was prompted by reports of corrosion in the mass-balance weights of the flight control surfaces and a determination that new airworthiness limitations are necessary. The FAA is issuing this AD to address corrosion in the mass-balance weights of the flight control surfaces. The unsafe condition, if not addressed, could result in loss of mass or the detachment of the mass-balance weights, resulting in an unbalanced control surface, which could lead to flutter and loss of airplane control.

(f) Compliance

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

(g) Retained Compliance Times for the Actions Required by Paragraph (h) of This AD, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2020–12–08, with no changes. For airplanes with a serial number listed in Embraer Alert Service Bulletin SB505–55–A004, Revision 5, dated December 12, 2019 (SB505–55–A004R5): At the applicable compliance time specified in paragraph (g)(1), (2), or (3) of this AD, accomplish the actions required by paragraph (h) of this AD.

(1) For airplanes with a serial number listed in Group 1 of Embraer Alert SB505–55–A004R5: Within 3 calendar days or 5 hours time-in-service (TIS), whichever occurs first, after July 1, 2020 (the effective date of AD 2020–12–08).

(2) For airplanes with a serial number listed in Group 3 of SB505–55–A004R5: Within 30 calendar days or 50 hours TIS, whichever occurs first, after July 1, 2020 (the effective date of AD 2020–12–08).

(3) For airplanes with a serial number listed in Group 2 of SB505–55–A004R5: Within 60 calendar days or 100 hours TIS, whichever occurs first, after July 1, 2020 (the effective date of AD 2020–12–08).

(h) Retained Required Actions, Without Reporting Requirement

This paragraph restates the requirements of paragraph (h) of AD 2020–12–08, without the requirement to report information to Embraer. For airplanes with a serial number listed in SB505–55–A004R5, at the applicable time specified in paragraph (g) of this AD: Do the inspections identified in paragraphs (h)(1) through (6) of this AD and, before further flight, install or replace the mass-balance, as applicable, and replace the attachment parts, in accordance with Parts I through VI and Part VIII, as applicable, of the Accomplishment Instructions of SB505–55–A004R5; except, where the service information tells you to submit information to Embraer, this AD does not require that action.

(1) Do an inspection of the elevator horn mass-balance weights and attachment parts for corrosion and fragmentation, and weigh each mass-balance.

(2) Do an inspection of the elevator internal mass-balance weights and attachment parts for corrosion and fragmentation, and weigh each mass-balance. You must remove and weigh the mass-balance weight even if there is no sign of corrosion or material fragmentation.

(3) Do an inspection of the elevator adjustable mass-balance weights and attachment parts for corrosion and fragmentation, and weigh each mass-balance.

(4) Do an inspection of the aileron mass-balance weights and attachment parts for corrosion and fragmentation, and weigh each mass-balance. You must remove and weigh the mass-balance weight even if there is no sign of corrosion or material fragmentation.

(5) Do an inspection of the rudder adjustable mass-balance weights and attachment parts for corrosion and fragmentation, and weigh each mass-balance.

(6) Do an inspection of the rudder internal mass-balance weights and attachment parts for corrosion and fragmentation and, weigh each mass-balance. You must remove and weigh the mass-balance weight even if there is no sign of corrosion or material fragmentation.

(i) Retained Revision of the Airworthiness Limitations Section, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2020–12–08, with no changes. Within 10 days after July 1, 2020 (the effective date of AD 2020–12–08), revise the airworthiness limitations section (ALS) of the existing maintenance manual or instructions for continued airworthiness to add the information in table 1 to paragraph (i) of this AD and the initial compliance time information in table 2 to paragraph (i) of this AD.

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Table 1 of paragraph (i) – *New Airworthiness Limitations*

Maintenance Requirement	Inspection Type	Inspection Title	Interval
55-20-04-001	General visual inspection (GVI)	Internal GVI of Elevator Mass-Balance Weight and Attachments	60 Months (MO)
55-20-04-002	Special detailed inspection (SDI)	SDI (Borescope Method) of Elevator Mass-Balance Weight and Attachments	60 MO
55-40-04-002	GVI	Internal GVI of Rudder Adjustable Mass-Balance Weight and Attachments	60 MO
55-40-04-003	SDI	SDI (Borescope Method) of Rudder Fixed Mass-Balance Weight and Attachments	60 MO
57-60-00-001	Detailed visual inspection (DET)	External DET of the Aileron	60 MO

Table 2 of paragraph (i) – *Initial compliance time for the inspections listed in Table 1 of paragraph (i) of this AD*

Age of airplane on July 1, 2020 (the effective date of AD 2020-12-08)	Initial Compliance Time for Each Inspection
Less than 48 MO since the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness	Within 60 MO after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness
Between 48 MO and 72 MO since the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness	Within 12 MO after July 1, 2020 (the effective date of AD 2020-12-08), or within 72 MO after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, whichever occurs first
More than 72 MO since the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness	Within 30 days after July 1, 2020 (the effective date of AD 2020-12-08)

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(j) Retained Provision: No Alternative Actions or Intervals, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2020–12–08, with no changes. After the ALS has been revised as required by paragraph (i) of this AD, no alternative inspection intervals may be approved, except as provided in paragraph (p) of this AD.

(k) New Definition

For the purposes of this AD, ''since new'' is defined as since the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness.

(l) New Elevator Mass-Balance Actions (Groups 1, 2, and 3)

At the applicable compliance time specified in paragraph (l)(1), (2), or (3) of this AD, clean, weigh, and, as applicable, install or replace the elevator mass-balances; or replace the elevator mass-balances; as applicable, in accordance with Part I of the Accomplishment Instructions in Embraer Service Bulletin SB505–55–0004, Revision 01, dated June 24, 2020 (SB505–55–0004R01). Where steps (1)(d), (2)(d), and (3)(e) of Part I of the Accomplishment Instructions in SB505–55–0004R01 reference ''criteria of the PART I,'' use the criteria in section 1.D. of SB505–55–0004R01.

(1) For airplanes with a serial number listed as Group 1 or Group 3 in paragraphs 1.A.(1)(a) and (c), respectively, of SB505–55–0004R01: Within 12 months after the effective date of this AD.

(2) For airplanes with a serial number listed as Group 2 in paragraph 1.A.(1)(b) of SB505–55–0004R01, which are not included in the effectivity of SB505–55–A004R5 or Embraer Alert Service Bulletin SB505–55–A004, Revision 06, dated March 25, 2020 (SB505–55–A004R06): At the applicable compliance time specified in paragraph (l)(2)(i), (ii), (iii), (iv), (v), or (vi) of this AD.

(i) For airplanes with 12 or fewer months since new as of the effective date of this AD: Within 18 months after the effective date of this AD.

(ii) For airplanes with more than 12 months but 24 or fewer months since new as of the effective date of this AD: Within 12 months after the effective date of this AD.

(iii) For airplanes with more than 24 months but 36 or fewer months since new as of the effective date of this AD: Within 9 months after the effective date of this AD.

(iv) For airplanes with more than 36 months but 48 or fewer months since new as of the effective date of this AD: Within 7 months after the effective date of this AD.

(v) For airplanes with more than 48 months but 60 or fewer months since new as of the effective date of this AD: Within 6 months after the effective date of this AD.

(vi) For airplanes with more than 60 months since new as of the effective date of this AD: Within 5 months after the effective date of this AD.

(3) For airplanes with a serial number listed as Group 2 in paragraph 1.A.(1)(b) of SB505–55–0004R01, which are included in the effectivity of SB505–55–A004R5 or SB505–55–A004R06: Before further flight.

(m) New Aileron Mass Balance Actions (Groups 1 and 2)

At the applicable compliance time specified in paragraph (m)(1), (2), or (3) of this AD, clean, weigh, and, as applicable, install or replace the aileron mass-balance in accordance with Part II of the Accomplishment Instructions in SB505–55–0004R01. Where steps (1)(c) and (2)(c) of Part II of the Accomplishment Instructions in SB505–55–0004R01 reference ''criteria of the PART II,'' use the criteria in section 1.D. of SB505–55–0004R01.

(1) For airplanes with a serial number listed as Group 1 in paragraph 1.A.(2)(a) of SB505–55–0004R01: Within 60 months after the effective date of this AD.

(2) For airplanes with a serial number listed as Group 2 in paragraph 1.A.(2)(b) of SB505–55–0004R01, which are not included in the effectivity of SB505–55–A004R5 or SB505–55–A004R06: At the applicable compliance time specified in paragraph (m)(2)(i) or (ii) of this AD.

(i) For airplanes with 59 or fewer months since new as of the effective date of this AD: Within 60 months since new.

(ii) For airplanes with more than 59 months since new as of the effective date of this AD: Within 120 months since new.

(3) For airplanes with a serial number listed as Group 2 in paragraph 1.A.(2)(b) of SB505–55–0004R01, which are included in the effectivity of SB505–55–A004R5 or SB505–55–A004R06: Before further flight.

(n) New Rudder Mass Balance Actions (Groups 1 and 2)

At the applicable compliance time specified in paragraph (n)(1), (2), or (3) of this AD, clean, weigh, and, as applicable, install or replace the rudder mass-balances in accordance with Part III of the Accomplishment Instructions in SB505–55–0004R01. Where steps (1)(c) and (2)(c) of Part III of the Accomplishment Instructions in SB505–55–0004R01 reference ''criteria of the PART III,'' use the criteria in section 1.D. of SB505–55–0004R01.

(1) For airplanes with a serial number listed as Group 1 in paragraph 1.A.(3)(a) of SB505–55–0004R01: At the applicable compliance time specified in paragraph (n)(1)(i), (ii), or (iii) of this AD.

(i) For airplanes with 59 or fewer months since new as of the effective date of this AD: Within 60 months since new.

(ii) For airplanes with more than 59 months but 119 or fewer months since new as of the effective date of this AD: Within 120 months since new.

(iii) For airplanes with more than 119 months since new as of the effective date of this AD: Within 6 months after the effective date of this AD.

(2) For airplanes with a serial number listed as Group 2 in paragraph 1.A.(3)(b) of SB505–55–0004R01, which are not included in the effectivity of SB505–55–A004R5 or SB505–55–A004R06: At the applicable compliance time specified in paragraph (n)(2)(i) or (ii) of this AD.

(i) For airplanes with 59 or fewer months since new as of the effective date of this AD: Within 60 months since new.

(ii) For airplanes with more than 59 months since new as of the effective date of this AD: Within 120 months since new.

(3) For airplanes with a serial number listed as Group 2 in paragraph 1.A.(3)(b) of SB505–55–0004R01, which are included in the effectivity of SB505–55–A004R5 or SB505–55–A004R06: Before further flight.

(o) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraph (h) of this AD, if you performed those actions before July 1, 2020 (the effective date of AD 2020–12–08) using the service information specified in paragraphs (o)(1)(i), (ii), or (iii) of this AD.

(i) Embraer Alert Service Bulletin SB505–55–A004, Revision 2, dated November 6, 2019.

(ii) Embraer Alert Service Bulletin SB505–55–A004, Revision 3, dated November 13, 2019.

(iii) Embraer Alert Service Bulletin SB505–55–A004, Revision 4, dated November 21, 2019.

(2) This paragraph provides credit for the actions required by paragraph (h) of this AD, if you performed those actions before the effective date of this AD using SB505–55–A004R06.

(3) This paragraph provides credit for the initial inspections required by table 2 of paragraph (i) of this AD, if you performed those actions before July 1, 2020 (the effective date of AD 2020–12–08) using the service information specified in paragraphs (o)(3)(i), (ii), or (iii) of this AD.

(i) Embraer Alert Service Bulletin SB505–55–A004, Revision 2, dated November 6, 2019.

(ii) Embraer Alert Service Bulletin SB505–55–A004, Revision 3, dated November 13, 2019.

(iii) Embraer Alert Service Bulletin SB505–55–A004, Revision 4, dated November 21, 2019.

(4) This paragraph provides credit for the initial inspections required by table 2 of paragraph (i) of this AD, if you performed those actions before the effective date of this AD using SB505–55–A004R5 or SB505–55–A004R06.

(5) This paragraph provides credit for the actions required by paragraphs (l), (m), and (n) of this AD, if you performed those actions before the effective date of this AD using Embraer Service Bulletin SB505–55–0004, dated March 25, 2020.

(p) Alternative Methods of Compliance (AMOCs)

(1) The Manager, General Aviation & Rotorcraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the General Aviation & Rotorcraft Section, International Validation Branch, send it to the attention of the person identified in Related Information or *email: 9-AVS-AIR-730-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) AMOCs approved for AD 2020–12–08 are approved as AMOCs for the corresponding provisions of this AD.

(q) Related Information

(1) For more information about this AD, contact Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; *phone:* (816) 329–4165; *fax:* (816) 329–4090; *email: jim.rutherford@faa.gov.*

(2) Refer to Mandatory Continuing Airworthiness Information (MCAI) Brazilian AD No. 2020–09–01, dated September 8, 2020, for related information. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1073.

(3) For service information identified in this AD, contact Phenom Maintenance Support, Avenida Brigadeiro Faria Lima, 2170, P.O. Box 36/2, São José dos Campos, 12227–901, Brazil; *phone:* +55 12 3927 1000; *email: phenom.reliability@embraer.com.br; website: https://www.embraer.com.br/en-US/Pages/home.aspx.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued on August 31, 2021.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–19304 Filed 9–8–21; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

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

RIN 2120–AA66

Proposed Amendment of United States Area Navigation Route Q–73 in the Vicinity of Twentynine Palms, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

DATES: Comments must be received on or before October 25, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2021–0704; Airspace Docket No. 21–AWP–32 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington,

DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email: *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2021–0704; Airspace Docket No. 21–AWP–32) and be submitted in triplicate to the Docket Management Facility (see ''**ADDRESSES**'' section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–0704; Airspace Docket No. 21–AWP–32.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRM

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see ''**ADDRESSES**'' section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Western Service Center, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The Los Angeles Air Route Traffic Control Center (ZLA) is responsible for managing the NAS for much of the Desert Southwest portion of the United States. This responsibility requires close coordination with the many military installations to ensure a proper balance between the NAS user needs and military mission requirements.

The United States Marine Corps (USMC) in Yuma, AZ has requested additional airspace (higher altitude) above the existing Bristol Military Operations Area (MOA) northeast of Twentynine Palms, CA. The airspace in the Bristol MOA has a ceiling to but not including 18,000 feet MSL, however the USMC has determined that to be inadequate to support Marine Expeditionary Brigade sized training events. A recent agreement between the USMC in Yuma, AZ, and ZLA provides two ATCAAs above the current Bristol MOAs to support the need for higher altitudes. Creating this additional airspace, however, conflicts with traffic on RNAV route Q–73. A slight modification of Q–73 will be required to provide safe passage of non-participating aircraft transitioning this area.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend United States Area Navigation (RNAV) route Q–73 due to the creation of SAA, Bristol ATCAA in the vicinity of Twentynine Palms, CA. The proposal would add two additional waypoints between LVELL and HAKMN in order to provide an adequate buffer between military activities in that area. The full legal description is provided in the ''Rule'' area below.

Q–73: Q–73 currently extends from the MOMAR, CA, waypoint (WP) to the CORDU, ID, WP. The FAA proposes to add two additional WPs. The first WP would be BLKWL between LVELL and ZELMA and the other KRLIE, WP, between ZELMA and HAKMN. These proposed WP would provide safe segregation of air traffic along Q–73 from military activity operating within the adjacent SAA. The rest of the route would remain unchanged.

United States Area Navigation Routes are published in paragraph 2006 of FAA Order 7400.11E dated July 21, 2020 and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document would be published subsequently in the Order.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for part 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 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–73 MOMAR, CA to CORDU, ID [Amended]

MOMAR, CA	FIX	(Lat. 33°30′54.13″ N, long. 115°56′40.14″ W)
LVELL, CA	WP	(Lat. 34°12′37.38″ N, long. 115°36′53.25″ W)
BLKWL, CA	WP	(Lat. 34°22′01.06″ N, long. 115°29′56.81″ W)
ZELMA, CA	WP	(Lat. 34°46′59.99″ N, long. 115°19′47.51″ W)
KRLIE, CA	WP	(Lat. 35°08′24.42″ N, long. 115°13′59.57″ W)
HAKMN, NV	WP	(Lat. 35°30′28.31″ N, long. 115°04′47.04″ W)
LAKRR, NV	WP	(Lat. 36°05′07.72″ N, long. 114°17′09.16″ W)
GUNTR, AZ	WP	(Lat. 36°24′39.65″ N, long. 114°02′11.55″ W)
ZAINY, AZ	WP	(Lat. 36°39′24.73″ N, long. 113°54′03.50″ W)
EEVUN, UT	WP	(Lat. 37°02′52.90″ N, long. 113°42′42.56″ W)
WINEN, UT	WP	(Lat. 37°56′00.00″ N, long. 113°30′00.00″ W)
CRITO, NV	WP	(Lat. 39°18′00.00″ N, long. 114°33′00.00″ W)
BROPH, ID	WP	(Lat. 42°43′15.71″ N, long. 114°52′31.80″ W)
DERSO, ID	WP	(Lat. 43°21′42.63″ N, long. 115°08′01.66″ W)
ZATIP, ID	WP	(Lat. 46°13′17.48″ N, long. 116°31′37.57″ W)
CORDU, ID	FIX	(Lat. 48°10′46.41″ N, long. 116°40′21.84″ W)

* * * * *

Issued in Washington, DC, on August 30, 2021.

George Gonzalez,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021–19321 Filed 9–8–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2021–C–0925]

Fermentalg; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Fermentalg, proposing that the color additive regulations be amended to provide for the safe use of blue *Galdieria* extract, derived from unicellular red algae (*Galdieria sulphuraria*), as a color additive in various food categories at levels consistent with good manufacturing practice.

DATES: The color additive petition was filed on July 27, 2021.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this 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.

FOR FURTHER INFORMATION CONTACT: Stephanie A. Hice, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 301–348–1740.

SUPPLEMENTARY INFORMATION: Under section 721(d)(1) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379e(d)(1)), we are giving notice that we have filed a color additive petition (CAP 1C0320), submitted by Fermentalg, 4 Rue Rivière, 33500 Libourne, France. The petition proposes to amend the color additive regulations in part 73 (21 CFR 73), ''Listing of Color Additives Exempt from Certification,'' to provide for the safe use of blue *Galdieria* extract as a color additive at levels consistent with good manufacturing practice in: (1) Beverages and beverage bases, non-alcoholic; (2) breakfast cereals; (3) chewing gum; (4) confections and frostings; (5) dairy product analogs; (6) frozen dairy desserts and mixes; (7) fruit and water ices; (8) gelatins, puddings, and fillings; (9) hard candy and cough drops; (10) milk products; (11) processed fruits and fruit juices; (12) processed vegetables and vegetable juices; and (13) soft candy.

The petitioner has claimed that this action is categorically excluded under 21 CFR 25.32(r) because the substance occurs naturally in the environment, and the proposed action does not alter significantly the concentration or distribution of the substance, its metabolites, or degradation products in the environment. In addition, the petitioner has stated that, to their knowledge, no extraordinary

circumstances exist that would warrant at least an environmental assessment (see 21 CFR 25.21). If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Dated: September 2, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–19405 Filed 9–8–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. FDA–2021–F–0926]

Monaghan Mushrooms Ireland Unlimited Company; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Monaghan Mushrooms Ireland Unlimited Company, proposing that the food additive regulations be amended to provide for the safe use of vitamin D_2 mushroom powder produced by exposing dried and powdered edible cultivars of *Agaricus bisporus* to ultraviolet light.

DATES: The food additive petition was filed on June 8, 2021.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this 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.

FOR FURTHER INFORMATION CONTACT: Katie Overbey, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–7536.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5)), we are giving notice that we have filed a food additive petition (FAP 1A4828), submitted by Monaghan Mushrooms Ireland Unlimited Company, Tullygony, Tyholland, County Monaghan, H18 FW95, Ireland. The petition proposes to amend the food additive regulations in § 172.382 (21 CFR 172.382) *Vitamin D_2 mushroom powder* to provide for the safe use of vitamin D_2 mushroom powder produced by exposing dried and powdered edible cultivars of *Agaricus bisporus* to ultraviolet light.

The petitioner has claimed that this action is categorically excluded under 21 CFR 25.32(k) because the substance is intended to remain in food through ingestion by consumers and is not intended to replace macronutrients in food. In addition, the petitioner has stated that, to their knowledge, no extraordinary circumstances exist that would warrant at least an environmental assessment (see 21 CFR 25.21). If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Dated: September 2, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–19409 Filed 9–8–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57 and 77

[Docket No. MSHA–2018–0016]

RIN 1219–AB91

Safety Program for Surface Mobile Equipment

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The Mine Safety and Health Administration (MSHA) is proposing to require that mine operators employing six or more miners develop and implement a written safety program for mobile and powered haulage equipment (excluding belt conveyors) at surface mines and surface areas of underground mines. The written safety program would include actions mine operators would take to identify hazards and risks to reduce accidents, injuries, and fatalities related to surface mobile equipment. The proposal would offer mine operators flexibility to devise a safety program that is appropriate for their specific mining conditions and operations.

DATES: Comments must be received or postmarked by midnight Eastern Time on November 8, 2021.

ADDRESSES: Submit comments and informational materials, identified by RIN 1219–AB91 or Docket No. MSHA–2018–0016 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: zzMSHA-comments@dol.gov.*
- *Mail:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.
- *Hand Delivery or Courier:* 201 12th Street South, Suite 4E401, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except federal holidays. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.
- *Fax:* 202–693–9441.

Instructions: All submissions must include RIN 1219–AB91 or Docket No. MSHA 2018–0016. Do not include personal or proprietary information that you do not wish to disclose publicly. If a commenter marks parts of a comment as ''business confidential'' information, MSHA will not post those parts of the comment. Otherwise, MSHA will post all comments without change, including personal information.

Docket: For access to the docket to read comments and background documents, go to *http://www.regulations.gov.* The docket can also be reviewed in person at MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except federal holidays. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

Email Notification: To subscribe to receive an email notification when MSHA publishes rulemaking documents in the **Federal Register**, go to *https://public.govdelivery.com/accounts/USDOL/subscriber/new.*

Information Collection Requirements: Comments concerning the information collection requirements of this proposal

must be clearly identified with RIN 1219–AB91 or Docket No. MSHA 2018–0016, and be sent to both MSHA and the Office of Management and Budget (OMB).

- Comments to MSHA may be sent by one of the methods in the **ADDRESSES** section above.
- Comments to OMB may be sent by mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW, Washington, DC 20503, Attn: Desk Officer for DOL MSHA.

FOR FURTHER INFORMATION CONTACT:

Jessica Senk, Director, Office of Standards, Regulations and Variances, MSHA at *Senk.Jessica@dol.gov* (email), 202–693–9440 (voice) or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background Information
A. Request for Information (RFI)
B. Comments Received on the RFI
C. Workplace Safety Programs
D. Written Safety Program for Surface Mobile Equipment
II. Section-by-Section Analysis
A. Sections 56.23000, 57.23000, and 77.2100—Purpose and Scope
B. Sections 56.23001, 57.23001, and 77.2101—Definitions
C. Sections 56.23002, 57.23002, and 77.2102—Written Safety Program
D. Sections 56.23003, 57.23003, and 77.2103—Requirements for Written Safety Program
E. Sections 56.23004, 57.23004, and 77.2104—Record and Inspection
F. Request for Comments
III. Executive Order 12866: Regulatory Planning and Review; and Executive Order 13563: Improving Regulation and Regulatory Review
A. Regulated Industry Description
B. Benefits
C. Compliance Costs
D. Net Benefits
E. Request for Comments
IV. Feasibility
A. Technological Feasibility
B. Economic Feasibility
V. Regulatory Flexibility Analysis (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA) and Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking
A. Definition of a Small Mine
B. Factual Basis for Certification
VI. Paperwork Reduction Act of 1995
A. Summary
B. Procedural Details
VII. Regulatory Alternative
VIII. Other Regulatory Considerations
A. The Unfunded Mandates Reform Act of 1995
B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families
C. Executive Order 12630: Government Actions and Interference with Constitutionally Protected Property Rights
D. Executive Order 12988: Civil Justice Reform
E. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
IX. References

I. Background Information

At surface mines and at surface areas of underground mines, a wide range of mobile and powered haulage equipment is in use. Examples of such equipment are bulldozers, front-end loaders, skid steers, and haul trucks. While accidents at mines are declining, accidents involving mobile and powered haulage equipment are still a leading cause of fatalities in mining. Of all 739 fatalities that occurred at U.S. mines between 2003 and 2018, 109 were caused by hazards related to working near or operating mobile and powered haulage equipment at mines with six or more miners. To reduce the number of injuries and fatalities involving mobile and powered haulage equipment, the Mine Safety and Health Administration (MSHA) has launched several actions, including providing technical assistance, developing training materials, and gathering information from the public and mining stakeholders. MSHA is now proposing a rule to improve safety in the use of surface mobile equipment, defined as mobile and powered haulage equipment (except belt conveyors), at surface mines and surface areas of underground mines. This proposal is based on the information gathered from many stakeholders; the details are presented in the section-by-section analysis portion of this preamble.

A. Request for Information (RFI)

On June 26, 2018, MSHA published a request for information (RFI), *Safety Improvement Technologies for Mobile Equipment at Surface Mines, and for Belt Conveyors at Surface and Underground Mines* (83 FR 29716), that focused on technologies for reducing accidents involving mobile equipment at surface mines and surface areas of underground mines, and belt conveyors at surface and underground mines.

The RFI also requested information from the mining community on what types of engineering controls are available, how to implement such engineering controls, and how these controls could be used in mobile equipment and belt conveyors to reduce accidents, fatalities, and injuries. MSHA sought information and data on: (1) Seat belt interlock systems or other controls that affect equipment operation when the seat belt is not properly fastened; (2) collision warning systems and collision avoidance systems that may reduce collisions or prevent accidents by decreasing blind areas that are invisible to equipment operators due to direct line of sight or other reasons; (3) technologies that would provide equipment operators better information regarding their location in relation to the edge of highwalls or dump points; (4) use of autonomous mobile equipment at surface mines; (5) technologies that provide additional protections from accidents related to working near or around belt conveyors; and (6) training and technical assistance that improve equipment operators' awareness of hazards at the mine site, and assure miners lock and tag conveyor belts before performing maintenance work.

To encourage additional public participation, the Agency held six stakeholder meetings and one webinar in August and September 2018. The meetings were held in Birmingham, Alabama; Dallas, Texas; Reno, Nevada; Beckley, West Virginia; Albany, New York; and Arlington, Virginia.

B. Comments Received on the RFI

All commenters supported MSHA's focused efforts to improve miner safety related to the operation of surface mobile equipment. Some emphasized the use of technologies to achieve this goal, while others argued for the importance of non-technological interventions such as safety programs to bring behavioral and cultural changes. Commenters also differed in how technological and non-technological interventions should be implemented.

Several commenters supported incorporating new technologies into the workplace to reduce accidents, injuries, and fatalities. One commenter noted that the use of current automobile technologies such as collision avoidance systems, collision warning systems, seat belt warning signals, and other engineering controls could add much-needed improvement in preventing collision accidents or mitigating their impacts.

A majority of commenters noted, however, that the application of engineering controls or technologies needs further review by MSHA and the National Institute for Occupational

Safety and Health (NIOSH) before any regulatory changes are made. One commenter noted that because the issues MSHA raised vary at different mines and with different types of equipment and operations, it is critical to understand how specific hazards at a mine would be addressed through new technologies. Other commenters asserted that the best outcomes occur when mine operators and their employees partner with other stakeholders such as NIOSH and equipment manufacturers, to introduce innovative solutions into the workplace through the use of new technologies. One commenter noted that to comprehensively address solutions, MSHA needs to acknowledge certain factors that can limit mine operators' ability to introduce new safety technology effectively. These obstacles include mistrust of technology by the workforce, inadequate testing of technology before full implementation, and challenges in communicating to miners why technological improvements in equipment operation create a safer work environment. A trade association recommended that MSHA proceed with caution to avoid excessive costs and unintended consequences that do not address the root causes of accidents.

On the other hand, a number of commenters noted that non-technological interventions such as safety programs are as important, or even more important, than technology in improving safety in the use of surface mobile equipment and reducing accidents, injuries, and fatalities. A mining coalition commented that because human factors are a major contributor to accidents, properly enforced comprehensive safety programs are a significant component of the solution, with or without new technology. This mining coalition continued to note that mining's major safety advances would ''come from consistently improving behavior and culture across the industry.'' The mining coalition also stated on the basis of its members' experiences that safety does best when mine operators develop and implement their own comprehensive safety programs. Another commenter noted that effective safety programs work because they create incentives for compliance and disincentives for violations.

In addition, one commenter observed that mine operators who develop and implement safety programs do so with the goal of preventing injuries, fatalities, and the suffering these accidents cause miners, their families, and their communities. For these mine operators, noted the commenter, preventing harm to their miners is more than just compliance with safety requirements; it reflects a culture of safety. Indeed, according to the commenter, this culture of safety derives from a commitment to a systematic, effective, and comprehensive management of safety at mines with the full participation of the miners.

MSHA has been most persuaded by comments on the use of safety programs. The Agency agrees with these commenters that mine operators should be allowed to tailor safety programs specifically to their mining conditions and operations, so that operators could: (1) Systematically and continuously evaluate their mine operations to identify hazards and (2) determine how to eliminate or mitigate risks and hazards related to operating and working near surface mobile equipment, which includes mobile and powered haulage equipment (except belt conveyors). The Agency further agrees that such a flexible approach to reducing hazards and risks (*e.g.,* not imposing universal mandates) would be more effective since mine operators would be able to develop and implement safety programs that work for their operation, mining conditions, and miners. Taking into account all comments and information received, this proposal would require written safety programs for surface mobile equipment at surface mines and surface areas of underground mines with six or more miners.

In the 2018 RFI, MSHA sought information on safety issues related to belt conveyors. After reviewing the comments, the Agency has concluded, at this time, that the safety issues surrounding the operation of belt conveyors can be better addressed through best practices and training than through rulemaking. No belt conveyor is covered under this proposed rule.

MSHA solicits comments regarding the Agency's decision to exclude belt conveyors from the proposed rule. Please provide the rationale and any supporting documentation in your comment.

C. Workplace Safety Programs

Many resources are available for employers to provide a safe workplace. MSHA has reviewed several types of organizations that provide guidance on safety programs: (1) Consensus standards organizations (*e.g.,* American Society of Safety Professionals (ASSP), Occupational Health and Safety Management Systems, ANSI/ASSP Z10–2012 (R2017); and the International Standards Organization (ISO), Occupational Health and Safety Management Systems—Requirements With Guidance for Use (ISO 45001:2018)); (2) industry organizations (*e.g.,* the National Mining Association's CORESafety and Health Management System); and (3) government agencies (*e.g.,* the Department of Transportation, 49 CFR part 270). The Department of Labor's Occupational Safety and Health Administration (OSHA) also has developed recommended practices for developing safety and health programs (*https://www.osha.gov/shpguidelines/*).

Generally, safety programs recommended by these organizations share the following principles. First, safety programs should address safety proactively rather than reactively. In other words, addressing problems only after an employee is injured is less effective than finding and fixing hazards before injuries and fatalities occur. Second, safety programs should take into account work processes and conditions specific to the workplaces and should make sense for the organizations that implement them. Third, safety programs should not be static and should be continually improving, based on monitoring and evaluating work performance and safety outcomes, scanning and assessing risks of mining conditions and operations, and evaluating use of emerging technologies.

In addition, most of the safety programs include a set of interacting elements that are designed to establish and achieve similar safety goals. Specifically, a safety program includes a common set of elements that focus on identifying hazards in the workplace and developing a plan for preventing and controlling those hazards. Examples of common elements include management commitment; worker involvement; hazard identification, prevention, and remediation, including workplace examinations for violations of mandatory safety and health standards; worker training and education; and program evaluation.

Based on its review of best practices and guidance on safety programs, together with comments gathered from a variety of stakeholders in mining communities, MSHA has concluded that developing and implementing a written safety program for surface mobile equipment at mines would contribute to advancing miners' safety and health. For this reason, MSHA is now issuing a proposal that would require mine operators with six or more miners to develop, implement, and update a written safety program for surface mobile equipment.

D. Written Safety Program for Surface Mobile Equipment

This proposal would address hazards related to mobile equipment and powered haulage equipment (except belt conveyors) used at surface mines and in surface areas of underground mines. MSHA believes that mine safety would be substantially improved when mine operators implement written safety programs that promote a culture of safety, take a holistic approach to safety and health, and encourage technological solutions to prevent or mitigate hazards. The Agency also believes that miners' safety would be improved if mine operators: (1) Continually evaluate their operations to identify hazards resulting from operating and working near surface mobile equipment and (2) identify controls that prevent or mitigate these hazards, including the use of technology to reduce accidents, injuries, and fatalities.

The proposed written safety program would be required only for operators employing six or more miners. Over the years, MSHA has observed that mine operators with five or fewer miners generally have a limited inventory of surface mobile equipment. These operations also tend to have less complex mining operations, with fewer mobile equipment hazards that would necessitate a written safety program. Although these mine operators are not required to have a written safety program, MSHA encourages mine operators with five or fewer miners to assure that surface mobile equipment hazards at their mines would be mitigated to the greatest extent possible. For mines employing five or fewer miners, MSHA's Educational Field and Small Mine Services (EFSMS) would provide assistance in the development and improvement of safety programs for mine operators and contractors in the mining community. Also, MSHA's EFSMS staff would encourage state grantees to focus on providing training to address hazards and risks involving surface mobile equipment in small mining operations.

The written safety program would list actions that mine operators would take to identify hazards and reduce risks, develop equipment maintenance and repair schedules, evaluate technologies, and train miners. The proposal would provide mine operators with the flexibility to tailor the written safety program to meet the specific needs of their operations and unique mining conditions. Under the proposal, mine operators would be required to evaluate and update the written safety program whenever necessary to manage safety risks associated with their surface mobile equipment appropriately.

A written safety program is an important part of a mine operator's overall safety program to prevent workplace injuries, illnesses, or deaths. A written safety program, as opposed to an oral one, is one that's more likely to be followed by mine operators and miners. The specific contents of an operator's written safety program do not need MSHA approval, but a written program serves other purposes beyond simply meeting regulatory requirements because it: (1) Reinforces that the mine operator/management is serious about safety; (2) provides benchmarks against which safety performance can be measured and verified; and (3) prevents confusion about authority, responsibility, and accountability. Furthermore, a written safety program which is reviewed regularly can clarify policy, create consistency and continuity, provide a basis for making decisions relative to when changes are needed, and serve as a checkpoint whenever there is a question regarding the use of surface mobile equipment at surface mines and surface areas of underground mines.

As is MSHA's practice, the Agency would provide mine operators with guidance needed to develop, implement, evaluate, and update their safety programs, if requested. MSHA would also work with mining industry stakeholders as it develops materials and templates to assist mine operators.

II. Section-by-Section Analysis

This proposal would require mine operators to develop a written safety program in which they would systematically identify and evaluate risks of surface mobile equipment used at their mines to eliminate or mitigate safety hazards and reduce accidents, injuries, and fatalities. The safety program should be designed so that it promotes and supports a safety culture at the mine. Since each mine has a unique environment, MSHA is proposing to allow each mine operator the flexibility to develop a safety program that addresses its specific types of surface mobile equipment and mining conditions and operations.

A. Sections 56.23000, 57.23000 and 77.2100—Scope and Purpose

Proposed §§ 56.23000, 57.23000 and 77.2100 address the purpose and scope of the proposal. The purpose of the safety program is to reduce accidents, injuries, and fatalities related to the operation of surface mobile equipment. Operators covered by this part would be required to develop, implement, and update a written safety program for mobile equipment used at surface mines and at surface areas of underground mines.

MSHA recognizes that mine operations are diverse, with varying mining methods, mining conditions and operations, types of mobile equipment, and mined commodities. Under this proposal, mine operators would have the flexibility to develop effective safety programs that best meet the unique conditions of their mines to prevent accidents, injuries, and fatalities involving surface mobile equipment. Indeed, mine operators with existing effective safety programs would likely need to make few adjustments, if any, to their existing programs and practices to meet the requirements of this proposal.

Proposed §§ 56.23000, 57.23000 and 77.2100 would require mine operators employing six or more miners to develop a written safety program. Based on Agency experience and data, a mine operator with five or fewer miners would generally have a limited inventory of surface mobile equipment. These operators would also have less complex mining operations, with fewer mobile equipment hazards that would necessitate a written safety program. Although these mine operators are not required to have a written safety program, MSHA would encourage operators with five or fewer miners to have safety programs. As stated earlier, for mines with five or fewer miners, MSHA's EFSMS would provide compliance assistance to operators in developing a safety program, such as making examples of model safety programs available at the Agency's website. Also, MSHA would encourage its state grantees to focus on providing training to address hazards and risks involving surface mobile equipment in small mining operations.

MSHA believes that these small mine operators would be able to accomplish the goals of this proposal through existing requirements (for example, 30 CFR parts 56, 57, and 77) relating to the use of written hazard warnings, oral instruction, signs and posted warnings, walkaround training, or other appropriate means that alert persons to site-specific hazards at the mine. However, to assure that surface mobile equipment hazards at these mines are mitigated to the greatest extent possible, MSHA intends to use its EFSMS resources as stated earlier.

The proposal is premised on MSHA's experience and data that, as a mine operation grows, the number and size of surface mobile equipment used at the mine usually increase, as do the complexity of the hazards that occur at

the mine. MSHA believes that mines employing six or more miners often have more complex mining operations and more surface mobile equipment.

MSHA estimates that about 41 percent of all mines in the U.S. employ six or more miners and that about 88 percent of all miners in the U.S. work at mines employing six or more miners. MSHA requests comments on whether the Agency should require all mine operators, regardless of size, to develop a written safety program. MSHA is particularly interested in comments on the economic feasibility of requiring operators with five or fewer miners to develop a written safety program. MSHA is also interested in comments and suggestions on alternatives or best practices that all mines might use to develop safety programs (whether written or not) for surface mobile equipment. MSHA solicits comments on requiring a non-written safety program for mines with five or fewer miners. Please provide the rationale and any supporting documentation in the comment. If a commenter marks parts of a comment as ''business confidential'' information, MSHA will not post those parts of the comment.

B. Sections 56.23001, 57.23001 and 77.2101—Definitions

Proposed §§ 56.23001, 57.23001 and 77.2101 would define *responsible person* as a person with authority and responsibility to evaluate and update a written safety program for surface mobile equipment. MSHA believes that designating a person with authority and responsibility to evaluate and update the safety program as necessary would help assure the successful development and maintenance of a safety program that addresses and eliminates surface mobile equipment hazards at a particular mine. This individual should be able to communicate the operator's commitment to safety and the importance of miners' involvement in the program to prevent or mitigate hazards. The responsible person must communicate the goals of the safety program to all miners, including contractors. The responsible person would need to have the experience and knowledge about mining conditions, including surface mobile equipment, necessary to develop and manage the safety program, as well as experience and knowledge necessary to maintain and evaluate any controls and best practices.

Proposed §§ 56.23001, 57.23001 and 77.2101 would define *surface mobile equipment* as wheeled, skid-mounted, track-mounted, or rail-mounted equipment capable of moving or being moved, and any powered equipment that transports people, equipment or materials, excluding belt conveyors, at surface mines and in surface areas of underground mines.

C. Sections 56.23002, 57.23002 and 77.2102—Written Safety Program

Under proposed §§ 56.23002(a), 57.23002(a) and 77.2102(a), mine operators would develop and implement a written safety program for surface mobile equipment within 6 months after the effective date of the final rule. MSHA requests comments on whether the 6-month period provides mine operators sufficient time to develop and implement a written safety program that includes the elements in proposed §§ 56.23003(a),/57.23003(a) and 77.2103(a), and rationales for the comments.

Proposed §§ 56.23002(b), 57.23002(b) and 77.2102(b) would also require mine operators to designate a responsible person as described above within 6 months after the effective date of the final rule. MSHA requests comments on whether this provides mine operators sufficient time to meet the proposed requirements, and rationales for the comments.

D. Sections 56.23003, 57.23003 and 77.2103—Requirements for Written Safety Program

Proposed §§ 56.23003(a), 57.23003(a) and 77.2103(a) would require a written safety program for surface mobile equipment to include four types of actions that mine operators would take in order to reduce accidents, injuries, and fatalities and to improve miners' safety.

Proposed §§ 56.23003(a)(1), 57.23003(a)(1) and 77.2103(a)(1) would require the safety program to include actions that would identify and analyze hazards and reduce the resulting risks related to the movement and operation of surface mobile equipment. Specifically, the proposal would require mine operators to identify, collect, and review information about hazards at their mines. These actions could include review of accident data and information on close calls or near misses, and any operational or maintenance accidents at their mines. Based on the information collected, mine operators would be able to develop a program that more specifically addresses conditions at their mines and measures to eliminate, prevent, or mitigate hazards.

Proposed §§ 56.23003(a)(2), 57.23003(a)(2) and 77.2103(a)(2) would require operators to develop and maintain procedures and schedules for routine maintenance and non-routine repairs for surface mobile equipment. Operators must comply with MSHA's existing requirements for maintenance and repair, which include but are not limited to 30 CFR 56.14100; 56.14105; 56.14211; 57.14100; 57.14105; 57.14211; 77.404(a); 77.404(c); 77.410(c); 77.1606(a) and (c); 77.1607(l); 77.1607(q); 77.405(a) and (b); 77.502; and 77.1302(b). Under this proposal, the mine operator would need to integrate existing compliance processes with any manufacturer's recommendations into the safety program and to assure that hazards in all phases of work be examined and analyzed. Existing processes include procedures for maintaining brakes and steering components, as well as procedures that assure pre-operational checks of equipment are conducted and then defects are corrected.

Proposed §§ 56.23003(a)(3), 57.23003(a)(3) and 77.2103(a)(3) would require that the program include actions the mine operator would take to evaluate currently available and newly emerging feasible technologies that can enhance safety and evaluate whether to adopt them. The safety program would include a process by which operators would periodically evaluate new and existing technologies that could enhance safety.

Examples of these technologies could include seat belt interlocks that affect equipment operation when a seat belt is not fastened; seatbelt notification systems that alert management when the seatbelts are not worn; collision warning systems and collision avoidance systems that may prevent accidents by alerting equipment operators to hazards located in blind areas; technologies that use Global Positioning Systems to provide equipment operators with information regarding their location when pushing and dumping material; as well as cameras, curvilinear mirrors, and other vision enhancements. As stated earlier, for mines with five or fewer employees that would not be subject to this proposed rule, MSHA's EFSMS would provide assistance to operators who are interested in developing a safety program. Also, as part of the Agency's compliance assistance efforts, MSHA would work with operators and provide information and technical assistance that would help them investigate control options and the use of technology to prevent accidents and injuries. Furthermore, MSHA would encourage its state grantees to focus on providing training to address hazards and risks involving surface mobile equipment in small mining operations.

Proposed §§ 56.23003(a)(4), 57.23003(a)(4) and 77.2103(a)(4) would require operators to train miners and other persons at the mine necessary to perform work (*e.g.,* office workers) to identify and address or avoid hazards related to surface mobile equipment. Training provided under this section would be met through existing training requirements, which include but are not limited to 30 CFR part 46—Training and Retraining of Miners Engaged in Shell Dredging or Employed At Sand, Gravel, Surface Stone, Surface Clay, Colloidal Phosphate, or Surface Limestone Mines (§§ 46.3, 46.4, 46.5, 46.7, 46.8, 46.11, and 46.12); part 48—Training and Retraining of Miners (§§ 48.23, 48.25, 48.26, 48.27, 48.28, and 48.31); and part 77 Mandatory Safety Standards, Surface Coal Mines and Surface Work Areas of Underground Coal Mines (§§ 77.404(b) and 77.1708).

Proposed §§ 56.23003(b), 57.23003(b) and 77.2103(b) would require the responsible person to evaluate and update the written safety program at least annually or as mining conditions or practices change, accidents or injuries occur, or as surface mobile equipment changes, or modifications are made. This proposed requirement would assure that the written safety program remains relevant and up to date. If a mine operator determines that the controls and procedures identified in the safety program are not effective (or are no longer relevant), further measures would need to be identified and implemented to assure miners' safety. Similarly, mine operators would also need to evaluate safety programs during seasonal weather condition changes or whenever work processes or practices change. In fact, best practices shown by NIOSH, OSHA, and other voluntary consensus standards organizations include ongoing evaluations of workplace activities and processes for hazards. These ongoing evaluations could result in identifying new hazards, taking corrective actions, and investigating accidents and near-misses to determine root causes and making this information available to all miners at the mines.

E. Sections 56.23004, 57.23004 and 77.2104—Record and Inspection

Proposed §§ 56.23004, 57.23004 and 77.2104 would require that the mine operator make available a copy of the written safety program for inspection by authorized representatives of the Secretary, miners, and representatives of miners, and provide a copy upon request.

F. Request for Comments

MSHA is interested in any information and data associated with safety programs for surface mobile equipment. The Agency is particularly interested in the aspects of the safety programs that work best and are most effective. The Agency also is interested in comments on MSHA's proposal to require a written safety program for mine operators employing six or more miners. If a commenter marks parts of a comment as ''business confidential'' information, MSHA will not post those parts of the comment. The Agency is interested in receiving comments from all members of the mining community and all interested stakeholders. Where possible, please include specific examples to support the rationale.

III. Executive Order 12866: Regulatory Planning and Review; and Executive Order 13563: Improving Regulation and Regulatory Review

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

Under E.O. 12866, a significant regulatory action is one that meets any of a number of specified conditions, including the following: Having an annual effect on the economy of $100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. MSHA has determined that the proposal would not be an economically significant regulatory action, pursuant to section 3(f) of E.O. 12866, because this proposal would not have an annual effect of $100 million or more on the economy.

This section provides a summary of MSHA's cost and benefit estimates of the proposal. The proposed rule is estimated to have a 10-year total net benefit of $343.0 million at a 7 percent discount rate, based on estimated benefits of $470.9 million and costs of $127.9 million. At that 7 percent discount rate, the estimated annualized net benefit is $45.6 million (annualized benefits of $62.7 million and annualized costs of $17.0 million). Supporting materials and data that provide additional details on the methodology used to estimate the costs, benefits, and other required analyses of the proposal are included in the proposed rule docket at *https://www.regulations.gov/docket?D=MSHA-2018-0016* and are posted on MSHA's website at *https://www.msha.gov.*

A. Regulated Industry Description

The proposal would apply to surface mines and surface areas of underground mines, for mines employing six or more miners. As of 2018, there were 12,281 mines in the U.S.—1087 coal mines and 11,194 metal and nonmetal (MNM) mines. Of those mines, 5,027 mines (about 41 percent) had six or more miners working and would be subject to this proposal. Among a total of 223,289 workers at U.S. mines, 162,718 were reported to be miners. About 88 percent of the miners were working at mines with six or more miners. See Table 1 for additional details.

TABLE 1—MINES AND EMPLOYMENT IN 2018

	Number of mines	Number of miners	Total employment
U.S. Total	12,281	162,718	223,289
Subject to Proposed Rule:			
Coal mines with six or more miners	584	25,626	46,178
MNM mines with six or more miners	4,443	117,343	146,459
Subtotal	5,027	142,969	192,637
Not Subject to Proposed Rule:			
Coal mines with five or fewer miners	503	1,379	7,238

TABLE 1—MINES AND EMPLOYMENT IN 2018—Continued

	Number of mines	Number of miners	Total employment
MNM mines with five or fewer miners	6,751	18,370	23,414
Subtotal	7,254	19,749	30,652

Source: MSHA MSIS Data (reported on MSHA Form 7000–2).

Table 2 shows that in 2018 mining revenues were $109.4 billion and miners worked 415.1 million hours. MSHA estimates coal revenue at $27.2 billion using the production estimates multiplied by the revenue per ton. For the MNM revenue figures, MSHA used the estimate of $82.2 billion from the U.S. Geological Survey's (USGS) annual commodity report.

TABLE 2—MINING REVENUES AND MINER HOURS IN 2018

	Estimated revenue ($ billions)	Miner work hours (millions)
Coal mines	$27.2	120.3
MNM mines	82.2	294.8
Total	109.4	415.1

Source: MSHA MSIS Data (total hours worked at mines and coal production reported on MSHA Form 7000–2 at $35.99 per ton). USGS reported 2018 MNM revenues at $82.2 billion. (U.S. Geological Survey, 2019, Mineral commodity summaries 2019: U.S. Geological Survey, 200 p., *https://doi.org/10.3133/70202434*).

B. Benefits

MSHA believes that the proposed rule would improve miners' safety in important ways. Numerous published professional articles about safety describe the relationship between effective safety programs and accident reduction. For example, Maxey (2013, p. 14) describes the shared features of successful programs as follows: ''These basic elements—management leadership, worker participation, hazard identification and assessment, hazard prevention and control, education and training, and program evaluation and improvement—are common to almost all existing health and safety management programs. Each element is important in ensuring the success of the overall program, and the elements are interrelated and interdependent.'' [1] MSHA's proposal would require mine operators to develop and implement a written safety program with six or more miners that covers the range of actions an operator would take to systematically evaluate and address risks to reduce accidents, injuries, and fatalities related to the operation of or working near surface mobile equipment.

The proposed safety program would create benefits through several mechanisms. First, the proposed safety program would include a variety of actions an operator would take to identify hazards and assess risks to reduce accidents, injuries, and fatalities. Second, MSHA believes the process of developing and maintaining a safety program would help create or improve a safety culture at the mine. As mine management and miners work together to identify hazards and determine appropriate controls to prevent or mitigate those hazards, they could come to share beliefs, practices, and attitudes about safety and to promote a positive safety culture.

In addition, MSHA believes that there would be additional unquantifiable financial benefits, such as reduced insurance premiums and decreased downtime after accidents, stemming from the collaborative focus on safety by operators and miners.

MSHA is aware that some mine operators have developed safety programs based on the Occupational Safety and Health Administration (OSHA)'s recommended practices, or on consensus standards. These operators would have procedures in place already to continually identify workplace hazards and evaluate risks. MSHA is also aware that some states require, by either regulation or statute, a workplace safety plan or program for some or all employers including mine operators. Other states incentivize (through premium credits or public recognition) and support (with free training and consultations) safety programs.[2] Of those states that require safety programs, most require employers to develop procedures to identify controls to eliminate or mitigate identified hazards and evaluate the effectiveness of existing controls to determine whether they continue to protect employees. Although MSHA does not know to what degree state programs may overlap with this proposal, MSHA believes that some mine operators with effective existing safety programs and processes would likely need to make few, if any, adjustments to their programs to meet the requirements of the proposal.

Accident Data and Forecast

Under 30 CFR part 50, mine operators are required to submit a report of each accident, injury, and illness to MSHA within 10 working days after an accident or occupational injury occurs or an occupational illness is diagnosed. Based on the information collected from mine operators' reports, the Agency has analyzed accident and injury trends related to mining equipment, work locations, and tasks.

MSHA'S Quarterly Mine Injury and Worktime, Quarterly Reports (2018 report at *https://arlweb.msha.gov/Stats/Part50/WQ/2018/MIWQ%20Report%20CY%202018.pdf*) provides official data and definition for injuries. The injury

[1] Maxey, H. 2013. Safety & Small Business. The Compass. Pages 12–22. [*https://ASEE.org.*]

[2] OSHA, Safety and Health Programs in the States White Paper, April 2016.

occurrences are classified according to severity as follows:

1. FATAL: Occurrences resulting in death.

2. NFDL: Nonfatal occurrences with Days Lost (lost workdays). That is, nonfatal injury occurrences that result in days away from work or days of restricted work activity.

3. NDL: Occurrences with No Days Lost. That is, nonfatal injury occurrences resulting in loss of consciousness or medical treatment other than first aid, but not in any lost workdays.

For the period from 2003 to 2018, MSHA identified 109 fatalities and 1,543 nonfatal injuries that involved surface mobile equipment at mines employing six or more miners. Table 3 shows the annual number of fatal and nonfatal injuries caused by operating or working near surface mobile equipment at coal and MNM mines with six or more miners, from 2003 to 2018.

TABLE 3—FATALITIES AND INJURIES INVOLVING SURFACE MOBILE EQUIPMENT AT ALL COVERED MINES: 2003–18

Year	Fatalities	NFDL	NDL
2003	7	70	28
2004	6	94	44
2005	11	88	50
2006	7	104	51
2007	8	76	39
2008	6	100	40
2009	9	66	30
2010	6	76	23
2011	3	62	22
2012	6	55	15
2013	5	50	18
2014	9	53	31
2015	5	42	24
2016	5	40	18
2017	10	46	19
2018	6	49	20
Total	109	1071	472

MSHA developed 10-year baseline forecasts of injuries and fatalities with the detailed coal and MNM data and the summary information shown in the following paragraphs. Table 4 shows the numbers of fatalities and injuries that MSHA projects would occur in the absence of any changes in the existing regulation. See the full Preliminary Regulatory Impact Analysis (PRIA), which is available in the docket, for the intermediary calculations and tables.

TABLE 4—BASELINE TREND FORECAST FOR FATALITIES AND INJURIES

Year	Fatalities	Nonfatal Injuries	
		NFDL	NDL
1	6	44	19
2	6	40	19
3	6	37	18
4	6	34	18
5	6	32	17
6	6	30	17
7	6	28	17
8	6	25	16
9	6	23	16
10	6	21	16

MSHA believes that a substantial percentage of accidents involving surface mobile equipment could be reduced if operators comply with the proposed rule, and it projects that the number of fatalities and injuries would be reduced by 80 percent as a result. MSHA believes it is likely that the severity of injuries would be reduced, creating an additional benefit, which is not quantified in this analysis. MSHA believes that as mine operators begin the process of developing their safety program, some benefits would be realized in the first year. Because mine operators would focus on safety during the development of their programs, injury rates would likely start falling even before the programs were complete. In the first year, MSHA therefore assumes injuries and fatalities would drop 10 percent (equivalent also to 10 percent of the full-year potential reduction) due to these improvements taking place as safety programs are finalized. Starting from the second year, MSHA expects that there would be considerably fewer accidents involving surface mobile equipment, leading to a substantial drop in the number of fatalities and nonfatal injuries. MSHA solicits comments regarding the Agency's proposed regulatory effectiveness. Please provide the rationale and any supporting documentation in your comment.

Table 5 shows the projected reduction in fatalities and nonfatal injuries related to surface mobile equipment for each of 10 years after the proposal takes effect. (A break-even analysis is discussed later, in the benefit monetization section.) Even though fatalities and injuries are always whole numbers, the projection of reduced fatalities and injuries includes decimal values to allow more accurate estimates of benefit monetization later. Supporting material

and data that provide additional details on MSHA's forecast including sensitivity analysis results are included in the proposed rule docket at *https://www.regulations.gov/docket?D=MSHA-2018-0016* and are posted on MSHA's website at *www.msha.gov.*

TABLE 5—PROJECTED REDUCTIONS IN FATALITIES AND INJURIES INVOLVING SURFACE MOBILE EQUIPMENT AT ALL COVERED MINES

Year	Fatalities	Nonfatal injuries	
		NFDL	NDL
1 *	0.48	3.52	1.52
2	4.80	32.00	15.20
3	4.80	29.60	14.40
4	4.80	27.20	14.40
5	4.80	25.60	13.60
6	4.80	24.00	13.60
7	4.80	22.40	13.60
8	4.80	20.00	12.80
9	4.80	18.40	12.80
10	4.80	16.80	12.80

* MSHA Assumes that due to timing of implementation, the startup will result in only 10% of likely reduction of the overall as the operators begin implementing their programs.

Benefit Monetization

To estimate the monetary value of the reductions in fatalities and nonfatal injuries, MSHA used an analysis that relies on the theory of compensating wage differentials (*i.e.,* the wage premiums paid to workers to accept the risk associated with various jobs) in the labor market. This theory grows out of the widely observed correlation between higher job risk and higher wages, which suggests that employees demand monetary compensation in return for incurring greater risk. The measure of risk reduction as applied to fatalities is known as the Value of a Statistical Life (VSL). Despite its name, VSL is not the valuation of life, but the valuation of reductions in risks. Following OMB Circular A–4 and adjusting for real income changes, MSHA has used a VSL value of $13.6 million for the 2018 base year and $13.9 million for the first year of rule implementation.[3] By the tenth year, the VSL value reaches $16.5 million.[4]

For NFDL and NDL injuries, MSHA used percentages of VSL. In the past, to estimate the cost of nonfatal lost-time injuries, MSHA used a value equivalent to 0.7 percent of VSL. The figure is taken from a 2003 meta-analysis by Viscusi & Aldy and represents the study's estimate of injury dollar value divided by the VSL. For this analysis, MSHA continues its use of 0.7 percent of VSL for NFDL injuries.

For the NDL injuries, as discussed in the PRIA, MSHA considered values from two sources. The National Safety Council (NSC) and the National Institute for Occupational Safety and Health (NIOSH) have analyzed injury costs and have continued to update their findings. NIOSH, which is part of the Centers for Disease Control and Prevention, focuses on researching and developing new knowledge related to worker safety and health and to transfer that knowledge into practice. The National Safety Council is recognized among safety professionals as a leading nonprofit safety advocate. The organization focuses on eliminating the leading causes of preventable injuries and deaths. The NIOSH data offers many values for individual industry groups, together with numerous percentile groupings, means, and medians, but no single overall value. By contrast, NSC provides a consolidated estimate of the cost of each type of injury—one cost estimate for non-fatal injuries with days lost (NFDL) that includes wage losses, medical expenses, administrative expenses, and employer costs, and a second cost estimate for injuries resulting no days of work lost (NDL) that takes into account medical expenses, administrative expenses and employer costs. (Note that neither estimate includes costs of property damage except to motor vehicles). MSHA believes that the average calculated by the NSC is a reasonable estimate to use for NDL injuries, because it is simpler and more similar to estimates used in past MSHA analysis. Adjusting the 2016 NSC value of $39,000 (2016 dollars) for inflation using the Medical Consumer Price Index (CPI), this figure yields a 2018 value of $40,000. By taking the ratio of $40,000 to a 2018 VSL of $13.6 million, MSHA calculates a percent-of-VSL value of 0.3 percent (rounded value) for NDLs. For more detailed information, including alternate scenarios, see the monetization discussion in the full PRIA. Table 6 lists the resulting annual values for VSL and nonfatal injuries.

TABLE 6—ANNUAL VALUES FOR VSL AND INJURIES

Year	VSL ($ millions)	NFDL ($ millions)	NDL ($ millions)
1	$13.90	$0.10	$0.04
2	14.16	0.11	0.04
3	14.44	0.11	0.04
4	14.71	0.11	0.04

[3] In selecting this VSL, MSHA has taken into account recent VSL research and OMB Circular A–4 guidance, which underscore the need to reflect industry-specific risk profiles in calculating VSLs. For a detailed discussion, see the Preliminary Regulatory Impact Analysis.

[4] The historical VSL value is adjusted for inflation. Future years are adjusted using projected increase in national real income. These adjustments are consistent with the practice of other large federal agencies. See the Preliminary Regulatory Impact Analysis for the formula and documentation.

TABLE 6—ANNUAL VALUES FOR VSL AND INJURIES—Continued

Year	VSL ($ millions)	NFDL ($ millions)	NDL ($ millions)
5	15.00	0.11	0.04
6	15.28	0.11	0.04
7	15.58	0.12	0.04
8	15.88	0.12	0.04
9	16.18	0.12	0.04
10	16.50	0.12	0.05

Table 7 below displays the monetized benefits from the reductions in fatalities and nonfatal injuries attributable to the proposal. These figures are calculated by multiplying the numbers of prevented fatalities and nonfatal injuries in Table 5 by the VSL estimates of fatal and nonfatal injuries shown in Table 6.

TABLE 7—MONETIZED BENEFIT ESTIMATES—UNDISCOUNTED

[Values in Table 5 × Values in Table 6]

Year	Prevented fatalities ($ millions)	Prevented nonfatal injuries NFDL ($ millions)	Prevented nonfatal injuries NDL ($ millions)	Annual total * ($ millions)
1	6.7	0.4	0.1	7.1
2	68.2	3.5	0.6	72.3
3	69.1	3.3	0.6	73.0
4	70.6	3.0	0.6	74.1
5	72.0	2.8	0.5	75.4
6	73.4	2.6	0.5	76.6
7	74.9	2.7	0.5	78.1
8	76.3	2.4	0.5	79.2
9	77.8	2.2	0.5	80.5
10	79.2	2.0	0.6	81.9
10-Year Total *	668.2	24.9	5.0	698.2

* Totals are based on the detailed data without rounding of the individual table cells.

C. Compliance Costs

As explained above, this proposed rule would require certain mine operators to develop a written safety program in which they would systematically evaluate risks to reduce accidents, injuries, and fatalities. The quantified costs associated with this proposal would be two types—one related to the development of the written safety program, and the other related to measures taken to enhance safety and minimize risks.

Safety Program Development Cost

MSHA recognizes that mine operations are diverse, with varying mining methods, mining conditions and operations, types of mobile equipment, and mined commodities. Under this proposal, mine operators would develop programs that are unique to their operations and/or build on existing programs.

Program development costs are estimated based on categories of actions to be included in the written program. To develop the safety program, a mine operator would need to implement various procedures and processes that identify hazards and manage risks. However, many operators already have a number of procedures and processes in place that would meet the requirements of this proposal. Those operators would only have to identify and describe these procedures and processes. Therefore, when MSHA estimates the average time for each type of action it would take a mine operator to develop a written safety program, it is averaging across these variations in the new compliance actions that would be required.

The hourly-wage data used in MSHA's analysis assumes an average rate for all mining and uses BLS's 2018 Occupational Employment Survey (OES) mean wage rates adjusted for benefits and wage inflation since completion of the survey. MSHA has also added an overhead cost rate of 1 percent to the wage rates. Labor costs for most employees are estimated using $65.10 per hour for a supervisor; the only exception is the item identified as clerical assistance, for which the estimated cost is $31.46 per hour. Costs are estimated based on a projection that 5,027 mine operators would need to develop written programs. Table 8 summarizes these costs associated with a written safety program.

TABLE 8—SAFETY PROGRAM DEVELOPMENT COSTS

Major Safety Program Elements *	Mine task hours (annual)	Total hours (task hours × 5,027 mines)	One-time ($ millions)	Out-year annual ($ millions)
Identifying hazards and manage risks	15	75,405	$4.9	$0.0
Evaluating technologies that enhance safety	60	301,620	19.5	0.0
Summarizing findings and developing written program	20	100,540	6.5	0.0
Clerical assistance to finalize program (clerical rate $31.03)	30	150,810	4.7	0.0

TABLE 8—SAFETY PROGRAM DEVELOPMENT COSTS—Continued

Major Safety Program Elements *	Mine task hours (annual)	Total hours (task hours × 5,027 mines)	One-time ($ millions)	Out-year annual ($ millions)
Reevaluating workplace activities due to changes in technology, conditions, processes, materials, or equipment; conducting on-site examinations; identifying hazards, trends, root causes, and taking corrective actions	20	100,540	0.0	6.5
Annual review and update of the safety program	5	25,135	0.0	1.6
Total including overhead of 1%			35.7	8.1

Safety-Enhancement Cost

Under the proposed rule, MSHA would require mine operators to evaluate technologies that enhance safety in the operation of surface mobile equipment. As a result, mine operators would incur costs in implementing safety-enhancing processes and controls.

Because it is difficult to determine the type of controls mine operators would use to eliminate or mitigate a hazard, MSHA's analysis approximates the safety-enhancement costs by estimating the number of pieces of surface mobile equipment covered by this proposal and multiplying by the associated cost for each one.

Based on MSHA experience and data, the agency has estimated the number of pieces of equipment by several mine sizes and by mining process (using the MSIS data for subunits) and cost per piece of equipment for startup as well as outyear maintenance and updates. MSHA estimates that there are approximately 60,000 pieces of mobile equipment used at surface mines and surface areas of underground mines; of this total, 41,994 are used at mines with six or more miners.

The safety-enhancing expenditures would vary widely across mine operations. Some operators would incur lower costs, as they would use less advanced controls such as signs and signals, while other operators would invest in higher-priced controls such as interlocked seatbelts or collision warning systems. Given this variation, MSHA assumes an average cost of $500 per piece of surface mobile equipment in the first year, reflecting the cost of both new technology purchases and existing technology repairs and modifications. From the second year on, the analysis assumes an average cost of $100 per piece of surface mobile equipment, reflecting mostly costs of modification of existing technologies. The analysis assumes little incremental cost for repairs in the second year and beyond, because the repairs are already required by other MSHA standards.

Using these estimates of the average safety-enhancement costs and the number of pieces of equipment used by the covered mines that would be subject to this proposal, MSHA estimates that mine operators would incur safety-enhancement costs of approximately $21.0 million in the first year and $4.2 million annually after that. MSHA invites commenters to submit estimates of the types and costs of safety enhancements that would be needed at mining operations under this proposal.

MSHA estimates that there would be no incremental training costs, because this proposed rule requires no new or additional training. Training costs are already accounted for in training required by existing standards in 30 CFR parts 46, 48, and 77, which address mine hazard awareness and safety measures. MSHA invites commenters' views and estimates on training costs.

Table 9 shows the total compliance costs, which are the sum of the written program development costs and safety-enhancement and training costs. Based on the estimates above, the total compliance costs in the first year would be $56.6 million and $12.3 million annually in the out-years starting from the second year of implementation. MSHA invites commenters to submit estimates of the types and costs of enhancements at their operations.

TABLE 9—COMPLIANCE COST SUMMARY

Cost item	Millions of dollars (undiscounted)	
	Startup costs	Annual out-year costs
Safety program development (inclusive of overhead costs)	$35.7	$8.1
Safety enhancement	21.0	4.2
Total Costs	56.7	12.3

D. Net Benefits

MSHA's 10-year cost and benefit estimates are shown in Table 10. Under MSHA's proposed rule, mine operators would be required to meet the requirements of the proposed rule 6 months after the effective date of the final rule. MSHA believes that this 6-month period would provide mine operators time to develop and communicate the safety program to employees, evaluate mine operations for hazards, and eliminate or control identified hazards (*e.g.,* engineering controls, work practices, and equipment maintenance). MSHA assumes that by reducing the surface mobile machine fatalities and injuries by 80 percent, full benefits of the proposed rule would be achieved by the second year, with benefits equal to 10 percent of that amount in the first year.

TABLE 10—SUMMARY OF BENEFITS, COSTS, AND NET BENEFITS *

[$ millions]

Year	Benefits	Undiscounted		Discounted	
		Costs	Net benefits	Net benefits (3 percent)	Net benefits (7 percent)
1	$7.1	$56.7	−$49.6	−$48.2	−$46.4
2	72.3	12.3	60.0	56.6	52.4
3	73.0	12.3	60.7	55.5	49.5
4	74.1	12.3	61.8	54.9	47.1
5	75.4	12.3	63.1	54.4	45.0
6	76.6	12.3	64.3	53.9	42.8
7	78.1	12.3	65.8	53.5	41.0
8	79.2	12.3	66.9	52.8	38.9
9	80.5	12.3	68.2	52.3	37.1
10	81.9	12.3	69.6	51.8	35.4
Total	698.2	167.4	530.8	437.5	343.0
Annualized	69.8	16.7	53.1	49.8	45.6

* Values in millions. Full precision of numbers calculated and summed, but independent rounding for display purposes reflects subtotals but not the underlying calculations.

Break-Even Point Analysis

OMB Circular A–4 recommends use of a break-even or threshold analysis when there are qualitative benefits or issues of uncertainty related to the cost and benefit estimates. As discussed above, MSHA's estimates of the benefits of the rule are based on the projected reduction in the number of fatalities and injuries. The success of the proposed rule in reducing fatal and nonfatal injuries can be considered in terms of the resulting monetized benefit. A break-even point is when net benefits (monetized benefits minus costs) equal zero. According to the break-even calculations for this proposal, even if the fatalities and injuries are not reduced as forecasted, the reduction of fatal and nonfatal injuries would have a positive net benefit as long as those injuries are reduced by more than 27.1 percent; at 27.1 percent, the net benefits at a 7 percent discount rate would equal zero.

E. Request for Comments

Please provide data or information that would be useful to MSHA as the Agency evaluates the costs and benefits of this proposal. MSHA recognizes that mine operations are diverse with varying mining methods, mining conditions and operations, types of mobile equipment, mined commodities, and mine sizes. MSHA seeks data and information that would allow the Agency to develop estimates that might better reflect these differing conditions and further evaluate the economic feasibility of this proposal. MSHA requests comments on innovative technologies and/or new and developing technologies that could enhance the benefits of the proposal.

IV. Feasibility

A. Technological Feasibility

MSHA concludes that the proposal would be technologically feasible because it would require mine operators to develop and implement written safety programs based on an assessment of risk in their mines and use existing technology or methods to enhance safety. Therefore, there are no technological issues raised by the proposal.

B. Economic Feasibility

MSHA has traditionally used a revenue screening test—*i.e.,* whether the yearly impacts of a regulation are less than one percent of revenues—to establish presumptively that the regulation is economically feasible for the mining community. MSHA projects that the proposal would have an annualized cost of $17 million (at a 7 percent discount rate over 10 years), while the mining industry has estimated annual revenues of $109.4 billion. The cost of the proposal would be much less than 1 percent of revenues. Therefore, MSHA concludes that the proposed rule would be economically feasible for the mining industry.

V. Regulatory Flexibility Analysis (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA) and Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

MSHA has reviewed the proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. Pursuant to the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA analyzed the impact of the proposed rule on small entities. Based on that analysis, MSHA believes that this proposed rule would not have a significant economic impact on a substantial number of small entities. The Agency, therefore, is not required to develop an initial regulatory flexibility analysis. The factual basis for this proposed certification is presented below.

A. Definition of a Small Mine

Under the RFA, in analyzing the impact of a rule on small entities, MSHA must use the Small Business Administration (SBA)'s definition for a small entity, or after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment.

The SBA uses North American Industry Classification System (NAICS) codes, generally at the 6-digit NAICS level, to set thresholds for small business sizes for each industry. See Table 11 for SBA thresholds for each relevant NAICS code. The SBA size standard tables and methodology are available at *https://www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/summary-size-standards-industry-sector.*

B. Factual Basis for Certification

The SBA guidance recommends, as a first step, a threshold analysis. MSHA

evaluates the impacts on small entities by comparing the estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for the affected sector. As the threshold analysis is developed, MSHA considers the data availability as well as the degree of representativeness if the data is disaggregated. When estimated compliance costs are less than 1 percent of the estimated industry revenues, it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. MSHA examines data for the NAICS codes that have much higher impact ratios (cost/revenue) than others to ensure that the first level screening is representative. When estimated ratios may not be representative or when compliance costs exceed one percent of revenues, MSHA investigates whether further analysis is required.

For this analysis, MSHA evaluated a number of data sources related to the number of firms, employment, and revenue. MSHA concluded that the most useful data for firms and employment was the MNM mine data from MSIS, which is publicly available at *https://www.msha.gov/data-reports/data-sources-calculators.* Using the SBA criteria (see Table 11) and MSIS total average annual mine employment data as provided by mine operators, MSHA identified that 10,278 out of 12,281 mines and facilities are considered ''small'' and have usable data. MSHA identified 533 other small mines that were not included in this analysis, because some had incomplete data, another had few production hours for the year (intermittent mines), and others stopped production in 2018.) Of those small mines and facilities, slightly more than one-third, 35 percent (3,557/10,278 small), would be required to comply with the provisions of the proposal because they employ six or more miners. Costs from the Compliance Costs section above were distributed using the SBA small and large sizes using the same methodology discussed in that section. The 65 percent of small mine operators that do not have to comply will have no cost.[5]

MSHA estimates mine revenue as it did in the past. Since MNM mines do not report production, MSHA used U.S. Geological Commodity reports (USGS, 2019) to obtain national MNM revenue numbers for 2018. MSHA allocated the NAICS code revenue for MNM mines on a dollar per hour basis. MSHA uses the mine operator-reported coal production and Energy Information Administration price per ton for anthracite, lignite, and bituminous coal for small mines.[6]

MSHA considered the issue of disaggregation of summary data and displaying representative data for mines with only five or fewer miners. The revenue per hour for MNM mines and per ton for coal is representative for the total as most mines meet the SBA's small criteria. However, MSHA believes it is unlikely to be representative for the smallest mines. MSHA requests comments and data that would assist MSHA in estimating representative revenues for the categories of six or more, and five or fewer, miners.

Table 11 shows the estimated revenues, costs, SBA size standards (Feb. 2019), and the summary level screening test results for the total small mine revenue for each 6-digit NAICS code. The summary level data is consistent with evaluating the impact on a mine-by-mine basis without providing detail on all mines. The data allows each operator to use the Table 11 data to compare the revenue per mine and cost per mine to their operating data. However, the revenue for incomplete data was less than 1 percent of total revenues. It is therefore small enough not to affect MSHA's decision to propose to certify that there would be no significant economic impact on a substantial number of small entities.

TABLE 11—SUMMARY OF SMALL BUSINESS SCREENING DATA

[Revenues and costs in $ millions]

NAICS Code	NAICS description	Small standard (max. no. of employees)	Number of small mines	Estimated revenues all small mines	One percent of revenues	Costs to all small mines	Cost exceeds one percent
212111	Bituminous Coal and Lignite Surface Mining.	1,250	611	$9,325	$93.25	$4.48	No.
212112	Bituminous Coal Underground Mining	1,500	148	4,386	43.86	0.33	No.
212113	Anthracite Mining	250	117	189	1.89	0.38	No.
212210	Iron Ore Mining	750	21	999	9.99	0.16	No.
212221	Gold Ore Mining	1,500	122	2,332	23.32	0.63	No.
212222	Silver Ore Mining	250	5	99	0.99	0.01	No.
212230	Copper, Nickel, Lead, and Zinc Mining	750	27	2,780	27.80	0.31	No.
212291	Uranium-Radium-Vanadium Ore Mining	250	4	0	0.00	0.01	Yes.
212299	All Other Metal Ore Mining	750	17	419	4.19	0.13	No.
212311	Dimension Stone Mining and Quarrying	500	772	438	4.38	3.15	No.
212312	Crushed and Broken Limestone Mining and Quarrying.	750	1,318	6,459	64.59	7.64	No.
212313	Crushed and Broken Granite Mining and Quarrying.	750	138	1,135	11.35	0.97	No.
212319	Other Crushed and Broken Stone Mining and Quarrying.	500	874	1,732	17.32	3.52	No.
212321	Construction Sand and Gravel Mining	500	5,326	6,796	67.96	12.77	No.
212322	Industrial Sand Mining	500	249	4,231	42.31	1.34	No.
212324	Kaolin and Ball Clay Mining	750	7	620	6.20	0.05	No.
212325	Clay and Ceramic and Refractory Minerals Mining.	500	198	766	7.66	0.78	No.
212391	Potash, Soda, and Borate Mineral Mining	750	9	909	9.09	0.05	No.
212392	Phosphate Rock Mining	1,000	8	969	9.69	0.16	No.
212393	Other Chemical and Fertilizer Mineral Mining.	500	44	1,541	15.41	0.28	No.
212399	All Other Nonmetallic Mineral Mining	500	181	957	9.57	0.89	No.
311942	Spice and Extract Manufacturing	500	3	920	9.20	0.02	No.
327310	Cement Manufacturing	1,000	40	4,501	45.01	0.43	No.

[5] Those 533 mines excluded from this analysis are mines with 1 to 5 miners, which are not subject to the proposed rule.

[6] *https://www.eia.gov/coal/annual/archive/0584_2018.pdf,* p. XVII

TABLE 11—SUMMARY OF SMALL BUSINESS SCREENING DATA—Continued

[Revenues and costs in $ millions]

NAICS Code	NAICS description	Small standard (max. no. of employees)	Number of small mines	Estimated revenues all small mines	One percent of revenues	Costs to all small mines	Cost exceeds one percent
327410	Lime Manufacturing	750	31	1,350	13.50	0.24	No.
331313	Alumina Refining and Primary Aluminum Production.	1,000	6	3	0.03	0.04	Yes.
Grand Total			10,278	53,856	538.56	38.77	No.

Note: Total number of small mines includes two mines that were not reported as abandoned but lacked hours and sufficient information to assign revenues. Without miner hours, costs and revenues related to the NAICS codes above are most likely zero.

As Table 11 shows, the total estimated cost to small mines, $38.77 million, is far less than 1 percent of the total revenues of those mines, which comes to $538.56 million. Two NAICS codes, 331313 Alumina Refining and Primary Aluminum Production and 212291 Uranium Radium Vanadium Ore Mining, require further analysis, because estimated costs for those codes exceed MSHA's 1-percent threshold for additional analysis. The Census Bureau's Statistics of U.S. Businesses and 2017 Economic Census data provides helpful information for additional analysis of NAICS code 331313. The Census Bureau reports that all data for the 212291 NAICS has been withheld due to the very limited number of mines. The six mines and plants regulated by MSHA with NAICS code 331313 are only a portion of the larger group of all firms with NAICS code 331313. The preliminary data from the Economic Census as shown in the Bureau's data does not provide enough detail to separate small firms between 500 and 1,000 employees from their total for 500 and more employees or to isolate mines from all firms with NAICS code 331313.[7]

For NAICS code 331313, MSHA's estimate for the total costs for the small firms that it regulates within the code is $38,500. The Economic Census reports that the smallest firms for this NAICS have preliminary receipts of $9.3 million. The impact for the smallest firms would be only 0.4 percent ($38,500/$9,300,000). The overall percentage impact to small firms goes down as the revenues increase for the rest of the firms up to the SBA threshold of 1,000 employees. Although the Economic Census numbers are for 2017, information available online provided by a private firm *SICCODE.com* (*https://siccode.com/naics-code/331313/alumina-refining-primary-aluminum-production*), suggests that the number of firms (26) and total revenues ($3 billion) are down slightly for 2018 but not enough to alter MSHA's conclusion that there is no significant impact for small firms with this NAICS code.

For Uranium and Vanadium, the mines were rarely in production in 2018. Several web sources suggest that as uranium approaches or maintains zero production, the Vanadium mines have the potential for growth for use in steel and battery production; thus, non-producing mines are maintained for this possibility. Because no recent data are available regarding the remaining establishments, their total employment, their revenues or costs, it is not possible to compute the impact beyond the total cost for the NAICS code 212291 which is slightly more than $14,000. Considering that the firms owning the limited number of mines are maintaining the mines for future possibilities, it is unlikely that this low cost would impact their decision whether to close. MSHA invites comments and data that might improve this conclusion and analysis.

VI. Paperwork Reduction Act of 1995

A. Summary

This proposal would create new information collection burdens for the mining community. The new burden applies only to mine operators with six or more miners. As stated in the proposal, mine operators would have wide latitude to develop and implement a written safety program. Mine operators could also consult or use examples of model written safety programs available on MSHA's website. MSHA recognizes that this proposal could transfer burden from (or add burden to) existing information collections such as those related to training or equipment maintenance. However, MSHA is requesting a new OMB Control Number until the Agency determines how the burden under this proposal would affect MSHA's existing information collections. Using the data from the E.O. 12866 analysis, MSHA estimates that 5,027 respondents (mine operators employing six or more miners) would incur an average annual collection burden of 5,027 responses, 100,540 hours, with an annual burden cost estimate of $4.8 million. The MSHA enforcement staff would not review all written programs, but any program review would be part of routine mine inspections and therefore there is no new federal cost. Table 12 shows the anticipated first three years of collection burden.

TABLE 12—RECORDKEEPING BURDEN OF PROPOSED RULE

Year	Item description	Hours per task	Respondents (mines)	Burden hours	Hourly rate (with Benefits)	Hour burden cost ($ Millions)
1	Development of a written safety program	20	5,027	100,540	$65.10	$6.5
1	Clerical assistance to finalize written program.	30	5,027	150,810	31.46	4.7
2	Annual review, plan revision, and update due to changes in workplace activities.	5	5,027	25,135	65.10	1.6

[7] See *https://www2.census.gov/programs-surveys/susb/tables/2017/us_6digitnaics_2017.xlsx* for the available data.

TABLE 12—RECORDKEEPING BURDEN OF PROPOSED RULE—Continued

Year	Item description	Hours per task	Respondents (mines)	Burden hours	Hourly rate (with Benefits)	Hour burden cost ($ Millions)
3	Annual review, plan revision, and update due to changes in workplace activities.	5	5,027	25,135	65.10	1.6
3-Year Total		60	5,027	301,620	NA	14.4
Annual Average		20	5,027	100,540	NA	4.8

B. Procedural Details

The information collection package for this proposal has been submitted to OMB for review under 44 U.S.C. 3504, paragraph (c) of the Paperwork Reduction Act of 1995, as amended. Comments on the information collection requirements should be sent to both OMB and MSHA. Addresses for both offices can be found in the **ADDRESSES** section of this preamble.

MSHA is soliciting comments concerning the proposed information collection related to written safety programs. MSHA is particularly interested in comments that address the following:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

VII. Regulatory Alternative

MSHA considered requiring all mines, regardless of size, to develop and implement a written safety program for surface mobile equipment used at surface mines and surface areas of underground mines. Between 2013 and 2018, mines with five or fewer miners experienced 10 fatalities related to surface mobile equipment, whereas mines with six or more miners experienced 109 related fatalities during the same time period.

If those mines with five or fewer miners were required to develop and implement a written safety program, they would incur substantial costs. MSHA estimates that there are 7,254 mines with five or fewer miners. The preliminary projected costs for this group of mines would add up to approximately undiscounted cost of $170 million over a ten-year period. These mines would incur a start up cost of $ 64.6 million in the first year and an annual cost of $11.7 over the subsequent 9 years.

Based on the Agency's experience, MSHA concluded that a mine operator with five or fewer miners would generally have a limited inventory of surface mobile equipment. These operators would also have less complex mining operations, with fewer mobile equipment hazards that would necessitate a written safety program. Also, at these small mines, safety can be communicated more effectively through face to face communication rather than in writing. Taken together, MSHA has determined that mine operators employing five or fewer miners would not be required to have a written safety program, although the Agency would assist these mine operators with promoting a safety culture in a variety of ways. Fuller discussions can be found in the Preliminary Regulatory Impact Analysis in the proposed rule docket at *https://www.regulations.gov/docket?D=MSHA-2018-0016* and are posted on MSHA's website at *https://www.msha.gov.* MSHA also solicits comments on the Agency's determination.

VIII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Act) (2 U.S.C. 1501 *et seq.*) 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 state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) or more in any one year. This proposed rule would not result in such an expenditure. Accordingly, the Unfunded Mandates Reform Act requires no further Agency action or analysis.

B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of Agency action on family well-being. MSHA has determined that the proposal would not have an effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. Accordingly, MSHA certifies that this proposed rule would not impact family well-being.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

Section 5 of E.O. 12630 requires federal agencies to ''identify the takings implications of final regulatory actions. . . .'' MSHA has determined that the proposal would not include a regulatory or policy action with takings implications. Accordingly, E.O. 12630 requires no further Agency action or analysis.

D. Executive Order 12988: Civil Justice Reform

Section 3 of E.O. 12988 contains requirements for federal agencies promulgating new regulations or reviewing existing regulations to minimize litigation by eliminating drafting errors and ambiguity, providing a clear legal standard for affected conduct rather than a general standard, promoting simplification, and reducing burden. MSHA has reviewed the proposal and has determined that it would meet the applicable standards provided in E.O. 12988 to minimize litigation and undue burden on the federal court system.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

MSHA has determined that the proposal would not have an adverse impact on children. Accordingly, E.O. 13045 requires no further Agency action or analysis.

F. Executive Order 13132: Federalism

MSHA has determined that the proposal would not have federalism implications because it would 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. Accordingly, E.O. 13132 requires no further Agency action or analysis.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

MSHA has determined that the proposal would not have tribal implications because it would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Accordingly, E.O. 13175 requires no further Agency action or analysis.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

E.O. 13211 requires agencies to publish a statement of energy effects when a rule has a significant energy action that adversely affects energy supply, distribution, or use. MSHA reviewed the proposal for its energy effects on the production of coal and uranium mining. The proposal would result in annualized costs of approximately $16.7 million to covered surface mines and surface areas of underground mines. The Energy Information Administration's annual uranium report for 2018 shows, ''Owners and operators of U.S. civilian nuclear power reactors (civilian owner/operators, or COOs) purchased a total of 43 million pounds U3O8e (equivalent) of deliveries from U.S. suppliers and foreign suppliers during 2017, at a weighted-average price of $38.80 per pound,'' which is approximately $1.7 billion. Given that domestic nuclear plants represent only 19.3 percent of the U.S. electrical production and using average annual costs of the entire proposal, the impact to the domestic energy production could not reach 1 percent. Coal mining industry has an annual revenue of $27.2 billion (See Table 2). Under this proposal, annual costs impacting the total coal production of 756 million tons would not affect national energy production costs by more than 1 percent or reduce annual coal production by 5 million tons. MSHA has concluded that it is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, under this analysis, no further Agency action or analysis is required.

IX. References

American Society of Safety Professionals (ASSP), Occupational Health and Safety Management Systems, ANSI/ASSP Z10–2012, (R2017).

International Standards Organization (ISO), Occupational Health and Safety Management Systems—Requirements With Guidance for Use (ISO 45001:2018). Occupational Health and Safety Assessment Series (OHSAS) 18001.

List of Subjects

30 CFR Parts 56 and 57

Metal and nonmetal mining, Mine safety and health, Surface mining, Mobile equipment safety program, Reporting and recordkeeping requirements, and Underground mining.

30 CFR Part 77

Coal mining, Mine safety and health, Surface mining, Mobile equipment safety program, Reporting and recordkeeping requirements, and Underground mining.

Patricia W. Silvey,

Deputy Assistant Secretary of Labor for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response Act of 2006, MSHA is proposing to amend chapter I of title 30 of the Code of Federal Regulations as follows:

PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 2. Add subpart T to Part 56 to read as follows:

Subpart T—Safety Program For Surface Mobile Equipment

Sec.

56.23000 Purpose and scope.
56.23001 Definitions.
56.23002 Written safety program.
56.23003 Requirements for written safety program.
56.23004 Record and inspection.

§ 56.23000 Purpose and scope.

This subpart requires mine operators employing six or more miners to develop, implement, and update a written safety program for surface mobile equipment to reduce the number and rates of accidents, injuries, and fatalities. This subpart applies to surface mobile equipment at surface metal and nonmetal mines. The purpose of this safety program is to promote and support a positive safety culture and improve miners' safety at the mine.

§ 56.23001 Definitions.

The following definitions apply in this subpart—

Responsible person means a person with authority and responsibility to evaluate and update a written safety program for surface mobile equipment.

Surface mobile equipment means wheeled, skid-mounted, track-mounted, or rail-mounted equipment capable of moving or being moved, and any powered equipment that transports people, equipment, or materials, excluding belt conveyors, at surface metal and nonmetal mines.

§ 56.23002 Written safety program.

(a) Each operator subject to this subpart shall develop and implement a written safety program for surface mobile equipment that contains the elements in this subpart, no later than [DATE 6 months after the effective date of the final rule].

(b) Each operator subject to this subpart shall designate a responsible person to evaluate and update the written safety program, no later than [DATE 6 months after the effective date of the final rule].

§ 56.23003 Requirements for written safety program.

(a) The mine operator shall develop and implement a written safety program that includes actions the operator would take to:

(1) Identify and analyze hazards and reduce the resulting risks related to the movement and the operation of surface mobile equipment;

(2) develop and maintain procedures and schedules for routine maintenance and non-routine repairs for surface mobile equipment;

(3) identify currently available and newly emerging feasible technologies that can enhance safety at the mine and evaluate whether to adopt them; and

(4) train miners and other persons at the mine necessary to perform work to identify and address or avoid hazards related to surface mobile equipment.

(b) The responsible person shall evaluate and update the written safety program annually or as mining conditions or practices change, as accidents or injuries occur, or as surface mobile equipment changes or modifications are made.

§ 56.23004 Record and inspection.

The mine operator shall make the written safety program available for inspection by authorized representatives of the Secretary, miners, and representatives of miners, and provide a copy, upon request.

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

■ 3. The authority citation for Part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 4. Add subpart U to part 57 to read as follows:

Subpart U—Safety Program for Surface Mobile Equipment

Sec.
57.23000 Purpose and scope.
57.23001 Definitions.
57.23002 Written safety program.
57.23003 Requirements for written safety program.
57.23004 Record and inspection.

§ 57.23000 Purpose and scope.

This subpart requires mine operators employing six or more miners to develop, implement, and update a written safety program for surface mobile equipment to reduce the number and rates of accidents, injuries, and fatalities. This subpart applies to surface mobile equipment at surface areas of underground metal and nonmetal mines. The purpose of this safety program is to promote and support a positive safety culture and improve miners' safety at the mine.

§ 57.23001 Definitions.

The following definitions apply in this subpart—

Responsible person means a person with authority and responsibility to evaluate and update a written safety program for surface mobile equipment.

Surface mobile equipment means wheeled, skid-mounted, track-mounted, or rail-mounted equipment capable of moving or being moved, and any powered equipment that transports people, equipment, or materials, excluding belt conveyors, at surface areas of underground metal and nonmetal mines.

§ 57.23002 Written safety program.

(a) Each operator subject to this subpart shall develop and implement a written safety program for surface mobile equipment that contains the elements in this subpart, no later than [DATE 6 months after the effective date of the final rule].

(b) Each operator subject to this subpart shall designate a responsible person to evaluate and update the written safety program, no later than [DATE 6 months after the effective date of the final rule].

§ 57.23003 Requirements for written safety program.

(a) The mine operator shall develop and implement a written safety program that includes actions the operator would take to:

(1) Identify and analyze hazards and reduce the resulting risks related to the movement and the operation of surface mobile equipment;

(2) develop and maintain procedures and schedules for routine maintenance and non-routine repairs for surface mobile equipment;

(3) identify currently available and newly emerging feasible technologies that can enhance safety at the mine and evaluate whether to adopt them; and

(4) train miners and other persons at the mine necessary to perform work to identify and address or avoid hazards related to surface mobile equipment.

(b) The responsible person shall evaluate and update the written safety program annually or as mining conditions or practices change, as accidents or injuries occur, or as surface mobile equipment changes or modifications are made.

§ 57.23004 Record and inspection.

The mine operator shall make the written safety program available for inspection by authorized representatives of the Secretary, miners, and representatives of miners, and provide a copy, upon request.

PART 77—MANDATORY SAFETY STANDARDS, SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

■ 5. The authority citation for part 77 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 6. Add subpart V to part 77 to read as follows:

Subpart V—Safety Program for Surface Mobile Equipment

Sec.
77.2100 Purpose and scope.
77.2101 Definitions.
77.2102 Written safety program.
77.2103 Requirements for written safety program.
77.2104 Record and inspection.

§ 77.2100 Purpose and scope.

This subpart requires mine operators employing six or more miners to develop, implement, and update a written safety program for surface mobile equipment to reduce the number and rates of accidents, injuries, and fatalities. This subpart applies to surface mobile equipment at surface coal mines and surface work areas of underground coal mines. The purpose of this safety program is to promote and support a positive safety culture and improve miners' safety at the mine.

§ 77.2101 Definitions.

The following definitions apply in this subpart—

Responsible person means a person with authority and responsibility to evaluate and update a written safety program for surface mobile equipment.

Surface mobile equipment means wheeled, skid-mounted, track-mounted, or rail-mounted equipment capable of moving or being moved, and any powered equipment that transports people, equipment, or materials, excluding belt conveyors, at surface coal mines and surface work areas of underground coal mines.

§ 77.2102 Written safety program.

(a) Each operator subject to this subpart shall develop and implement a written safety program for surface mobile equipment that contains the elements in this subpart, no later than [DATE 6 months after effective date of the final rule].

(b) Each operator subject to this subpart shall designate a responsible person to evaluate and update the written safety program, no later than [DATE 6 months after effective date of the final rule].

§ 77.2103 Requirements for written safety program.

(a) The mine operator shall develop and implement a written safety program that includes actions the operator would take to:

(1) Identify and analyze hazards and reduce the resulting risks related to the movement and the operation of surface mobile equipment;

(2) develop and maintain procedures and schedules for routine maintenance

and non-routine repairs for surface mobile equipment;

(3) identify currently available and newly emerging feasible technologies that can enhance safety at the mine and evaluate whether to adopt them; and

(4) train miners and other persons at the mine necessary to perform work to identify and address or avoid hazards related to surface mobile equipment.

(b) The responsible person shall evaluate and update the written safety program annually or as mining conditions or practices change, as accidents or injuries occur, or as equipment changes or modifications are made.

§ 77.2104 Record and inspection.

The mine operator shall make the written safety program available for inspection by authorized representatives of the Secretary, miners, and representatives of miners, and provide a copy, upon request.

[FR Doc. 2021–18791 Filed 9–8–21; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AQ95

Update and Clarify Regulatory Bars to Benefits Based on Character of Discharge

AGENCY: Department of Veterans Affairs.

ACTION: Request for information; notification of listening sessions.

SUMMARY: The Department of Veterans Affairs (VA) is requesting information to assist in the modification of the regulatory framework for discharges considered ''dishonorable'' for VA benefit eligibility purposes. On July 10, 2020, VA published a proposed rule for public notice and comment. The proposed rule would modify VA regulations governing VA character of discharge determinations based on ''willful and persistent misconduct,'' ''moral turpitude,'' and ''homosexual acts involving aggravating circumstances or other factors affecting the performance of duty.'' In addition, the proposed rule would create a ''compelling circumstances'' exception to certain regulatory bars to benefits in order to ensure fair character of discharge determinations in light of all pertinent factors. Following publication, VA received numerous public comments. Due to the various and differing comments received, VA is seeking additional information to help inform VA's development of updated character of discharge regulations. Additionally, VA is announcing a virtual listening session to further seek verbal feedback from a variety of entities as VA implements this regulation. Regardless of attendance at the virtual listening session, interested parties are invited to submit comments, including data and research.

DATES: Comments on this request for information must be received by VA on or before October 12, 2021. VA will also hold the first public virtual listening session on October 5, 2021, and the second public virtual listening session on October 6, 2021. Each meeting will start at 8:50 a.m. and conclude at or before 4:15 p.m. Eastern Daylight Time. Virtual check-in will begin at 8 a.m.

ADDRESSES: Comments must be submitted through *www.Regulations.gov* and will be available for public viewing, inspection, or copies.

The virtual listening sessions will be held virtually as WebEx events and will be open to the public to listen on a first come, first served basis. Information about the meeting and registration to speak or listen can be obtained by emailing: *CODRegistration.VBACO@va.gov.* Virtual attendance will be limited to the maximum allowed by WebEx.

FOR FURTHER INFORMATION CONTACT: Robert Parks, Chief, Part 3 Forms and Regulations (211D), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–461–9540 (This is not a toll-free telephone number).

SUPPLEMENTARY INFORMATION:

Background

On July 10, 2020 (85 FR 41471), VA published a proposed rule in the **Federal Register** to amend 38 CFR 3.12 by updating and clarifying the regulatory bars to benefits. Specifically, VA proposed to modify the regulatory framework for discharges considered ''dishonorable'' for VA benefit eligibility purposes, such as discharges due to ''willful and persistent misconduct,'' ''an offense involving moral turpitude,'' and ''homosexual acts involving aggravating circumstances or other factors affecting the performance of duty.'' VA also proposed to extend a ''compelling circumstances'' exception to certain regulatory bars to benefits in order to ensure fair character of discharge determinations in light of all pertinent factors.

VA invited interested persons to submit written comments on or before September 8, 2020. VA received over 70 comments in response to the proposed rule. Over 20 of those comments were from organizations and the rest were from individual members of the public. Those organizations included: (1) American Psychological Association, (2) Charlotte Center for Legal Advocacy, (3) Homeless Advocacy Project, (4) Homeless Persons Representation Project, Inc., (5) Inner City Law Center, (6) Legal Aid Foundation of Los Angeles, (7) Lewis B. Puller Veterans Benefits Clinic of William & Mary Law School, (8) Modern Military Association of America, (9) National Law School Veterans Clinic Consortium, (10) National Organization of Veterans' Advocates, Inc., (11) National Veterans Legal Services Program, (12) New York State Division of Veterans Services, (13) NY Legal Assistance Group, (14) Ohio Veterans Law Task Force, (15) Public Counsel Center for Veterans Advancement, (16) Swords to Plowshares, (17) The Jerome N. Frank Legal Services Organization, (18) The Minority Veterans of America (MVA), (19) The National Coalition for Homeless Veterans, (20) The National Veterans Council for Legal Redress, (21) University of Florida Levin College of Law Veterans and Servicemembers Legal Clinic, (22) Veterans Advocacy Project, (23) Veterans Clinic at the University of Missouri School of Law, (24) Veterans Healthcare Policy Institute, (25) Veterans Legal Services, and (26) Vietnam Veterans of America. Individual comments were also received from U.S. Senators Richard Blumenthal, Jon Tester, and Sherrod Brown.

This additional request for information, described in more detail below, will assist VA in gathering and taking into account diverse viewpoints on this issue. Responses to this request for information will be used to help inform VA's development of updated character of discharge regulations. This request for information has a written comment period of 30 days, during which VA invites individuals, groups, and entities to reply to the questions presented below. VA believes that 30 days is sufficient to provide comments, as the individuals, groups, and entities interested in this program likely have information and opinions readily available or can quickly compile and submit such information. Commenters are encouraged to provide complete but concise responses to the questions outlined below.

VA will also be holding virtual public listening sessions on October 5, 2021, and October 6, 2021, to provide groups and entities an opportunity to share additional information. Oral comments, testimonies, and technical remarks are encouraged to be concise and directed

toward specific Request for Information topics below. Please note that VA will evaluate all comments (oral and written) and, as appropriate, incorporate them into VA's next action.

Request for Information

To update its character of discharge regulations, VA seeks information on the topics and issues listed below. Commenters do not need to address every question and should focus on those that relate to their expertise or perspectives. Commenters should clearly indicate which topics and issues are being addressed in their response.

A. Compelling Circumstances

1. VA proposed to consider, as a factor in a ''compelling circumstances'' analysis, the impact of mental impairment at the time of the prolonged absence without leave (AWOL) or misconduct, to include a diagnosis of (or evidence that could later be medically determined to demonstrate the existence of) certain enumerated mental disabilities. Some commenters felt that the list of disabilities was overinclusive; some felt that it was underinclusive. VA seeks comment on the following question: What conditions, symptoms, or circumstances if any, should VA consider when determining the impact of mental impairment at the time of the prolonged AWOL or misconduct?

2. VA proposed to consider, as a factor in a ''compelling circumstances'' analysis, ''Sexual abuse/assault.'' Should VA employ a different or additional term for this category, such as ''Military Sexual Trauma (MST)''? Also, should VA include language reminding adjudicators to look beyond service records to corroborate the account of an in-service personal assault, as provided in 38 CFR 3.304(f)(5)?

B. Willful and Persistent Misconduct

VA noted in the proposed rulemaking that ''willful misconduct'' is already defined in 38 CFR 3.1(n) as ''an act involving conscious wrongdoing or known prohibited action''—*i.e.,* the act involves deliberate or intentional wrongdoing with knowledge of or wanton and reckless disregard of its probable consequences. VA then proposed to clarify what circumstances qualify as ''willful and persistent misconduct'' in proposed 38 CFR 3.12(d)(2)(ii), with reference to certain timelines for ''minor misconduct'' and ''more serious misconduct''. VA seeks comments on the following questions:

1. Should VA proceed with a distinction between ''minor misconduct'' and ''more serious misconduct'' when evaluating whether misconduct is persistent? Should VA define what is considered ''serious misconduct?'' Should VA only consider an action to be ''misconduct'' if it actually caused harm to a person or property or should VA consider all misconduct, regardless of severity, in its determination? Should VA consider extenuating circumstances that may have led to or impacted the ''misconduct'' at issue?

2. Some commenters requested that VA clarify the number of incidents required to constitute willful and persistent misconduct. How many instances over what period of time should be considered persistent? Should the totality of the circumstances be considered in addition to the number of incidents when determining misconduct to be willful and persistent?

C. Moral Turpitude

Some commenters expressed concern that the proposed rule's definition of moral turpitude is too vague. VA seeks comments on the following questions:

1. VA regulation currently does not define moral turpitude, but states in 38 CFR 3.12(d)(3) that it includes ''generally, conviction of a felony.'' VA's proposed rule would define moral turpitude as a '''willful act that gravely violates accepted moral standards and would be expected to cause harm or loss to person or property.'' Should VA revise this proposed definition, and if so, how?

D. Benefit Eligibility

VA seeks comments on the following questions regarding former service members and the bars to VA benefits:

1. Some commenters recommended that VA only apply statutory bars to benefits (those enumerated in 38 U.S.C. 5303(a)); others expressed concerns about how such an approach would affect military order and discipline. How (if at all) would removing the regulatory bars affect military order and discipline?

2. Some commenters suggested that granting benefits to those with less than honorable discharges denigrates others' honorable service. How (if at all) would extending VA benefits eligibility denigrate others' honorable service?

3. VA is committed to ensuring that its character of discharge regulations reflect the principles of fairness, inclusion, and justice that our Service members and our Nation deserves. What specific changes can be made to the proposed rule for fairly adjudicating the benefits eligibility of historically disadvantaged and vulnerable populations?

Listening Session Registration

Information about the meeting, how to listen and/or register to speak can be obtained by emailing: *CODRegistration.VBACO@va.gov.*

Individual registration: VA encourages individual registrations for those wishing to speak who are not affiliated with or representing a group, association, or organization.

Group registration: Identification of the name of the group, association, or organization should be indicated in your registration request. Due to virtual platform meeting limitations of WebEx, and the statutory mandate that VA consult with certain entities, VA may select certain entities to speak or may limit the size of a group's registration to allow receipt of testimonies, and/or technical remarks from a broad, diverse group of stakeholders. Oral comments, testimonies, and/or technical remarks may be limited from a group, association, or organization with more than two individuals representing the same group, association, or organization. Efforts will be made to accommodate all attendees who wish to participate. The length of time allotted for participants to provide oral comments, testimonies, and/or technical remarks during the meeting will be no more than ten minutes, and is subject to the total number of participants speaking, to ensure time is allotted to selected registered speakers. Breaks between speakers will be ten minutes. There will be no opportunity for audio-visual presentations during the meeting.

Audio (For listening purposes only): Virtual attendance will be limited to the maximum allowed by WebEx on a first come, first served basis. Advanced registration is not required. Audio attendees will not be allowed to offer oral comments, testimonies, and/or technical remarks as the phone line will be muted.

Note: Should it be necessary to cancel the meeting due to technical issues or other emergencies, VA will take available measures to notify registered participants. VA will conduct the public meeting informally, and technical rules of evidence will not apply. VA will arrange for a written transcript of the meeting and keep the official record open until the closure of the Request For Information comment period to allow submission of supplemental information. The transcript will be posted in the docket of the rule as part of the official record when the rule is published.

Each listening session will focus on the Request for Information topics described in this notice and will be scheduled according to the following Agendas:

Listening Session 1

Virtual Public Listening Sessions 1 (October 5, 2021)

Agenda

08:00–08:50 Arrival/Check-In
09:00–12:00 Morning Public Meeting Session
12:00–13:00 Break
13:00–16:10 Afternoon Public Meeting Session
16:15 Adjourn

Listening Session 2

Virtual Public Listening Sessions 2 (October 6, 2021)

Agenda

08:00–08:50 Arrival/Check-In
08:50–12:00 Morning Public Meeting Session
12:00–13:00 Break
13:00–16:10 Afternoon Public Meeting Session
16:15 Adjourn

Paperwork Reduction Act

This request for information constitutes a general solicitation of public comments as stated in the implementing regulations of the Paperwork Reduction Act of 1995 at 5 CFR 1320.3(h)(4). Therefore, this request for information does not impose information collection requirements (*i.e.,* 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.*).

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on July 7, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2021–19413 Filed 9–8–21; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1995–0002, EPA–HQ–OLEM–2021–0454, 0456, 0457, 0458, 0459, 0460, 0461, 0462, 0463, 0464, 0465, 0466 and 0467; FRL–8886–01–OLEM]

National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the agency'') in determining which sites warrant further investigation. These further investigations will allow the EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add 12 sites to the General Superfund section and one site to the Federal Facilities section of the NPL. This document also withdraws a previous proposal for NPL addition.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before November 8, 2021.

As of September 9, 2021, the proposed rule published at 60 FR 8212 (February 13, 1995), is withdrawn.

ADDRESSES: Identify the appropriate docket number from the table below.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, state	Docket ID No.
Westside Lead	Atlanta, GA	EPA–HQ–OLEM–2021–0454
North 5th Street Groundwater Contamination	Goshen, IN	EPA–HQ–OLEM–2021–0456
Lower Neponset River	Boston/Milton, MA	EPA–HQ–OLEM–2021–0457
Bear Creek Sediments	Baltimore County, MD	EPA–HQ–OLEM–2021–0458
Michner Plating—Mechanic Street	Jackson, MI	EPA–HQ–OLEM–2021–0459
Southeast Hennepin Area Groundwater and Vapor	Minneapolis, MN	EPA–HQ–OLEM–2021–0460
Meeker Avenue Plume	Brooklyn, NY	EPA–HQ–OLEM–2021–0461
Bradford Island	Cascade Locks, OR	EPA–HQ–OLEM–2021–0462
Ochoa Fertilizer Co	Guánica, PR	EPA–HQ–OLEM–2021–0463
Galey and Lord Plant	Society Hill, SC	EPA–HQ–OLEM–2021–0464
National Fireworks	Cordova, TN	EPA–HQ–OLEM–2021–0465
Unity Auto Mart	Unity, WI	EPA–HQ–OLEM–2021–0466
Paden City Groundwater	Paden City, WV	EPA–HQ–OLEM–2021–0467

You may send comments, identified by the appropriate docket number, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Agency Website: https://www.epa.gov/superfund/current-npl-updates-new-proposed-npl-sites-and-new-npl-sites;* scroll down to the site for which you would like to submit comments and click the ''Comment Now'' link.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Superfund Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30

a.m.–4:30 p.m., Monday–Friday (except Federal holidays).

Instructions: All submissions received must include the appropriate Docket ID No. for site(s) for which you are submitting comments. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Review/Public Comment'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (703) 603–8852, email: *jeng.terry@epa.gov,* Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation, Mail code 5204P, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Public Review/Public Comment
- A. May I review the documents relevant to this proposed rule?
- B. How do I access the documents?
- C. What documents are available for public review at the EPA Headquarters docket?
- D. What documents are available for public review at the EPA regional dockets?
- E. How do I submit my comments?
- F. What happens to my comments?
- G. What should I consider when preparing my comments?
- H. May I submit comments after the public comment period is over?
- I. May I view public comments submitted by others?
- J. May I submit comments regarding sites not currently proposed to the NPL?

II. Background
- A. What are CERCLA and SARA?
- B. What is the NCP?
- C. What is the National Priorities List (NPL)?
- D. How are sites listed on the NPL?
- E. What happens to sites on the NPL?
- F. Does the NPL define the boundaries of sites?
- G. How are sites removed from the NPL?
- H. May the EPA delete portions of sites from the NPL as they are cleaned up?
- I. What is the Construction Completion List (CCL)?
- J. What is the Sitewide Ready for Anticipated Use measure?
- K. What is state/tribal correspondence concerning NPL listing?

III. Contents of This Proposed Rule
- A. Proposed Additions to the NPL
- B. Withdrawal of Previous Proposal for NPL Addition

IV. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs
- C. Paperwork Reduction Act (PRA)
- D. Regulatory Flexibility Act (RFA)
- E. Unfunded Mandates Reform Act (UMRA)
- F. Executive Order 13132: Federalism
- G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- J. National Technology Transfer and Advancement Act (NTTAA)
- K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. Public Review/Public Comment

A. May I review the documents relevant to this proposed rule?

Yes, documents that form the basis for the EPA's evaluation and scoring of the sites in this proposed rule are contained in public dockets located both at the EPA Headquarters in Washington, DC, and in the regional offices. These documents are also available by electronic access at *https://www.regulations.gov* (see instructions in the **ADDRESSES** section above).

B. How do I access the documents?

The EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

The following is the contact information for the EPA dockets: Mail comments to the EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the regional dockets is as follows:

- Holly Inglis, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; 617/918–1413.
- James Desir, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4342.
- Lorie Baker (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3HS12, Philadelphia, PA 19103; 215/814–3355.
- Sandra Bramble, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW, Mailcode 9T25, Atlanta, GA 30303; 404/562–8926.
- Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.
- Michelle Delgado-Brown, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1201 Elm Street, Suite 500, Mailcode SED, Dallas, TX 75270; 214/665–3154.
- Kumud Pyakuryal, Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mailcode SUPRSTAR, Lenexa, KS 66219; 913/551–7956.
- Victor Ketellapper, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303/312–6578.
- Eugenia Chow, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD 6–1, San Francisco, CA 94105; 415/972–3160.
- Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Suite 155, Mailcode 12–D12–1, Seattle, WA 98101; 206/890–0591.

You may also request copies from the EPA Headquarters or the regional dockets. An informal request, rather than a formal written request under the

Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents. Please note that due to the difficulty of reproducing them, oversized maps may be viewed only in-person; since the EPA dockets are not equipped to both copy and mail out such maps or scan them and send them out electronically.

You may use the docket at *https://www.regulations.gov* to access documents in the Headquarters docket. Please note that there are differences between the Headquarters docket and the regional dockets and those differences are outlined in this preamble below.

C. What documents are available for public review at the EPA Headquarters docket?

The Headquarters docket for this proposed rule contains the following information for the sites proposed in this rule: Hazard Ranking System (HRS) score sheets; documentation records describing the information used to compute the score; information for any sites affected by particular statutory requirements or the EPA listing policies; and a list of documents referenced in the documentation record.

D. What documents are available for public review at the EPA regional dockets?

The regional dockets for this proposed rule contain all of the information in the Headquarters docket plus the actual reference documents containing the data principally relied upon and cited by the EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the regional dockets.

E. How do I submit my comments?

Follow the online instructions detailed above in the **ADDRESSES** section for submitting comments. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

F. What happens to my comments?

The EPA considers all comments received during the comment period. Significant comments are typically addressed in a support document that the EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What should I consider when preparing my comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that the EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas,* 849 F.2d 1516 (D.C. Cir. 1988)). The EPA will not address voluminous comments that are not referenced to the HRS or other listing criteria. The EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in the EPA's stated eligibility criteria is at issue.

H. May I submit comments after the public comment period is over?

Generally, the EPA will not respond to late comments. The EPA can guarantee only that it will consider those comments postmarked by the close of the formal comment period. The EPA has a policy of generally not delaying a final listing decision solely to accommodate consideration of late comments.

I. May I view public comments submitted by others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the regional dockets approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper form, will be made available for public viewing in the electronic public docket at *https://www.regulations.gov* as the EPA receives them and without change, unless the comment contains copyrighted material, CBI or other information whose disclosure is restricted by statute. Once in the public dockets system, select ''search,'' then key in the appropriate docket ID number.

J. May I submit comments regarding sites not currently proposed to the NPL?

In certain instances, interested parties have written to the EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

II. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, the EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. The EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose

of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by the EPA (the ''General Superfund section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities section''). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody or control, although the EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which the EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), the EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. On January 9, 2017 (82 FR 2760), a subsurface intrusion component was added to the HRS to enable the EPA to consider human exposure to hazardous substances or pollutants and contaminants that enter regularly occupied structures through subsurface intrusion when evaluating sites for the NPL. The current HRS evaluates four pathways: Ground water, surface water, soil exposure and subsurface intrusion, and air. As a matter of agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each state may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each state as the greatest danger to public health, welfare or the environment among known facilities in the state. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- The EPA determines that the release poses a significant threat to public health.
- The EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

The EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' The EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the ''Jones Co. Plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.,* where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination; and is not meant to constitute any determination of liability at a site. For example, the name

''Jones Co. Plant site,'' does not imply that the Jones Company is responsible for the contamination located on the plant site.

The EPA regulations provide that the remedial investigation (''RI'') ''is a process undertaken . . . to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the feasibility Study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted previously, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

The EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that the EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment and taking of remedial measures is not appropriate.

H. May the EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, the EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the Construction Completion List (CCL)?

The EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) the EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.,* institutional controls); or (3) the site qualifies for deletion from the NPL. For more information on the CCL, see the EPA's internet site at *https://www.epa.gov/superfund/construction-completions-national-priorities-list-npl-sites-number*.

J. What is the Sitewide Ready for Anticipated Use measure?

The Sitewide Ready for Anticipated Use measure (formerly called Sitewide Ready-for-Reuse) represents important Superfund accomplishments and the measure reflects the high priority the EPA places on considering anticipated future land use as part of the remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, Office of Solid Waste and Emergency Response (OSWER) 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *https://www.epa.gov/superfund/about-superfund-cleanup-process#reuse*.

K. What is state/tribal correspondence concerning NPL listing?

In order to maintain close coordination with states and tribes in the NPL listing decision process, the EPA's policy is to determine the position of the states and tribes regarding sites that the EPA is considering for listing. This consultation process is outlined in two memoranda that can be found at the following website: *https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing*.

The EPA has improved the transparency of the process by which state and tribal input is solicited. The EPA is using the web and where appropriate more structured state and tribal correspondence that (1) explains the concerns at the site and the EPA's rationale for proceeding; (2) requests an explanation of how the state intends to address the site if placement on the NPL is not favored; and (3) emphasizes the transparent nature of the process by informing states that information on their responses will be publicly available.

A model letter and correspondence between the EPA and states and tribes where applicable, is available on the EPA's website at *https://www.epa.gov/superfund/statetribal-correspondence-concerning-npl-site-listing*.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

In this proposed rule, the EPA is proposing to add 13 sites to the NPL, 12 to the General Superfund section, and one to the Federal Facilities section. All of the sites in this rule are being proposed for NPL addition based on an HRS score of 28.50 or above.

The sites are presented in the tables below.

GENERAL SUPERFUND SECTION

State	Site name	City/county
GA	Westside Lead	Atlanta.
IN	North 5th Street Groundwater Contamination	Goshen.
MA	Lower Neponset River	Boston/Milton.

GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county
MD	Bear Creek Sediments	Baltimore County.
MI	Michner Plating—Mechanic Street	Jackson.
MN	Southeast Hennepin Area Groundwater and Vapor	Minneapolis.
NY	Meeker Avenue Plume	Brooklyn.
PR	Ochoa Fertilizer Co	Guánica.
SC	Galey and Lord Plant	Society Hill.
TN	National Fireworks	Cordova.
WI	Unity Auto Mart	Unity.
WV	Paden City Groundwater	Paden City.

FEDERAL FACILITIES SECTION

State	Site name	City/county
OR	Bradford Island	Cascade Locks.

B. Withdrawal of Previous Proposal for NPL Addition

The EPA is withdrawing its previous proposal to add the Highway 71/72 Refinery site in Bossier City, Louisiana, to the NPL because cleanup is nearing completion via Federal, State, and potentially responsible party actions. CanadianOxy Offshore Production Co. (COPCO), which is represented by Glenn Springs Holding Inc. (GSHI), has been working with EPA and the Louisiana Department of Environmental Quality to clean up the contamination. GSHI completed the remedial action for lead in soil and light non-aqueous phase liquid (LNAPL) recovery as operational and functional in 2011. GSHI completed the remedial actions for benzene and polynuclear aromatic hydrocarbons (PAHs) in soil in 2018. EPA has determined that the cleanup for lead, benzene and PAHs in soil meets the remedial action objectives, remediation goals, and performance standards and that the dual-phase extraction system to remove LNAPL and contaminated groundwater is operational and functional. Operation and maintenance activities and monitoring are ongoing. The rule proposing to add this site to the NPL can be found at 60 FR 8212 (February 13, 1995). Refer to the Docket ID number EPA–HQ–SFUND–1995–0002 for supporting documentation regarding this action. Further supporting information can be found on the Superfund web page for this site at *https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.scs&id=0600641&doc=Y&colid=40643&region=06&type=SC.*

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This rule does not contain any information collection requirements that require approval of the OMB.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local, or tribal governments or the private sector. Listing a site on the NPL does not itself impose any costs. Listing does not mean that the EPA necessarily will undertake remedial action. Nor does listing require any action by a private party, state, local, or tribal governments or determine liability for response costs. Costs that arise out of site responses result from future site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL.

F. Executive Order 13132: Federalism

This rule does not have federalism implications. It 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.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those

regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because this action itself is procedural in nature (adds sites to a list) and does not, in and of itself, provide protection from environmental health and safety risks. Separate future regulatory actions are required for mitigation of environmental health and safety risks.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. As discussed in Section I.C. of the preamble to this action, the NPL is a list of national priorities. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance as it does not assign liability to any party. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 31, 2021.

Barry N. Breen,

Acting Assistant Administrator, Office of Land and Emergency Management.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 300 as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Amend appendix B of part 300 by:

■ a. In Table 1, adding entries for ''GA,'' ''Westside Lead'', ''IN,'' ''North 5th Street Groundwater Contamination'', ''MA,'' ''Lower Neponset River'', ''MD,'' ''Bear Creek Sediments'', ''MI,'' ''Michner Plating—Mechanic Street'', ''MN,'' ''Southeast Hennepin Area Groundwater and Vapor'', ''NY,'' ''Meeker Avenue Plume'', ''PR,'' ''Ochoa Fertilizer Co'', ''SC,'' ''Galey and Lord Plant'', ''TN,'' ''National Fireworks'', ''WI,'' ''Unity Auto Mart'', and ''WV,'' ''Paden City Groundwater'' in alphabetical order by state; and

■ b. In Table 2, adding the entry for ''OR,'' ''Bradford Island'' in alphabetical order by state.

The additions read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
*	*	*	*
GA	Westside Lead	Atlanta.	
*	*	*	*
IN	North 5th Street Groundwater Contamination	Goshen.	
*	*	*	*
MA	Lower Neponset River	Boston/Milton.	
*	*	*	*
MD	Bear Creek Sediments	Baltimore County.	
*	*	*	*
MI	Michner Plating—Mechanic Street	Jackson.	
*	*	*	*
MN	Southeast Hennepin Area Groundwater and Vapor	Minneapolis.	
*	*	*	*
NY	Meeker Avenue Plume	Brooklyn.	
*	*	*	*
PR	Ochoa Fertilizer Co	Guánica.	
*	*	*	*
SC	Galey and Lord Plant	Society Hill.	
*	*	*	*
TN	National Fireworks	Cordova.	

TABLE 1—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes [a]
*	*	*	*
WI	Unity Auto Mart	Unity.	
*	*	*	*
WV	Paden City Groundwater	Paden City.	
*	*	*	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

* * * * *

TABLE 2—FEDERAL FACILITIES SECTION

State	Site name	City/county	Notes [a]
*	*	*	*
OR	Bradford Island	Cascade Locks.	
*	*	*	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50).

* * * * *

[FR Doc. 2021–19192 Filed 9–8–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 281 and 282

[EPA–R04–UST–2020–0614; FRL–8816–01–R4]

Tennessee: Final Approval of State Petroleum Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Tennessee (Tennessee or State) has applied to the Environmental Protection Agency (EPA) for final approval of revisions to its Petroleum Underground Storage Tank Program (Petroleum UST Program) under subtitle I of the Resource Conservation and Recovery Act (RCRA). Pursuant to RCRA, the EPA is proposing to approve revisions to the Tennessee Petroleum UST Program. This action is based on the EPA's determination that the State's revisions satisfy all requirements for UST program approval. This action also proposes to codify Tennessee's revised Petroleum UST Program and to incorporate by reference the State statutes and regulations that we have determined meet the requirements for approval.

DATES: Comments on this proposed rule must be received on or before October 12, 2021.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R04–UST–2020–0614, by either of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Email: smith.wg@epa.gov.* Include the Docket ID No. EPA–R04–UST–2020–0614 in the subject line of the message.

Instructions: Submit your comments, identified by Docket ID No. EPA–R04–UST–2020–0614, via the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *https://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 whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit: *https://www.epa.gov/dockets/commenting-epa-dockets.*

Out of an abundance of caution for members of the public and our staff, the public's access to the EPA Region 4 Offices is by appointment only to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov* or via email. The EPA encourages electronic comment submittals, but if you are unable to submit electronically or need other assistance, please contact Winston Smith, the contact listed in the **FOR FURTHER INFORMATION CONTACT** provision below. The index of the docket and all publicly available docket materials for this action are available for review on the *https://www.regulations.gov* website. The EPA encourages electronic reviewing of these documents, but if you are unable to review these documents electronically, please contact Winston Smith to schedule an appointment to view the documents at the Region 4 Offices. Interested persons wanting to examine these documents should make an appointment at least two weeks in advance. EPA Region 4

requires all visitors to adhere to the COVID–19 protocol. Please contact Winston Smith for the COVID–19 protocol requirements for your appointment.

Please also contact Winston Smith 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 on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

FOR FURTHER INFORMATION CONTACT: Winston Smith, RCRA Programs and Cleanup Branch, Land, Chemicals, and Redevelopment Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; Phone number: (404) 562–9467, email address: *smith.wg@epa.gov.* Please contact Winston Smith by phone or email for further information.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

List of Subjects in 40 CFR Parts 281 and 282

Environmental protection, Administrative practice and procedure, Hazardous substances, Incorporation by reference, Indian country, Petroleum, Reporting and recordkeeping requirements, State program approval, Underground storage tanks.

Authority: This document is issued under the authority of sections 2002(a), 9004, and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Dated: August 30, 2021.

John Blevins,

Acting Regional Administrator, Region 4.

[FR Doc. 2021–19340 Filed 9–8–21; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 86, No. 172

Thursday, September 9, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2021–0016]

Notification of Availability of a Pest Risk Analysis for the Importation of Fresh Mango (Mangifera indica L.) Fruit From Grenada Into the United States

AGENCY: Animal and Plant Health Inspection Service, Agriculture (USDA).

ACTION: Notice of availability.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation of fresh mango fruit from Grenada into the United States. Based on the analysis, we have determined that the application of one or more phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh mango fruit from Grenada. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before November 8, 2021.

ADDRESSES: We will submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Enter APHIS–2021–0016 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2021–0016, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *www.regulations.gov* or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Marc E. Phillips, Senior Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 851–2114; *Marc.Phillips@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart L—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into or disseminated within the United States.

Section 319.56–4 contains a performance-based process for approving the importation of fruits and vegetables that, based on the findings of a pest risk analysis, can safely be imported subject to one or more of the five designated phytosanitary measures listed in paragraph (b) of that section.

APHIS received a request from the national plant protection organization (NPPO) of Grenada to allow the importation of fresh mango fruit (*Mangifera indica L.*) from Grenada into the United States. As part of our evaluation of Grenada's request, we have prepared a pest risk assessment (PRA) to identify the pests of quarantine significance that could follow the pathway of the importation of fresh mango fruit into the United States from Grenada. Based on the PRA, a commodity import evaluation document (CIED) was prepared to identify phytosanitary measures that could be applied to the fresh mango fruit to mitigate the pest risk.

Therefore, in accordance with § 319.56–4(c)(3), we are announcing the availability of our PRA and CIED for public review and comment. Those documents, as well as a description of the economic considerations associated with the importation of fresh mango fruit from Grenada, may be viewed on the *Regulations.gov* website or in our reading room (see **ADDRESSES** above for a link to the *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of the PRA and CIED by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the analysis you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding the import status of fresh mango fruit from Grenada in a subsequent notice. If the overall conclusions of our analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will authorize the importation of fresh mango fruit from Grenada into the United States subject to the requirements specified in the CIED.

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 2nd day of September, 2021.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–19497 Filed 9–8–21; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–133–2021]

Foreign-Trade Zone 49—Newark, New Jersey; Application for Subzone; Getinge Group Logistics Americas LLC; Dayton, New Jersey

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Port Authority of New York and New Jersey, grantee of FTZ 49, requesting subzone status for the facility of Getinge Group Logistics Americas LLC (GGLA), located in Dayton, New Jersey. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on September 2, 2021.

The proposed subzone (3.55 acres) is located at 2349 Route 130, Suite A,

Dayton, New Jersey. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 49.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is October 19, 2021. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 3, 2021.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov.*

Dated: September 2, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–19404 Filed 9–8–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 210823–0167]

RIN 0694–XC082

National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of the Proposed Fiscal Year 2023 Annual Materials Plan

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry; request for comments.

SUMMARY: The purpose of this notice is to request public comments on the potential market impact of the proposed Fiscal Year 2023 National Defense Stockpile Annual Materials Plan (AMP). Potential changes to the AMP are discussed and decided by the National Defense Stockpile Market Impact Committee, co-chaired by the Departments of Commerce and State. The role of this committee is to advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions, conversions, and disposals involving the National Defense Stockpile and related material research and development projects. Public comments are an important element of the committee's market impact review process.

DATES: To be considered, written comments must be received by October 12, 2021.

ADDRESSES: Address all comments concerning this notice to Eric Longnecker, U.S. Department of Commerce, Bureau of Industry and Security, Office of Strategic Industries and Economic Security, email: *MIC@bis.doc.gov;* and Matthew McManus, Deputy Director, Office of Policy Analysis and Public Diplomacy, U.S. Department of State, Bureau of Energy Resources, email: *McManusMT@state.gov.*

FOR FURTHER INFORMATION CONTACT: Marina Youssef, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, telephone: (202) 655–1136, (Attn: Marina Youssef), email: *MIC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the Strategic and Critical Materials Stock Piling Revision Act of 1979, as amended (the Stock Piling Act) (50 U.S.C. 98 *et seq.*), the Department of Defense's Defense Logistics Agency (DLA), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 9(b)(2)(G)(ii) of the Stock Piling Act (50 U.S.C. 98h(b)(2)(H)(ii)) authorizes the National Defense Stockpile Manager to fund material research and development projects to develop new materials for the stockpile.

Section 3314 of the National Defense Authorization Act for Fiscal Year 1993 (FY 1993 NDAA) (50 U.S.C. 98h–1) formally established a Market Impact Committee (the Committee) to ''advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile . . . .'' The Committee must also balance market impact concerns with the statutory requirement to protect the U.S. Government against avoidable loss. *See* 50 U.S.C. 98e (b)(2).

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, the Treasury, and Homeland Security, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to consult with industry representatives that produce, process, or consume the types of materials stored in the stockpile.

As the National Defense Stockpile Manager, the DLA must produce an Annual Materials Plan (AMP) proposing the maximum quantity of each listed material that may be acquired, disposed of, upgraded, converted, recovered, or sold by the DLA in a particular fiscal year. In Attachment 1 to this notice, the DLA lists the quantities and types of activity—potential disposals, potential acquisitions, potential conversions (upgrade, rotation, reprocessing, etc.) or potential recovery (from government sources)—associated with each material in its proposed FY 2023 AMP. The quantities listed in Attachment 1 are not acquisition, disposal, upgrade, conversion, recovery, reprocessing, or sales target quantities, but rather a statement of the proposed maximum quantity of each listed material that may be acquired, disposed of, upgraded, converted, recovered, or sold in a particular fiscal year by the DLA. The quantity of each material that will actually be acquired or offered for sale will depend on the market for the material at the time of the acquisition or offering, as well as on the quantity of each material approved by Congress for acquisition, disposal, conversion, or recovery.

The Committee is seeking public comments on the potential market impact associated with the proposed FY 2023 AMP as enumerated in Attachment 1. Public comments are an important element of the Committee's market impact review process.

Submission of Comments

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the quantities associated with the proposed FY 2023 AMP. All comments must be submitted to the addresses indicated in this notice. All comments submitted through email must include the phrase ''Market Impact Committee Notice of Inquiry'' in the subject line.

The Committee encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on October 12, 2021. The Committee will consider all comments received before the close of the comment period. Comments received after the comment

period closes will be considered, if possible, but their consideration cannot be assured.

All comments submitted in response to this notice will be made a matter of public record and will be available for public inspection and copying. Any person submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public record. The Committee will seek to protect such information to the extent permitted by law.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) website at *https://efoia.bis.doc.gov/.* This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this website, please call BIS's Office of Administration at (202) 482–1900 for assistance.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

Attachment 1

PROPOSED FISCAL YEAR 2023 ANNUAL MATERIALS PLAN

Material	Unit	Quantity	Footnote
Potential Disposals			
Beryllium Metal	ST	8	
Chromium, Ferro	ST	24,000	
Chromium, Metal	ST	500	
Germanium	kg	5,000	
Manganese, Ferro	ST	50,000	
Manganese, Metallurgical Grade	SDT	167,000	(1)
Aerospace Alloys	Lbs	1,500,000	
Platinum	Tr Oz	8,380	(1)
PGM—Iridium	Tr Oz	489	(1)
Quartz Crystals	Lbs	15,759	(1)
Tantalum	Lbs	190	(1)
Tin	MT	688	
Titanium Based Alloys	Lbs	600,000	
Tungsten Ores and Concentrates	Lbs W	2,500,000	
Zinc	ST	2,500	
Potential Acquisitions			
Antimony	MT	1,100	
Carbon Fibers (Pitch Based)	Lbs	5,000	
Cerium	MT	550	
Electrolytic Manganese Metal	MT	5,000	
Lanthanum	MT	1,300	
Neodymium	MT	600	
Praseodymium	MT	70	
Rare Earth Magnet Block	MT	100	
Rayon	MT	600	
Titanium	MT	1,500	
TNT/HMX/RDX	Lbs	4,000,000	
Potential Conversions (Upgrade, Rotation, Reprocessing, etc.)			
Beryllium Metal	ST	8	
CZT (Cadmium Zinc Tellurium substrates)	EA	5	
Carbon Fibers	Lbs	5,000	
Europium	MT	35	
Germanium	kg	5,000	
Iridium Catalyst	Lbs	200	
Lithium Ion Materials	MT	25	
Rare Earths Elements	MT	12	
Silicon Carbide Fibers	Lbs	875	
Triamino Trinitrobenzene (TATB)	Lbs	48,000	
Potential Recovery From Government Sources			
Aerospace Alloys	Lbs	1,500,000	
Battery Materials	MT	50	
Boron Carbide	MT	150	
Cobalt	Lbs	25,000	
E-Waste	MT	100	(2)
Germanium	kg	5,000	
Iridium Catalyst	Lbs	200	
Magnesium Metal	MT	25	
Rare Earths	Lbs	20,000	
Tantalum	MT	10	
Yttrium Aluminum Garnet Rods	kg	250	

Footnote Key:

[1] Actual quantity will be limited to remaining inventory.
[2] Strategic and Critical Materials collected from E-Waste (Strategic Materials collected from electronics waste).

[FR Doc. 2021–19415 Filed 9–8–21; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–844]

Steel Concrete Reinforcing Bar From Mexico: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that steel concrete reinforcing bar (rebar) from Mexico was sold in the United States at less than normal value during the period of review (POR), November 1, 2018, through October 31, 2019. In addition, Commerce determines that Ternium Mexico, S.A. de C.V. (Ternium) had no shipments of subject merchandise during the POR.

DATES: Applicable September 9, 2021.

FOR FURTHER INFORMATION CONTACT: David Lindgren, 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.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 2021, Commerce published the *Preliminary Results.*[1] On April 22, 2021, Commerce received case briefs on behalf of the petitioners [2] and Deacero S.A.P.I. de C.V. (Deacero). On April 29, 2021, the petitioners and Deacero submitted rebuttal briefs.

Commerce extended the deadline for the final results by 58 days on June 22, 2021.[3] The deadline for the final results of this review is now September 17, 2021. For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[4]

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 Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html/.*

Determination of No Shipments

As noted in the *Preliminary Results,* we received a no-shipment claim from Ternium. In the *Preliminary Results,* we preliminarily determined that Ternium had no shipments during the POR. We received no comments from interested parties with respect to this claim. Therefore, we continue to find that Ternium had no shipments during the POR.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties, we: (1) Corrected an error in Commerce's dumping margin programming when calculating the weighted-average dumping margin for Deacero; (2) used a revised U.S. sales database; (3) updated the date assigned to U.S. sales without a reported payment date; and (4) updated our calculation of the cost of scrap.[5]

Rates for Companies Not Selected for Individual Examination

The statute and Commerce's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act). Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for companies which we did not examine in an administrative review. Section 735(c)(5)(A) of the Act establishes a preference to avoid using rates which are zero, *de minimis,* or based entirely on facts available (FA) in calculating an all-others rate. Accordingly, Commerce's practice in administrative reviews has been to average the weighted-average dumping margins for the companies selected for individual examination in the annual review, excluding rates that are zero, *de minimis,* or based entirely on FA.[6] For these final results of review, we calculated a weighted-average dumping margin for Deacero that is above *de minimis* and not based entirely on FA. Therefore, consistent with our practice, we have assigned the companies not selected for individual examination the weighted-average dumping margin calculated for Deacero.

Final Results of the Review

Commerce determines that the following weighted-average dumping margins exist for the period November 1, 2018, through October 31, 2019:

[1] *See Steel Concrete Reinforcing Bar from Mexico: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018–2019,* 86 FR 15458 (March 23, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] The petitioners are the Rebar Trade Action Coalition (RTAC) and its individual members, Nucor Corporation, Ameristeel US Inc., Commercial Metals Company, Cascade Steel Rolling Mills, Inc. and Byer Steel Corporation (the petitioners).

[3] *See* Memorandum, ''Steel Concrete Reinforcing Bar from Mexico: Antidumping Duty Administrative Review; 2018–2019; Extension of Deadline for Final Results,'' dated June 22, 2021.

[4] *See* Memorandum, ''Steel Concrete Reinforcing Bar from Mexico: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review; 2018–2019,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *Id.* at 2–3 and Comments 4, 5 and 6.

[6] *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

Producer and/or exporter	Weighted-average dumping margin (percent)
Deacero S.A.P.I de C.V.[7]	4.93
Review-Specific Average Rate Applicable to the Following Companies:	
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 6 S.A. de C.V.; Simec International, S.A. de C.V.; Simec International 7 S.A. de C.V.; and Simec International 9 S.A. de C.V.)[8]	4.93
AceroMex S.A	4.93
Arcelor Mittal	4.93
ArcelorMittal Celaya	4.93
ArcelorMittal Cordoba S.A. de C.V	4.93
ArcelorMittal Lazaro Cardenas S.A. de C.V	4.93
Cia Siderurgica de California, S.A. de C.V	4.93
Compania Siderurgica de California, S.A. de C.V	4.93
Grupo Villacero S.A. de C.V	4.93
Industrias CH	4.93
Siderurgica Tultitlan S.A. de C.V	4.93
Talleres y Aceros, S.A. de C.V	4.93

Assessment Rate

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.

Because Deacero's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce has calculated importer-specific antidumping duty assessment rates. We calculated importer-specific antidumping duty assessment rates by aggregating the total amount of dumping calculated for the examined sales of each importer and dividing each of these amounts by the total sales value associated with those sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For entries of subject merchandise during the POR produced by Deacero where the producer did not know its merchandise was destined for the United States, or for entries associated with Ternium, who had no shipments during the POR, we will instruct CBP to liquidate unreviewed suspended entries, consistent with the reseller policy, at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[9]

The assessment rate for antidumping duties for each of the companies not selected for individual examination, will be equal to the weighted-average dumping margin identified above in the Final Results of Review.

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 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 rates for the companies identified above in the Final Results of Review will be equal to the company-specific weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company not covered in this administrative review but covered in a completed prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or completed prior segment of this proceeding but the producer is, the cash deposit rate will be the company-specific rate established for the most recently-completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 20.58 percent, the rate established in the investigation of this proceeding.[10] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred and the subsequent

[7] This also applies to any entries made under the name DE ACERO SA. DE CV. While the petitioner requested a review of both DE ACERO SA. DE CV. and Deacero, Commerce has previously determined that DE ACERO SA. DE CV. is the same company as Deacero and therefore, we are treating DE ACERO SA. DE CV. as the same as Deacero. *See, e.g., Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 85 FR 71053 (November 6, 2020) (*2017–2018 AR Mexico Rebar Final*), at 71053–71054.

[8] Commerce has previously collapsed the following entities into a single entity: 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 6 S.A. de C.V.; Simec International, S.A. de C.V.; Simec International 7 S.A. de C.V.; and Simec International 9 S.A. de C.V. *See, e.g., 2017–2018 AR Mexico Rebar Final,* 85 FR at 71053–71054.

[9] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[10] *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).

assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5) and 19 CFR 351.213(h)(1).

Dated: September 1, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Changes Since the *Preliminary Results*
V. Discussion of the Issues
  Comment 1: Whether to Grant Deacero a CEP Offset
  Comment 2: Whether to Apply Adverse Facts Available to U.S. Freight Expenses
  Comment 3: Whether Section 232 Duties Should be Deducted from U.S. Price
  Comment 4: Whether to Correct for a Macro Programming Error
  Comment 5: Whether to Rely on Deacero's Revised U.S. Sales Database
  Comment 6: Whether to Include Certain Items in the Calculation of Scrap Costs
  Comment 7: Whether to Make Adjustments to the Scrap Offset Calculation
VI. Recommendation

[FR Doc. 2021–19406 Filed 9–8–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: National Institute of Standards and Technology (NIST)'s Visiting Committee on Advanced Technology (VCAT or Committee) will meet on Tuesday, October 26, 2021, from 10:00 a.m. to 5:30 p.m. Eastern Time.

DATES: The VCAT will meet on Tuesday, October 26, 2021, from 10:00 a.m. to 5:30 p.m. Eastern Time.

ADDRESSES: The meeting will be a virtual meeting via webinar. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephanie Shaw, VCAT, NIST, 100 Bureau Drive, Mail Stop 1060, Gaithersburg, Maryland 20899–1060, telephone number 240–298–4654. Ms. Shaw's email address is *stephanie.shaw@nist.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the VCAT will meet on Tuesday, October 26, 2021, from 10:00 a.m. to 5:30 p.m. Eastern Time. The meeting will be open to the public. The VCAT is composed of not fewer than 9 members appointed by the NIST Director, eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The primary purpose of this meeting is for the VCAT to review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on major legislation and policy affecting the NIST mission. It will also include updates on the NIST programs and safety, as well as an update on ongoing actions to implement NIST's Strategic Plan. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST website at *http://www.nist.gov/director/vcat/agenda.cfm.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's business are invited to request a place on the agenda. Approximately one-half hour will be reserved for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received but, is likely to be about 3 minutes each. The exact time for public comments will be included in the final agenda that will be posted on the NIST website at *http://www.nist.gov/director/vcat/agenda.cfm.* Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend via webinar are invited to submit written statements to Stephanie Shaw at *stephanie.shaw@nist.gov.*

All participants will be attending via webinar and must contact Ms. Shaw at *stephanie.shaw@nist.gov* by no later than 5:00 p.m. Eastern Time, Wednesday, October 20, 2021 for detailed instructions on how to join the webinar.

Authority: 15 U.S.C. 278, as amended, and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2021–19482 Filed 9–8–21; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees—Defense Policy 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 Policy Board (''the Board'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board 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 Board's Designated Federal Officer (DFO) are found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

The Board provides the Secretary of Defense independent advice and recommendations on matters concerning defense policy. Specifically, the Board will focus on: (a) Issues central to strategic DoD planning; (b) policy implications of U.S. force structure and force modernization on DoD's ability to execute U.S. defense strategy; (c) U.S. regional defense policies; and (d) any other topics raised by the Secretary of Defense, the Deputy

Secretary of Defense, or the Under Secretary of Defense for Policy.

The Board is composed of not more than 20 members who have distinguished backgrounds in defense and national security affairs. These members will come from varied backgrounds including prior government or military service, multinational corporations, academia, or other non-government organizations. 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 Board. No member, unless approved according to DoD policy and procedures, may serve more than two consecutive terms of service on the Board, or serve on more than two DoD Federal advisory committees at one time.

Members of the Board 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. Board 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 Board 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 Board-related travel and per diem, members serve without compensation.

The public or interested organizations may submit written statements to the Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board. All written statements shall be submitted to the DFO for the Board, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: September 3, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–19478 Filed 9–8–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Sam Rayburn Dam Rate Schedule

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of extension of Sam Rayburn Dam rate schedule.

SUMMARY: The Administrator, Southwestern Power Administration (Southwestern) has approved and placed into effect on an interim basis Rate Order No. SWPA–78, which extends the following existing Southwestern Sam Rayburn Dam Hydropower Project rate schedule: *Rate Schedule SRD–15, Wholesale Rates for Hydro Power and Energy.* This is an interim rate action effective October 1, 2021, extending for a period of two years through September 30, 2023.

DATES: The effective period for the rate schedule specified in Rate Order No. SWPA–78 is October 1, 2021, through September 30, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Fritha Ohlson, Senior Vice President and Chief Operating Officer, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6684 or email: *fritha.ohlson@swpa.gov.*

SUPPLEMENTARY INFORMATION: Rate Order No. SWPA–78 is approved and placed into effect on an interim basis for the period October 1, 2021, through September 30, 2023, for the following Southwestern Sam Rayburn Dam rate schedule: *Rate Schedule SRD–15, Wholesale Rates for Hydro Power and Energy.*

Decision Rationale

The Southwestern Administrator completed an annual review of the continuing adequacy of the existing rate schedule for the Sam Rayburn Dam. This review, as presented in the 2021 Sam Rayburn Dam Power Repayment Studies (PRSs), indicated the need for a 3.5 percent revenue increase to continue to satisfy cost recovery criteria. It is Southwestern practice for the Administrator to defer, on a case-by-case basis, revenue adjustments for an isolated project if such adjustments are within plus or minus five percent of the revenue estimated from the current rate schedule. The deferral of a revenue adjustment (rate change) provides for rate stability and savings on the administrative cost of implementation. The Administrator determined it to be prudent to defer the increase and allow the current rate schedule, which is set to expire September 30, 2021, to remain in effect.

To ensure that Southwestern has a rate schedule in effect for collection of revenue in order to meet its repayment obligations, the Administrator has approved and placed into effect a two-year extension of the Sam Rayburn Dam rate schedule for the period October 1, 2021, through September 30, 2023.

The Administrator followed part 903, subpart A of title 10 of the Code of Federal Regulations (CFR), ''Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions'' for the extension to the rate schedule. The public was informed by publication in the **Federal Register** (86 FR 31500 (June 14, 2021)) of the proposed extension of the rate schedule and of the opportunity to provide written comments for a period of 30 days ending July 14, 2021. No comments were received.

Legal Authority

By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Southwestern Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to the Federal Energy Regulatory Commission (FERC). By Delegation Order No. S1–DEL–S4–2021, effective February 25, 2021, the Acting Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Science (and Energy). By Redelegation Order No. S4–DEL–OE1–2021, effective March 25, 2021, the Acting Under Secretary for Science (and Energy) redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Electricity. And by Redelegation Order No. 00–002.10–04, effective July 8, 2020, the Assistant Secretary for Electricity further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Southwestern Administrator. This redelegation order, despite predating the February 2021 delegation and March 2021 redelegation, remains valid. By these delegations, and in accordance with 10 CFR 903.22(h) and 10 CFR 903.23(a), as amended (84 FR 5347, 5350 (Feb. 21, 2019)), the Administrator may approve and extend, on an interim basis, rates previously confirmed and approved by

FERC beyond the period specified by FERC.

Environmental Impact

Southwestern previously determined that the rate change action, placed into effect on January 1, 2016 for Sam Rayburn Dam fit within the class of categorically excluded actions as listed in Appendix B to Subpart D of 10 CFR part 1021, the Implementing Procedures and Guidelines of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347), categorical exclusions applicable to B4.3: Electric power marketing rate changes, which does not require preparation of either an environmental impact statement (EIS) or an environmental assessment (EA). On May 27, 2021, Southwestern determined that categorical exclusion B4.3 applies to the current action.

Determination Under Executive Order 12866

Southwestern has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

United States of America Department of Energy Administrator, Southwestern Power Administration

In the matter of: Southwestern Power Administration Sam Rayburn Dam Rate Schedule

Rate Order No. SWPA–78

Order Approving Extension of Rate Schedule on an Interim Basis

(August 30, 2021)

Pursuant to Sections 301(b) and 302(a) of the Department of Energy Organization Act, 42 U.S.C. 7151(b) and 7152(a), the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southwestern Power Administration (Southwestern), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Southwestern Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to the Federal Energy Regulatory Commission (FERC). By Delegation Order No. S1–DEL–S4–2021, effective February 25, 2021, the Acting Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Science (and Energy). By Redelegation Order No. S4–DEL–OE1–2021, effective March 25, 2021, the Acting Under Secretary for Science (and Energy) redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Electricity. And by Redelegation Order No. 00–002.10–04, effective July 8, 2020, the Assistant Secretary for Electricity further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Southwestern Administrator. This redelegation order, despite predating the February 2021 delegation and March 2021 redelegation, remains valid. By these delegations, and in accordance with 10 CFR 903.22(h) and 10 CFR 903.23(a), as amended (84 FR 5347, 5350 (Feb. 21, 2019)), the Southwestern Administrator may approve and extend, on an interim basis, rates previously confirmed and approved by FERC beyond the period specified by FERC. Pursuant to that delegated authority, the Southwestern Administrator has issued this interim rate order.

Background

The following rate schedule for Sam Rayburn Dam was confirmed and approved on a final basis by FERC on June 30, 2016, in Docket No. EF16–2–000 (155 FERC ¶ 62,254) for the period January 1, 2016, through September 30, 2019.

Rate Schedule SRD–15, Wholesale Rates for Hydro Power and Energy

Since initial FERC approval, the Assistant Secretary for Electricity extended the Sam Rayburn rate schedule SRD–15 for a period of two years, from October 1, 2019, through September 30, 2021, in Rate Order No. SWPA–75.

Discussion

The existing Sam Rayburn Dam rate schedule is based on the Southwestern 2015 power repayment studies (PRSs). PRSs have been completed for the Sam Rayburn Dam isolated project each year since approval of the existing rate schedule. Since 2015, subsequent PRSs have indicated the need for a minimal rate increase, all within the plus or minus five percent rate adjustment threshold practice established by the Administrator on September 8, 2003. Therefore, the Administrator deferred these rate adjustments in the best interest of the government.

However, the existing rate schedule is set to expire on September 30, 2021. Consequently, Southwestern proposed to extend the existing rate schedule for a two-year period ending September 30, 2023, on an interim basis under the implementation authorities noted in 10 CFR 903.22(h) and 10 CFR 903.23(a).

Southwestern followed 10 CFR part 903, ''Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions'' for the proposed extension of the rate schedule. An opportunity for customers and other interested members of the public to review and comment on the proposed extension of the rate schedule was published in the **Federal Register** on June 14, 2021 (86 FR 31500), with written comments due by July 14, 2021.

Comments and Responses

Southwestern received no comments regarding the extension of the rate schedule.

Availability of Information

Information regarding the extension of the rate schedule is available for public review in the offices of Southwestern Power Administration, Williams Tower I, One West Third Street, Tulsa, Oklahoma 74103. The rate schedule is available on the Southwestern website at *www.swpa.gov.*

Administration's Certification

The 2015 Sam Rayburn Dam PRSs indicated that the current rate schedule will repay all costs including amortization of the power investment consistent with the provisions of Department of Energy Order No. RA 6120.2. The 2021 Sam Rayburn Dam PRSs indicated the need for an annual revenue increase of 3.5 percent. However, the 2021 rate adjustment falls within the Southwestern established plus or minus five percent isolated project rate adjustment threshold practice and was deferred.

The Southwestern 2022 PRSs will determine the appropriate level of revenues needed for the next rate period. In accordance with Delegation Order No. 00–037.00B, effective November 19, 2016, and Section 5 of the Flood Control Act of 1944, the Administrator has determined that the existing rate schedule is the lowest possible rate consistent with sound business principles, and the extension is consistent with applicable law.

Environment

Southwestern previously determined that the rate change actions, placed into effect on January 1, 2016 for Sam

Rayburn Dam, fit within the class of categorically excluded actions as listed in Appendix B to Subpart D of 10 CFR part 1021, the Implementing Procedures and Guidelines of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347): Categorical exclusions applicable to B4.3: Electric power marketing rate changes, which does not require preparation of either an environmental impact statement (EIS) or an environmental assessment (EA). On May 27, 2021, Southwestern determined that categorical exclusion B4.3 applies to the current action.

Administrative Procedures

Under the Administrative Procedure Act (5 U.S.C. 553(d)), publication or service of a substantive rule must be made not less than 30 days before its effective date, except (1) a substantive rule that grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. The Administrator finds good cause to waive the 30-day delay in the effective date of this action as unnecessary for the following reasons: (1) This is an extension of rates previously approved by FERC, pursuant to 10 CFR 903.23(a); (2) there are no substantive changes, as the existing rate schedules and anticipated revenues remain the same; and (3) the Administrator provided notice and opportunity for public comment more than 30 days prior to the effective date of the rate extension and received no comments.

Order

In view of the foregoing, and pursuant to delegated authority from the Secretary of Energy, I hereby extend on an interim basis, for the period of two years, effective October 1, 2021, through September 30, 2023, the current Sam Rayburn Dam rate schedule:

Rate Schedule SRD–15, Wholesale Rates for Hydro Power and Energy

Signing Authority

This document of the Department of Energy was signed on August 30, 2021, by Mike Wech, Administrator for Southwestern Power Administration, 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 DOE. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 2, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

United States Department of Energy

Southwestern Power Administration

Rate Schedule SRD–15 [1] **

Wholesale Rates for Hydro Power and Energy Sold to Sam Rayburn Dam Electric Cooperative, Inc.

(Contract No. DE–PM75–92SW00215)

Effective

During the period January 1, 2016, through September 30, 2023,** in accordance with the Federal Energy Regulatory Commission (FERC) order issued in Docket No. EF16–2–000 (June 30, 2016), extension approved by the Assistant Secretary for Electricity in Rate Order No. 75 (Sept. 22, 2019), and extension approved by the Administrator in Rate Order No. 78 (August 30, 2021).

Applicable

To the power and energy purchased by Sam Rayburn Dam Electric Cooperative, Inc. (SRDEC) from the Southwestern Power Administration (Southwestern) under the terms and conditions of the Power Sales Contract dated October 7, 1992, as amended, for the sale of all Hydro Power and Energy generated at the Sam Rayburn Dam and Reservoir.

Character and Conditions of Service

Three-phase, alternating current, delivered at approximately 60 Hertz, at the nominal voltage, at the point of delivery, and in such quantities as are specified by contract.

1. Wholesale Rates, Terms, and Conditions for Hydro Power and Energy

1.1. This rate shall be applicable regardless of the quantity of Hydro Power and Energy available or delivered to SRDEC; provided, however, that if an Uncontrollable Force prevents utilization of both of the project's power generating units for an entire billing period, and if during such billing period water releases were being made which otherwise would have been used to generate Hydro Power and Energy, then Southwestern shall, upon request by SRDEC, suspend billing for subsequent billing periods, until such time as at least one of the project's generating units is again available.

1.2. The term ''Uncontrollable Force,'' as used herein, shall mean any force which is not within the control of the party affected, including, but not limited to, failure of water supply, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, riot, civil disturbance, labor disturbance, sabotage, war, acts of war, terrorist acts, or restraint by court of general jurisdiction, which by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid.

1.3. Hydro Power Rates, Terms, and Conditions.

1.3.1. Monthly Charge for the Period of January 1, 2016, through September 30, 2023.

$380,316 per month ($4,563,792 per year) for Sam Rayburn Dam Hydro Power and Energy purchased by SRDEC from January 1, 2016, through September 30, 2023.

[1] Supersedes Rate Schedule SRD–13.

** Extended through September 30, 2023, by approval of Rate Order No. SWPA–78 by the Administrator, Southwestern Power Administration.

[FR Doc. 2021–19395 Filed 9–8–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Robert D. Willis Hydropower Project Rate Schedule

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of extension of Robert D. Willis Hydropower Project rate schedule.

SUMMARY: The Administrator, Southwestern Power Administration (Southwestern) has approved and placed into effect on an interim basis Rate Order No. SWPA–79, which extends the following existing Southwestern Robert D. Willis Hydropower Project rate: *Rate Schedule RDW–15, Wholesale Rates for Hydro Power and Energy.* This is an interim rate action effective October 1, 2021, extending for a period of two years through September 30, 2023.

DATES: The effective period for the rate schedule specified in Rate Order No. SWPA–79 is October 1, 2021, through September 30, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Fritha Ohlson, Senior Vice President and Chief Operating Officer, Office of

Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6684 or email: *fritha.ohlson@swpa.gov.*

SUPPLEMENTARY INFORMATION: Rate Order No. SWPA–79 is approved and placed into effect on an interim basis for the period October 1, 2021, through September 30, 2023, for the following Southwestern Robert D. Willis Hydropower Project (Robert D. Willis) rate schedule: *Rate Schedule RDW–15, Wholesale Rates for Hydro Power and Energy.*

Decision Rationale

The Southwestern Administrator completed an annual review of the continuing adequacy of the existing rate schedule for Robert D. Willis. This review, as presented in the 2021 Robert D. Willis Power Repayment Studies (PRSs), indicated the need for a 1.0 percent revenue increase to continue to satisfy cost recovery criteria. It is Southwestern practice for the Administrator to defer, on a case-by-case basis, revenue adjustments for an isolated project if such adjustments are within plus or minus five percent of the revenue estimated from the current rate schedule. The deferral of a revenue adjustment (rate change) provides for rate stability and savings on the administrative cost of implementation. The Administrator determined it to be prudent to defer the increase and allow the current rate schedule, which is set to expire September 30, 2021, to remain in effect.

To ensure that Southwestern has a rate schedule in effect for collection of revenue in order to meet its repayment obligations, the Administrator has approved and placed into effect a two-year extension of the Robert D. Willis rate schedule for the period October 1, 2021, through September 30, 2023.

The Administrator followed part 903, subpart A of title 10 of the Code of Federal Regulations (CFR), ''Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions'' for the extension to the rate schedule. The public was informed by notice published in the **Federal Register** (86 FR 31500 (June 14, 2021)) of the proposed extension of the rate schedule and of the opportunity to provide written comments for a period of 30 days ending July 14, 2021. No comments were received.

Legal Authority

By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Southwestern Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to FERC. By Delegation Order No. S1–DEL–S4–2021, effective February 25, 2021, the Acting Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Science (and Energy). By Redelegation Order No. S4–DEL–OE1–2021, effective March 25, 2021, the Acting Under Secretary for Science (and Energy) redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Electricity. And by Redelegation Order No. 00–002.10–04, effective July 8, 2020, the Assistant Secretary for Electricity further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Southwestern Administrator. This redelegation order, despite predating the February 2021 delegation and March 2021 redelegations, remains valid. By these delegations, and in accordance with 10 CFR 903.22(h) and 10 CFR 903.23(a), as amended (84 FR 5347, 5350 (Feb. 21, 2019)), the Administrator may approve and extend, on an interim basis, rates previously confirmed and approved by FERC beyond the period specified by FERC.

Environmental Impact

Southwestern previously determined that the rate change action, placed into effect on January 1, 2016 for Robert D. Willis fit within the class of categorically excluded actions as listed in Appendix B to Subpart D of 10 CFR part 1021, Implementing Procedures and Guidelines of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347): Categorical exclusions applicable to B4.3: Electric power marketing rate changes, which does not require preparation of either an environmental impact statement (EIS) or an environmental assessment (EA). On May 27, 2021, Southwestern determined that categorical exclusion B4.3 applies to the current action.

Determination Under Executive Order 12866

Southwestern has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

United States of America
Department of Energy
Administrator, Southwestern Power Administration

In the matter of: Southwestern Power Administration Robert D. Willis Hydropower Project Rate Schedule
Rate Order No. SWPA–79

Order Approving Extension of Rate Schedule on an Interim Basis

(August 30, 2021)

Pursuant to Sections 301(b) and 302(a) of the Department of Energy Organization Act, 42 U.S.C. 7151(b) and 7152(a), the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southwestern Power Administration (Southwestern), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Southwestern Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to the Federal Energy Regulatory Commission (FERC). By Delegation Order No. S1–DEL–S4–2021, effective February 25, 2021, the Acting Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Science (and Energy). By Redelegation Order No. S4–DEL–OE1–2021, effective March 25, 2021, the Acting Under Secretary for Science (and Energy) redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Electricity. And by Redelegation Order No. 00–002.10–04, effective July 8, 2020, the Assistant Secretary for Electricity further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Southwestern Administrator. This redelegation order, despite predating the February 2021 delegation and March 2021 redelegation, remains valid. By these delegations, and in accordance with 10 CFR 903.22(h) and 10 CFR 903.23(a), as amended (84 FR 5347, 5350 (Feb. 21, 2019)), the Southwestern Administrator may approve and extend, on an interim basis, rates previously confirmed and approved by FERC beyond the period specified by FERC. Pursuant to that delegated authority, the

Southwestern Administrator has issued this interim rate order.

Background

The following rate schedule for the Robert D. Willis Hydropower Project (Robert D. Willis) was confirmed and approved on a final basis by FERC on June 15, 2016, in Docket No. EF16–1–000 (155 FERC ¶ 62,213), for the period January 1, 2016, through September 30, 2019.

Rate Schedule RDW–15, Wholesale Rates for Hydro Power and Energy

Since initial FERC approval, the Assistant Secretary for Electricity extended the Robert D. Willis rate schedule RDW–15 for a period of two years, from October 1, 2019, through September 30, 2021, in Rate Order No. SWPA–76.

Discussion

The existing Robert D. Willis rate schedule is based on the Southwestern 2015 power repayment studies (PRSs). PRSs have been completed for Robert D. Willis, an isolated project, each year since approval of the existing rate schedule. Since 2015, subsequent PRSs have indicated the need for a minimal rate increase, all within the plus or minus five percent isolated project rate adjustment threshold practice established by the Administrator on September 8, 2003. Therefore, the Administrator deferred in the best interest of the government.

However, the existing rate schedule is set to expire on September 30, 2021. Consequently, Southwestern proposed to extend the existing rate schedule for a two-year period ending September 30, 2023, on an interim basis under the implementation authorities noted in 10 CFR 903.22(h) and 10 CFR 903.23(a).

Southwestern followed 10 CFR part 903, ''Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions'' for the proposed extension of the rate schedule. An opportunity for customers and other interested members of the public to review and comment on the proposed extension of the rate schedule was announced by notice published in the **Federal Register** on June 14, 2021 (86 FR 31500), with written comments due by July 14, 2021.

Comments and Responses

Southwestern received no comments regarding the extension of the rate schedule.

Availability of Information

Information regarding the extension of the rate schedule is available for public review in the offices of Southwestern Power Administration, Williams Tower I, One West Third Street, Tulsa, Oklahoma 74103. The rate schedule is available on the Southwestern website at *www.swpa.gov.*

Administration's Certification

The 2015 Robert D. Willis PRSs indicated that the current rate schedule will repay all costs, including amortization of the power investment consistent with the provisions of Department of Energy Order No. RA 6120.2. The 2021 Robert D. Willis PRSs indicated the need for an annual revenue increase of 1.0 percent. However, the 2021 rate adjustment falls within the Southwestern established plus or minus five percent isolated project rate adjustment threshold practice and was deferred.

The Southwestern 2022 PRSs will determine the appropriate level of revenues needed for the next rate period. In accordance with Delegation Order No. 00–037.00B, effective November 19, 2016, and Section 5 of the Flood Control Act of 1944, the Administrator has determined that the existing rate schedule is the lowest possible rate consistent with sound business principles, and the extension is consistent with applicable law.

Environment

Southwestern previously determined that the rate change actions, placed into effect on January 1, 2016 for Robert D. Willis, fit within the class of categorically excluded actions as listed in Appendix B to Subpart D of 10 CFR part 1021, Implementing Procedures and Guidelines of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347): Categorical exclusions applicable to B4.3: Electric power marketing rate changes, which does not require preparation of either an environmental impact statement (EIS) or an environmental assessment (EA). On May 27, 2021, Southwestern determined that categorical exclusion B4.3 applies to the current action.

Administrative Procedures

Under the Administrative Procedure Act (5 U.S.C. 553(d)), publication or service of a substantive rule must be made not less than 30 days before its effective date, except (1) a substantive rule that grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. The Administrator finds good cause to waive the 30-day delay in the effective date of this action as unnecessary for the following reasons: (1) This is an extension of rates previously approved by FERC, pursuant to 10 CFR 903.23(a); (2) there are no substantive changes, as the existing rate schedules and anticipated revenues remain the same; and (3) the Administrator provided notice and opportunity for public comment more than 30 days prior to the effective date of the rate extension and received no comments.

Order

In view of the foregoing, and pursuant to delegated authority from the Secretary of Energy, I hereby extend on an interim basis, for the period of two years, effective October 1, 2021 through September 30, 2023, the current Robert D. Willis rate schedule:

Rate Schedule RDW–15, Wholesale Rates for Hydro Power and Energy

Signing Authority

This document of the Department of Energy was signed on August 30, 2021, by Mike Wech, Administrator for Southwestern Power Administration, 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 DOE. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 2, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

United States Department of Energy

Southwestern Power Administration

Rate Schedule RDW–15 [1] **

Wholesale Rates for Hydro Power and Energy

Sold to Sam Rayburn Municipal Power Agency

(Contract No. DE–PM75–85SW00117)

Effective

During the period January 1, 2016, through September 30, 2023,** in

[1] Supersedes Rate Schedule RDW–13.

** Extended through September 30, 2023, by approval of Rate Order No. SWPA–79 by the

accordance with the Federal Energy Regulatory Commission (FERC) order issued in Docket No. EF16–1–000 (June 15, 2016), extension approved by the Assistant Secretary for Electricity in Rate Order No. 76 (Sept. 22, 2019), and extension approved by the Administrator in Rate Order No. 79 (August 30, 2021).

Applicable

To the power and energy purchased by Sam Rayburn Municipal Power Agency (SRMPA) from the Southwestern Power Administration (Southwestern) under the terms and conditions of the Power Sales Contract dated June 28, 1985, as amended, for the sale of all Hydro Power and Energy generated at the Robert Douglas Willis Hydropower Project (Robert D. Willis) (formerly designated as Town Bluff).

Character and Conditions of Service

Three-phase, alternating current, delivered at approximately 60 Hertz, at the nominal voltage, at the point of delivery, and in such quantities as are specified by contract.

1. Wholesale Rates, Terms, and Conditions for Hydro Power and Energy

1.1. These rates shall be applicable regardless of the quantity of Hydro Power and Energy available or delivered to SRMPA; provided, however, that if an Uncontrollable Force prevents utilization of both of the project's power generating units for an entire billing period, and if during such billing period water releases were being made which otherwise would have been used to generate Hydro Power and Energy, then Southwestern shall, upon request by SRMPA, suspend billing for subsequent billing periods, until such time as at least one of the project's generating units is again available.

1.2. The term ''Uncontrollable Force,'' as used herein, shall mean any force which is not within the control of the party affected, including, but not limited to, failure of water supply, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, riot, civil disturbance, labor disturbance, sabotage, war, acts of war, terrorist acts, or restraint by court of general jurisdiction, which by exercise of due diligence and foresight such party could not reasonably have been expected to avoid.

Administrator, Southwestern Power Administration.

1.3. Hydro Power Rates, Term, and Conditions

1.3.1. Monthly Charge for the Period of January 1, 2016, through December 31, 2016.

$102,681 per month ($1,232,166 per year) for Robert D. Willis Hydro Power and Energy purchased by SRMPA from January 1, 2016, through December 31, 2016.

1.3.2. Monthly Charge for the Period of January 1, 2017, through September 30, 2023.

$106,903 per month ($1,282,836 per year) for Robert D. Willis Hydro Power and Energy purchased by SRMPA from January 1, 2017, through September 30, 2023.

[FR Doc. 2021–19396 Filed 9–8–21; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0067; FRL–8910–01–OCSPP]

United States Department of Justice and Parties to Certain Litigation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to the Environmental Protection Agency (EPA) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to the U.S. Department of Justice (DOJ) and parties to certain litigation. This transfer of data is in accordance with the CBI regulations governing the disclosure of potential CBI in litigation.

DATES: Access to this information by DOJ and the parties to certain litigation is ongoing and expected to continue during the litigation as discussed in this Notice.

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION: This notice is being provided pursuant to 40 CFR 2.209(d) to inform affected businesses that EPA, via DOJ, will provide certain information to the parties and the Court in the matter of *Migrant Clinicians Network et al.* v. *U.S. Environmental Protection Agency et al.* (Case No. 21–70719) (9th Cir.) (''Streptomycin litigation''). The information is contained in documents that have been submitted to EPA pursuant to FIFRA and FFDCA by pesticide registrants or other data-submitters, including information that has been claimed to be, or determined to potentially contain, CBI. In the Streptomycin Litigation, Petitioners seek judicial review of EPA's January 12, 2021 registrations of streptomycin for use on citrus under FIFRA and ESA.

The documents are being produced as part of the Administrative Record of the decision at issue and include documents that registrants or other data-submitters may have submitted to EPA regarding the pesticide streptomycin, and that may be subject to various release restrictions under federal law. The information includes documents submitted with pesticide registration applications and may include CBI as well as scientific studies subject to the disclosure restrictions of FIFRA section 10(g), 7 U.S.C. 136h(g).

All documents that may be subject to release restrictions under federal law will be designated as ''Confidential or Restricted Information'' in the certified list of record materials that EPA will file in this case. Further, EPA intends to seek a Protective Order that would preclude public disclosure of any such documents by the parties in this action who have received the information from EPA, and that would limit the use of such documents to litigation purposes only. EPA would only produce such documents in accordance with the Protective Order. The anticipated Protective Order would require that such documents would be filed under seal and would not be available for public review, unless the information contained in the document has been determined to not be subject to FIFRA section 10(g) and all CBI has been redacted.

Authority: 7 U.S.C. 136 *et seq.;* 21 U.S.C. 301 *et seq.*

Dated: September 1, 2021.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2021–19407 Filed 9–8–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, September 14, 2021 at 10:00 a.m.

PLACE: 1050 First Street NE, Washington, DC (this meeting will be a virtual meeting).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Investigatory records compiled for law enforcement purposes and production would disclose investigative techniques.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer; Telephone: (202) 694–1220.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2021–19597 Filed 9–7–21; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreement to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 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**. Copies of agreement 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.: 012474–002.

Agreement Name: ONE/ELJSA Space Charter Agreement.

Parties: Ocean Network Express Pte. Ltd.; and Evergreen Line Joint Service Agreement.

Filing Party: Joshua Stein; Cozen O'Connor.

Synopsis: The amendment would revise the agreement to reduce the total amount of space that will be provided by ONE to ELJSA and change the service that such space will be provided on to the FP1 service. The amendment would also revise the agreement to replace references to NYK with ONE and delete provisions of the agreement relating to the now complete transition to ONE. The parties request expedited review.

Proposed Effective Date: 10/16/2021.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/1972.

Dated: September 3, 2021.

Rachel E. Dickon,

Secretary.

[FR Doc. 2021–19483 Filed 9–8–21; 8:45 am]

BILLING CODE 6730–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0875]

S12 Nonclinical Biodistribution Considerations for Gene Therapy Products; International Council for Harmonisation; 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 ''S12 Nonclinical Biodistribution Considerations for Gene Therapy Products.'' The draft guidance was prepared under the auspices of the International Council for Harmonisation (ICH), formerly the International Conference on Harmonisation. The draft guidance provides harmonized recommendations for the conduct and overall design of nonclinical biodistribution (BD) studies for gene therapy (GT) products. Considerations for interpretation and application of the BD data to support a nonclinical development program and inform the design of clinical trials are also provided. The recommendations in the guidance endeavour to facilitate the development of investigational GT products, while avoiding unnecessary use of animals, in accordance with the 3Rs (reduce/refine/replace) principles. The draft guidance is intended to promote harmonization of recommendations for BD studies for investigational GT products and facilitate a more efficient and timely nonclinical development program.

DATES: Submit either electronic or written comments on the draft guidance by November 8, 2021 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–2021–D–0875 for ''S12 Nonclinical Biodistribution Considerations for Gene Therapy Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' are publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper

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

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

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

Submit written requests for single copies of this draft guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002, or 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. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

Regarding the ICH: Jill Adleberg, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6364, Silver Spring, MD 20993–0002, 301–796–5259, *Jill.Adleberg@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''S12 Nonclinical Biodistribution Considerations for Gene Therapy Products.'' The draft guidance was prepared under the auspices of ICH. ICH has the mission of achieving greater regulatory harmonization worldwide to ensure that safe, effective, high-quality medicines are developed, registered, and maintained in the most resource-efficient manner.

By harmonizing the regulatory requirements in regions around the world, ICH guidelines have substantially reduced duplicative clinical studies, prevented unnecessary animal studies, standardized the reporting of important safety information, standardized marketing application submissions, and made many other improvements in the quality of global drug development and manufacturing and the products available to patients.

The six Founding Members of the ICH are FDA; the Pharmaceutical Research and Manufacturers of America; the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; and the Japanese Pharmaceutical Manufacturers Association. The Standing Members of the ICH Association include Health Canada and Swissmedic. Additionally, the Membership of ICH has expanded to include other regulatory authorities and industry associations from around the world (refer to *https://www.ich.org/*).

ICH works by involving technical experts from both regulators and industry parties in detailed technical harmonization work and the application of a science-based approach to harmonization through a consensus-driven process that results in the development of ICH guidelines. The regulators around the world are committed to consistently adopting these consensus-based guidelines, realizing the benefits for patients and for industry.

As a Founding Regulatory Member of ICH, FDA plays a major role in the development of each of the ICH guidelines, which FDA then adopts and issues as guidance for industry. FDA's guidance documents do not establish legally enforceable responsibilities. Instead, they describe the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited.

In June 2021, the ICH Assembly endorsed the draft guideline entitled ''S12 Nonclinical Biodistribution Considerations for Gene Therapy Products'' and agreed that the guidance should be made available for public comment. The draft guidance is the product of the Safety Expert Working Group of the ICH. Comments about this draft guidance will be considered by FDA and the Safety Expert Working Group.

FDA is thus announcing the availability of a draft guidance for industry entitled ''S12 Nonclinical Biodistribution Considerations for Gene Therapy Products.'' The draft guidance discusses the definition of BD and gives examples of GT products that are within the scope of the document. The guidance also provides recommendations for the design of nonclinical BD studies, such as the test article and dose level(s) administered, the animal species tested, route of administration, biofluid and tissue collection procedure, and other design elements. In addition, specific considerations, such as BD assay methods, GT expression product levels, and product immunogenicity are provided. The recommendations in the draft guidance are intended to promote harmonization in the development of a nonclinical development program for GT products to support clinical trial design, and reduce the use of animals, in accordance with the 3Rs (reduce/refine/replace) principles.

This draft guidance has been left in the original ICH format. The final guidance will be reformatted and edited to conform with FDA's good guidance practices regulation (21 CFR 10.115) and style before publication. The draft guidance, when finalized, will represent the current thinking of FDA on ''S12 Nonclinical Biodistribution Considerations for Gene Therapy Products.'' 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 and in 21 CFR part 601 under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.regulations.gov, https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances.*

Dated: September 2, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–19410 Filed 9–8–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0352]

Intent To Prepare an Environmental Impact Statement for Certain Sunscreen Drug Products for Over-the-Counter Use; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of intent; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA or Agency) is reopening the comment period for public scoping on the environmental impact statement (EIS) described in the notice entitled ''Intent To Prepare an Environmental Impact Statement for Certain Sunscreen Drug Products for Over-the-Counter Use'' that appeared in the **Federal Register** of May 13, 2021. The Agency is taking this action to allow interested persons additional time to submit comments.

DATES: FDA is reopening the comment period for public scoping on the EIS identified in the notice published May 13, 2021 (86 FR 26224). To ensure the Agency considers your comments on the draft EIS, submit either electronic or written comments on the scoping process discussed in the notice by September 23, 2021.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 23, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 23, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2021–N–0352 for ''Intent To Prepare an Environmental Impact Statement for Certain Sunscreen Drug Products for Over-the-Counter Use.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

FOR FURTHER INFORMATION CONTACT: Trang Q. Tran, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New

Hampshire Ave., Bldg. 22, Rm. 4139, Silver Spring, MD 20993; 240–402–7945.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 13, 2021 (86 FR 26224), FDA published a notice entitled ''Intent To Prepare an Environmental Impact Statement for Certain Sunscreen Drug Products for Over-the-Counter Use,'' which announced the initiation of a public scoping period that would end on June 14, 2021, and stated that comments on scoping would need to be submitted prior to the close of this period. In the **Federal Register** of June 25, 2021 (86 FR 33712), FDA reopened the docket to allow comments on scoping to be filed until July 14, 2021. To allow additional comments to be submitted to the docket, FDA is reopening the comment period for public scoping on the EIS for an additional 14 days, until September 23, 2021. The Agency believes that a 14-day extension will allow adequate time for interested persons to submit comments without significantly delaying publication of the draft EIS.

II. Electronic Access

Persons with access to the internet may obtain the notice of intent through the Agency's web link ''Environmental Impact Statement (EIS) for Certain Sunscreen Drug Products,'' available at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information* or by searching for the above docket number at *https://www.regulations.gov.*

Dated: September 1, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–19402 Filed 9–8–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0166]

International Council for Harmonisation Q12: Implementation Considerations for Food and Drug Administration-Regulated Products; Draft Guidance for Industry; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is reopening the comment period for the draft guidance for industry entitled ''ICH Q12: Implementation Considerations for FDA-Regulated Products'' published in the **Federal Register** of May 20, 2021. FDA is reopening the comment period to allow interested persons additional time to submit comments.

DATES: FDA is reopening the comment period on the notice published May 20, 2021 (86 FR 27437). Submit either electronic or written comments by October 12, 2021.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before October 12, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 12, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2021–D–0166 for ''ICH Q12: Implementation Considerations for FDA-Regulated Products; Draft Guidance for Industry; Reopening of the Comment Period.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management

Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002; or Office of Policy, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Ashley Boam, CDER, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4192, Silver Spring, MD 20993–0002, 301–796–6341; Stephen Ripley, CBER, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911; or Andrew Yeatts, CDRH, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5510, Silver Spring, MD 20993–0002, 301–796–4539.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 20, 2021 (86 FR 27437), FDA announced the availability of a draft guidance for industry entitled ''ICH Q12: Implementation Considerations for FDA-Regulated Products.'' Interested persons were originally given until July 19, 2021, to comment on the draft guidance. However, the Agency believes that reopening the comment period for an additional 30 days from the date of publication of this notice will allow adequate time for interested persons to submit comments without significantly delaying Agency decision-making on these important issues.

II. 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/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products,* or *https://www.regulations.gov.*

Dated: September 1, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–19403 Filed 9–8–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0008]

Allergenic Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) announces a forthcoming public advisory committee meeting of the Allergenic Products Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. Members will participate via teleconference. At least one portion of the meeting will be closed to the public.

DATES: The meeting will be held on October 28, 2021, from 9:30 a.m. to 1:20 p.m. EST.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. The online web conference meeting will be available at the following link on the day of the meeting: *https://youtu.be/OHRWDuihDns.*

FOR FURTHER INFORMATION CONTACT: Kathleen Hayes or Monique Hill, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 71, Rm. 6306, Silver Spring, MD 20993–0002, via email at *CBERVRBPAC@fda.hhs.gov;* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. On October 28, 2021, the committee will meet in open session to hear an overview of the research programs in the Laboratory of Immunobiochemistry (LIB), Division of Bacterial, Parasitic and Allergenic Products (DBPAP), Office of Vaccines Research and Review (OVRR), Center for Biologics Evaluation and Research (CBER).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: On October 28, 2021, from 9:30 a.m. to 12:20 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 13, 2021. Oral presentations from the public will be scheduled between approximately 11:20 a.m. to 12:20 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 13, 2021. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact

person will notify interested persons regarding their request to speak by October 14, 2021.

Closed Committee Deliberations: On October 28, 2021, from 12:20 p.m.to 1:20 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The recommendations of the advisory committee regarding the progress of the individual investigator's research programs, along with other information, will be discussed during this session. We believe that public discussion of these recommendations on individual scientists would constitute an unwarranted invasion of personal privacy.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Kathleen Hayes (*CBERVRBPAC@fda.hhs.gov)* at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/advisory-committees/about-advisory-committees/public-conduct-during-fda-advisory-committee-meetings* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 2, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–19436 Filed 9–8–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0951]

Reconsidering Mandatory Opioid Prescriber Education Through a Risk Evaluation and Mitigation Strategy in an Evolving Opioid Crisis; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public workshop entitled ''Reconsidering Mandatory Opioid Prescriber Education Through a Risk Evaluation and Mitigation Strategy (REMS) in an Evolving Opioid Crisis.'' Convened by the Duke-Margolis Center for Health Policy and supported by a cooperative agreement between FDA and Duke-Margolis, the purpose of the public workshop is to give stakeholders an opportunity to provide input on aspects of the current opioid crisis that could be mitigated in a measurable way by requiring mandatory prescriber education as part of a REMS. We expect interested stakeholders to include healthcare providers, healthcare professional associations, pharmacists, pharmacy benefit managers, public and private insurers, patient organizations, Federal and State Agencies, providers of continuing education for healthcare professionals, and the public. A second public workshop is being planned to solicit input on additional issues associated with a move to mandatory prescriber education under a REMS, such as operational and technical issues related to such a system and what should be included in potential mandatory prescriber education.

DATES: The public workshop will be held on October 13, 2021, from 1 p.m. to 5 p.m. Eastern Time and October 14, 2021, from 1 p.m. to 4:05 p.m. Eastern Time. Submit either electronic or written comments on this public workshop by December 3, 2021. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: Due to the impact of the COVID–19 pandemic, these meetings will be held virtually to help protect the public and limit the spread of the virus.

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 3, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 3, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2021–N–0951 for ''Reconsidering Mandatory Opioid Prescriber Education Through a Risk Evaluation and Mitigation Strategy (REMS) in an Evolving Opioid Crisis.'' Comments filed and received in a timely manner (see **ADDRESSES**) will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

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

FOR FURTHER INFORMATION CONTACT: Michie Hunt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6153, Silver Spring, MD 20993, 301–796–3504, *michie.hunt@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

As FDA continues to work to address the opioid crisis, we are reconsidering our current efforts to ensure prescriber education regarding opioids is being delivered in a way that is as efficient and effective as possible. As a part of this work, we are revisiting whether there is a need for a mandatory form of prescriber education linked to the prescribing of opioids. In 2012, FDA approved the Extended Release/Long Acting (ER/LA) Risk Evaluation and Mitigation Strategy (REMS), at the core of which was a requirement that sponsors of ER/LA opioid analgesics make an education program available for healthcare providers who prescribe ER/LA opioid analgesics (*e.g.,* physicians, nurse practitioners, and physician assistants). The goal of the ER/LA opioid analgesic REMS was to reduce serious adverse outcomes resulting from inappropriate prescribing, misuse, and abuse of ER/LA opioid analgesics while maintaining patient access to pain medications. The adverse outcomes of concern included addiction, unintentional overdose, and death.

While developing the REMS requirements, FDA considered whether the education should be made mandatory for prescribers but decided against making mandatory education a REMS requirement at the time. This was due to concerns about placing an undue burden on the healthcare delivery system, in part because the implementation of mandatory education through the REMS might have required a restricted distribution system. It is possible that given technological advances in the intervening years, including broader implementation of e-prescribing for controlled substances, there might be ways to lessen the burden associated with a restricted distribution system, including potential negative impact on patients who need opioids for pain management.

When the REMS was put in place in 2012, instead of mandatory education, FDA required that ER/LA opioid manufacturers make the training available to prescribers at no or nominal cost and that the training be accessible in a variety of different formats. FDA also recommended that the training be offered for continuing education (CE) credit. The REMS as implemented requires the training to conform to a blueprint (available at *https://www.accessdata.fda.gov/drugsatfda_docs/rems/Opioid_analgesic_2018_09_18_FDA_Blueprint.pdf*) developed by FDA that contains a high-level outline of the core educational messages to be included in the CE programs developed under the REMS. The initial education program included general and product-specific information about the ER/LA opioid analgesics; information on proper patient selection for use of these drugs; guidance for safely initiating therapy, modifying dosing, and discontinuing use of ER/LA opioid analgesics; guidance for monitoring patients; and information for counseling patients and caregivers about the safe use of these drugs.

After reviewing existing requirements and considering Advisory Committee recommendations obtained in 2016 about the ER/LA REMS, in 2018 FDA expanded the REMS to include both immediate release (IR) opioid analgesics and ER/LA opioid analgesics intended for use in an outpatient setting. The content of the blueprint was redesigned to contain principles of appropriate pain management, including the use of alternatives to opioids for the treatment of pain; the basic elements of addiction medicine; and the neurobiology, identification, and management of opioid use disorder. The blueprint currently does not include principles for managing opioid use disorder, including treatment with buprenorphine. The revised Opioid Analgesic (OA) REMS also expanded the prescriber audience and requires that the OA manufacturers make training available to all members of the healthcare team involved in the management of patients with pain, including nurses and pharmacists. As with the ER/LA REMS, training under the OA REMS is voluntary.

Cumulatively, from February 28, 2013, through May 15, 2021, there have been 354,949 completers of REMS CE from the ER/LA REMS and the OA REMS. For context, there were approximately 1 million prescribers of opioid analgesics in 2019. In addition, although many public and private entities have independently implemented their own education programs and other interventions to encourage safe and effective prescribing practices for opioid analgesics, there is no nationwide standard. Therefore, these programs likely differ with regard to content, focus, and duration.

Following the creation and expansion of the REMS and other efforts, including the introduction of the Centers for Disease Control and Prevention (CDC) Guideline for Prescribing Opioids for Chronic Pain in 2016,[1] the estimated number of opioid analgesic prescriptions dispensed per capita in the United States has been steadily declining from a peak of 84 prescriptions per 100 residents in 2012 to 67 prescriptions per 100 residents in 2016; and 52 prescriptions per 100 residents in 2018. The rate dropped to 43 prescriptions per 100 U.S. residents in 2020, reflecting levels not seen since the early 1990s (44 prescriptions per 100 U.S. residents in 1992).[2] Despite this decrease in dispensing, multiple studies have reported patients received more opioid analgesic tablets than needed following surgical procedures. FDA's systematic review of studies published prior to 2019 showed that in articles reporting on the prescribing of excess tablets, 25 percent to 98 percent of the total tablets prescribed were reported to be excess, with most studies reporting that 50 percent to 70 percent of tablets went unused.[3] There are also

[1] Dowell, D., T.M. Haegerich, and R. Chou, ''CDC Guideline for Prescribing Opioids for Chronic Pain—United States, 2016''. *JAMA,* (2016) 315(15):1624–1645.

[2] IQVIA Institute, ''National Prescription Audit'' extracted March 2021, U.S. Census Bureau.

[3] Mallama, C.A., C. Greene, A.A. Alexandridis, et al. ''Patient-Reported Opioid Analgesic Use After Discharge From Surgical Procedures: A Systematic

concerns about continued opioid analgesic prescribing to vulnerable populations, such as children and adolescents following common dental and minor surgical procedures.

Despite this decline in opioid analgesic dispensing, overall opioid-involved overdose deaths have risen sharply since 2012, with opioids often seen in combination with other substances such as cocaine, methamphetamine, and benzodiazepines.[4 5] This rise has been driven primarily by a surge in deaths initially involving heroin and then illicitly manufactured fentanyl and fentanyl analogues. Although these overdose deaths largely involve illicit substances, many users of illicit opioids are initially exposed to opioids through nonmedical use of prescription opioids.[6] Moreover, as of 2020, prescription opioids were involved in more than 16,000 fatal overdoses per year,[7] higher than the number seen at the peak of opioid analgesic dispensing in 2012.[8]

Against this background of a complex and intensifying crisis, FDA is reconsidering the need for mandatory prescriber training through a REMS and seeks input from stakeholders about the aspects of the opioid crisis that mandatory training through such a REMS could potentially mitigate. In light of the many available education programs and the lack of a nationwide standard, FDA is exploring the value of a single source for education on the appropriate use of opioids, on the risks of opioid abuse and misuse, and on the treatment of opioid use disorder to address multiple needs and reduce the burden on prescribers.

Review.'' (2021) *Pain Medicine,* doi: 10.1093/pm/pnab244.

[4] National Institute on Drug Abuse, ''Overdose Death Rates.'' (2021) (Available at: *https://www.drugabuse.gov/drug-topics/trends-statistics/overdose-death-rates)* (accessed August 20, 2021).

[5] Mattson C.L., L.J. Tanz, K. Quinn, et al, ''Trends and Geographic Patterns in Drug and Synthetic Opioid Overdose Deaths—United States, 2013–2019.'' *Morbidity and Mortality Weekly Report,* (2021) 70(6):202–207.

[6] Compton, W.M., C.M. Jones, and G.T. Baldwin, ''Relationship Between Nonmedical Prescription-Opioid Use and Heroin Use.'' *New England Journal of Medicine,* (2016) 374:154–163.

[7] Ahmad, F.B., L.M. Rossen, and P. Sutton, ''Provisional Drug Overdose Death Counts.'' National Center for Health Statistics, 2021. (Available at: *https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm)* (accessed 8/20/2021).

[8] National Institute on Drug Abuse, ''Overdose Death Rates.'' January 29, 2021. (Available at: *https://www.drugabuse.gov/drug-topics/trends-statistics/overdose-death-rates*).

II. Topics for Discussion at the Public Workshop

1. How could mandatory prescriber education through a REMS improve appropriate opioid prescribing, pain management, and the treatment of opioid use disorder?

a. Please specifically discuss the value of such a system in light of existing continuing education requirements, the wide array of available educational programs (including currently available OA REMS educational offerings), and other interventions by Federal Agencies, States, healthcare systems, retail pharmacies, payers, pharmacy benefit managers, and other public and private organizations. Could mandatory education under a REMS make prescriber education more consistent, efficient, and effective?

b. Please specifically discuss how a mandatory REMS educational program could address the needs for prescriber education on the overprescribing of opioids for acute pain.

c. Please specifically discuss how a mandatory REMS educational program could address the needs for prescriber education on the treatment of opioid use disorder.

2. What are the important core competencies, knowledge gaps, clinical challenges, or misunderstandings among practitioners that could be addressed through mandatory education under a REMS to help improve patient outcomes and mitigate the current crisis?

a. Please comment specifically on any key knowledge gaps or core competencies related to screening, diagnosis, or treatment of opioid use disorder or substance use disorder that should be incorporated into mandatory education for opioid prescribers.

3. If FDA were to implement a mandatory prescriber education program, please discuss what appropriate program goals might be. How could we measure the impacts of such a program and determine whether it is meeting its goals?

4. Regarding the implementation of such a mandatory REMS educational system:

a. Please discuss challenges you foresee in the implementation of a mandatory REMS educational system.

b. What can we learn about the implementation of prescriber education from existing educational programs in pain management, in opioid risk reduction, and in the treatment of opioid use disorder?

5. What could be unintended consequences of mandatory opioid prescriber education through a REMS and are there ways to identify and address them?

Although not specifically discussed at this Public Workshop, FDA is interested in obtaining input on additional issues, including:

a. The continuing education delivery approaches, methods, and information technology platforms that should be considered to maximize the acceptability and effectiveness of mandatory prescriber education.

b. Any technological advances since 2012 that would make the delivery of mandatory training more efficient and reduce burden on the healthcare system.

III. Participating in the Public Workshop

Registration: To register for the public workshop, please visit the following website: *http://events.constantcontact.com/register/event?llr=4fyj4myab&oeidk=a07eifbycnsfd5b6b1f.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free. Persons interested in attending this public workshop must register by 4:05 p.m. Eastern Time on October 14, 2021. Registrants will receive confirmation when they have been accepted. Registered participants will be sent technical system requirements in advance of the event. We recommend that you review these technical system requirements prior to joining the virtual public workshop. The workshop will be recorded, and the recording will be available after the workshop at *https://healthpolicy.duke.edu/events/fda-public-workshop-opioid-prescriber-education.*

There will be live closed captioning for this event. If you need other special accommodations due to a disability, please contact Michie Hunt (see **FOR FURTHER INFORMATION CONTACT**) no later than October 4, 2021, or the Duke-Margolis Center for Health Policy at *margolisevents@duke.edu.*

FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Dated: September 2, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–19437 Filed 9–8–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3037]

Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Clearance for Quantitative Testing for the Development of Food and Drug Administration Communications

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

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information entitled ''Generic Clearance for Quantitative Testing for the Development of FDA Communications,'' which collects individual generic quantitative information (*e.g.,* surveys, experimental studies) to test communications or educational messages on FDA-regulated food and cosmetic products, dietary supplements, and animal food and feed while they are being developed or are in review.

DATES: Submit either electronic or written comments on the collection of information by November 8, 2021.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before November 8, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 8, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2018–N–3037 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Clearance for Quantitative Testing for the Development of FDA Communications.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether

the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Generic Clearance for Quantitative Testing for the Development of FDA Communications

OMB Control Number 0910–0865—Extension

This notice requests extension of OMB approval of the FDA information collection for a generic clearance that allows FDA to use quantitative social/behavioral science data collection techniques (*i.e.,* surveys and experimental studies) to test consumers' reactions to FDA communications or educational messaging about FDA-regulated food and cosmetic products, dietary supplements, and animal food and feed. To ensure that communications activities and educational campaigns have the highest potential to be received, understood, and accepted by those for whom they are intended, it is important to assess communications while they are under development. Understanding consumers' attitudes, motivations, and behaviors in response to potential communications and education messaging plays an important role in improving FDA's communications.

If the following conditions are not met, FDA will submit an information collection request to OMB for approval through the normal PRA process:

- The collections are voluntary;
- The collections are low burden for participants (based on considerations of total burden hours, total number of participants, or burden hours per participant) and are low cost for both the participants and the Federal Government;
- The collections are noncontroversial;
- Personally-identifiable information (PII) is collected only to the extent necessary [1] and is not retained;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; [2] and
- Information gathered will yield qualitative findings; the collections will not be designed or expected to yield statistical data or used as though the results are generalizable to the population of study.

To obtain approval for an individual generic collection submission that meets the conditions of this generic clearance, an abbreviated supporting statement will be submitted to OMB along with supporting documentation (*e.g.,* a copy of the survey or experimental design and stimuli for testing).

FDA will submit individual quantitative collections under this generic clearance to OMB. Individual quantitative collections will also undergo review by FDA's Research Involving Human Subjects Committee, senior leadership in the Center for Food Safety and Applied Nutrition, and PRA specialists.

Respondents to this collection of information may include a wide range of consumers and other FDA stakeholders such as producers and manufacturers who are regulated under FDA-regulated food and cosmetic products, dietary supplements, and animal food and feed.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN BY ANTICIPATED DATA COLLECTION METHODS [1]

Survey type	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per response	Total hours
Cognitive Interviews Screener	720	1	720	0.083 (5 minutes)	60
Cognitive Interviews	144	1	144	1	144
Pre-test Study Screener	2,400	1	2,400	0.083 (5 minutes)	199
Pre-test Study	480	1	480	0.25 (15 minutes)	120
Self-administered Surveys/Experimental Studies Screener.	75,000	1	75,000	0.083 (5 minutes)	6,225
Self-administered Surveys/Experimental Studies	15,000	1	15,000	0.25 (15 minutes)	3,750
Total					10,498

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate. The total estimated annual burden is 10,498 hours. Current estimates are based on both historical numbers of participants from past projects as well as estimates for projects to be conducted in the next 3 years. The number of participants to be included in each new survey will vary, depending on the nature of the compliance efforts and the target audience.

Dated: September 3, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–19480 Filed 9–8–21; 8:45 am]

BILLING CODE 4164–01–P

[1] For example, collections that collect PII to provide remuneration for participants of focus groups and cognitive laboratory studies will be submitted under this request. All Privacy Act requirements will be met.

[2] As defined in OMB and Agency Information Quality Guidelines, ''influential'' means that ''an agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions.''

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Single Cell Opioid Responses in the Context of HIV (SCORCH) Program Expansion: CNS Data Generation for Chronic Opioid, Methamphetamine, and/or Cocaine Exposures (U01 Clinical Trial Not Allowed).

Date: October 18, 2021.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yvonne Owens Ferguson, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 402–7371, *yvonne.ferguson@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: September 2, 2021.

Tyeshia Roberson-Curtis,

Program Analyst, Office Federal Advisory Committee Policy.

[FR Doc. 2021–19408 Filed 9–8–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0408]

Guidance: Change 3 to NVIC 24–14 Guidelines on Qualification for STCW Endorsements as Electro-Technical Rating on Vessels Powered by Main Propulsion Machinery of 750 KW/1,000 HP or More

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of Change 3 to Navigation and Vessel Inspection Circular (NVIC) 24–14: Guidelines on Qualification for STCW Endorsements as Electro-Technical Rating (ETR) on Vessels Powered by Main Propulsion Machinery of 750 kW/1,000 HP or More. This NVIC provides guidance to mariners concerning STCW endorsements for ETR, including training and qualifications. This change notice revises NVIC 24–14 to indicate that the Coast Guard will allow mariners to qualify for an STCW endorsement as ETR without completing approved training for high voltage systems or computer systems and maintenance.

DATES: The policies announced in Change-3 to NVIC 24–14 are effective as of August 26, 2021.

ADDRESSES: To view documents mentioned in this notice, search the docket number USCG–2021–0408 using the Federal eRulemaking Portal at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For information about this document, contact James Cavo, Mariner Credentialing Program Policy Division (CG–MMC–2), Coast Guard; telephone 202–372–1205; email *MMCPolicy@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will use NVIC 24–14 and 46 CFR part 12 to establish whether mariners are qualified to hold STCW rating endorsements as Electro-Technical Rating (ETR) on Vessels Powered by Main Propulsion Machinery of 750 kW/1,000 HP or More. As specified in 46 CFR 12.611, mariners seeking this endorsement must complete an approved training for High Voltage Systems and Computer Systems and Maintenance. The standards of competence requirements for STCW endorsements as ETR are found in Table A–III/7 of the STCW Code. That STCW table does not include standards of competence relevant to high voltage systems or computer systems and maintenance.

The Coast Guard will not enforce the requirement for approved courses in Computer Systems and Maintenance or High Voltage Systems for an ETR endorsement because it places a higher training burden on U.S. mariners compared to what is required of the international maritime workforce for a similar endorsement. The time and cost for a mariner to complete these courses outweighs any benefit the course would provide because the mariner does not use this knowledge and proficiency in their ETR capacity. Therefore, we have determined this training requirement goes beyond the skillset necessary and the level of responsibility associated with an ETR endorsement, and thus is unnecessary and overly burdensome. For these reasons, this Commandant Change Notice will allow mariners to qualify for an STCW endorsement as ETR without completing approved training for computer systems and maintenance and for high voltage power systems.

The approved High Voltage Power Systems training courses will still be required and utilized for the Electro-Technical Officer endorsement.

This notice is issued under authority of 5 U.S.C. 552(a).

Dated: September 2, 2021.

J.W. Mauger,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2021–19411 Filed 9–8–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0278]

Port Access Route Study: Northern New York Bight

AGENCY: Coast Guard, Homeland Security (DHS).

ACTION: Notice of availability of draft report; reopening of the comment period.

SUMMARY: The U.S. Coast Guard is reopening the comment period to further its outreach efforts and solicit additional comments concerning its Northern New York Bight Port Access Route Study (NNYBPARS) draft version of the study report.

DATES: Your comments and related material must reach the Coast Guard on or before September 30, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0278 using the Federal portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact Mr. Craig Lapiejko, Waterways Management at First Coast Guard District, telephone (617) 223–8351, email *craig.d.lapiejko@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

The Ports and Waterways Safety Act (46 U.S.C. 70003(c)) requires the Coast Guard to conduct a Port Access Route Study (PARS), *i.e.,* a study of potential traffic density and the need for safe access routes for vessels. Through the study process, the Coast Guard coordinates with Federal, State, local, tribal and foreign state agencies (as appropriate) to consider the views of maritime community representatives, environmental groups, and other interested stakeholders. The primary purpose of this coordination is, to the extent practicable, to reconcile the need for safe access routes with other reasonable waterway uses such as construction and operation of renewable energy facilities and other uses of the Atlantic Ocean in the study area.

In 2019, the Coast Guard announced a new study of routes used by ships to access ports on the Atlantic Coast of the United States in the **Federal Register** (84 FR 9541; March 15, 2019). This new study supplements and builds upon the ACPARS by conducting a series of PARS to examine ports along the Atlantic Coast that are economically significant or support military or critical national defense operations and related international entry and departure transit areas that are integral to the safe and efficient and unimpeded flow of commerce to/from major international shipping lanes. The NNYBPARS is one of several studies being conducted.

On June 29, 2020, the First Coast Guard District published a notice of study and public meetings; request for comments entitled ''Port Access Route Study (PARS): Northern New York Bight'' in the **Federal Register** (85 FR 38907) to evaluate the adequacy of existing vessel routing measures and determine whether additional vessel routing measures are necessary for port approaches to New York and New Jersey and international and domestic transit areas in the First District area of responsibility.

The public was afforded a 60-day comment period, and two virtual public meetings were held via teleconference and webinar to receive public input. The Coast Guard received 25 comments to this document in response to our **Federal Register** Notice, public meetings and other outreach efforts. All comments and supporting documents to this document are available in a public docket and can be viewed at *http://www.regulations.gov.*

On April 12, 2021, we published a supplemental notice of study; request for comments entitled ''Port Access Route Study (PARS): Northern New York Bight'' in the **Federal Register** (86 FR 18996) seeking additional information.

The public was afforded a 30-day comment period. The Coast Guard received five comments to this document in response to our **Federal Register** Notice, and other outreach efforts. All comments and supporting documents to this document are available in a public docket and can be viewed at *http://www.regulations.gov.*

During both comment periods a total of 30 comments were submitted by representatives of the maritime community, wind energy developers, non-governmental organizations, Federal and State governmental agencies, and private citizens.

Of the thirty comments, fourteen requested additional routing measures be established, twelve expressed concerns that wind farm installations will negatively affect vessel's marine radar performance, eight requested setback/buffer zones, six requested anchorages be designated, six requested additional meetings, three requested alteration of existing routing measures, and three requested expanding Vessel Traffic Services.

A synopsis of the comments and copies of the Coast Guard's Public outreach can be found in the draft version of the study report.

On July 15, 2021, the First Coast Guard District published a notice of availability of the draft version of the study report entitled ''Port Access Route Study (PARS): Northern New York Bight'' in the **Federal Register** (86 FR 37339).

The public was afforded a 45-day comment period, one virtual public meeting and three in person public meetings were held, to receive public input. The Coast Guard received 17 comments to this document in response to our **Federal Register** Notice, public meetings and other outreach efforts. All comments and supporting documents to this document are available in a public docket and can be viewed at *www.regulations.gov.*

The Coast Guard is opening this fourth and final NNYBPARS comment period to facilitate transparent public discussions on the information above as well as the draft version of the study.

II. Information Requested

Do you agree or disagree with the draft report's recommendations, proposed actions, or continued actions, and if so, why?

III. Public Participation and Request for Comments

We encourage you to comment on the content and development of the report through the Federal eRulemaking Portal at *https://www.regulations.gov.*

A. Viewing the draft version of the report: To view the draft version of the NNYBPARS report in the docket, go to *http://www.regulations.gov,* and insert ''USCG–2020–0278'' in the ''search box.'' Click ''Search''. Then scroll down looking of the document entitled ''DRAFT REPORT Northern New York Bight PARS June 29, 2021'' under the document type ''Supporting & Related Material.''

B. Submitting Comments: To submit your comment online, go to *http://www.regulations.gov,* and insert ''USCG–2020–0278'' in the ''search box.'' Click ''Search''. Then click ''Comment.'' The ''Comment'' button can be found on the following pages:

- Docket Details page when a document within the docket is open for comment,
- Document Details page when the document is open for comment, and
- Document Search Tab with all search results open for comment displaying a ''Comment'' button.

Clicking ''Comment'' on any of the above pages will display the comment form. You can enter your comment on the form, attach files (maximum of 20 files up to 10MB each), and choose whether to identify yourself as an individual, an organization, or anonymously. Be sure to complete all required fields depending on which identity you have chosen. Once you have completed all required fields and chosen an identity, the ''Submit Comment'' button is enabled. Upon completion, you will receive a Comment Tracking Number for your comment. For additional step by step instructions, please see the Frequently Asked Questions page on *http://www.regulations.gov* or by clicking *https://www.regulations.gov/faq.*

We accept anonymous comments. Comments we post to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

We review all comments and materials received during the comment period, but we may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

C. How do I find and browse for posted comments on Regulations.gov.

On the previous version of *Regulations.gov*, users browse for comments on the Docket Details page. However, since comments are made on individual documents, not dockets, new *Regulations.gov* organizes comments under their corresponding document. To access comments and documents submitted to this draft version of the study report go to *http://www.regulations.gov,* and insert ''USCG–2020–0278'' in the ''search box.'' Click ''Search''. Then scroll down to and click on the ''notice'' entitled ''Port Access Route Study: Notice of availability of draft report and public information session; request for comments.'' This will open to the ''Document Details'' page. Then click on the ''Browse Comments'' tab. On the comment tab, you can search and filter comments. Note: If no comments have been posted to a document, the ''Comments'' tab will not appear on the Document Details page.

D. If you need additional help navigating the new Regulations.gov. For additional step by step instructions to submit a comment or to view submitted comments or other documents please see the Frequently Asked Questions (FAQs) at *http://www.regulations.gov/faqs* or call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

E. Privacy Act: Anyone can search the electronic form of 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.*). You may review a Privacy Act, system of records notice regarding DHS's eRulemaking in the March 11, 2020, issue of the **Federal Register** (85 FR 14226)

VI. Future Actions

Any comments received will be reviewed and considered before a final version of the NNYBPARS is announced in the **Federal Register**.

This notice is published under the authority of 46 U.S.C. 70004 and 5 U.S.C. 552(a).

Dated: September 2, 2021.

T.G. Allan Jr.,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2021–19464 Filed 9–8–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6283–N–01]

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2022

AGENCY: Office of the Assistant Secretary for Policy Development and Research, Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: This document designates ''Difficult Development Areas'' (DDAs) and ''Qualified Census Tracts'' (QCTs) for purposes of the Low-Income Housing Credit (LIHTC) under Internal Revenue Code (IRC) Section 42. The United States Department of Housing and Urban Development (HUD) makes new DDA and QCT designations annually.

ADDRESSES: This notice and additional information about DDAs and QCTs including the lists of DDAs and QCTs are available electronically on the internet at *https://www.huduser.gov/portal/datasets/qct.html.*

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions, contact Michael K. Hollar, Senior Economist, Public Finance and Regulatory Analysis Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street SW, Room 8216, Washington, DC 20410–6000; telephone number 202–402–5878, or send an email to *Michael.K.Hollar@hud.gov.* For specific legal questions pertaining to Section 42, Office of the Associate Chief Counsel, Passthroughs and Special Industries, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224; telephone number 202–317–4137. For questions about the ''HUBZone'' program, contact Bruce Purdy, Deputy Director, HUBZone Program, Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 Third Street SW, Suite 8800, Washington, DC 20416; telephone number 202–205–7554, or send an email to *hubzone@sba.gov.* (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at, toll-free, 800–245–2691 for a small fee to cover duplication and mailing costs. A toll-free text telephone is available for the telephone numbers above for persons with hearing or speech impairments at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. This Notice

Under IRC Section 42(d)(5)(B)(iii)(I), for purposes of the LIHTC, the Secretary of HUD must designate DDAs, which are areas with high construction, land, and utility costs relative to area median gross income (AMGI). This notice designates DDAs for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. HUD makes the designations of DDAs in this notice based on modified Fiscal Year (FY) 2021 Small Area Fair Market Rents (Small Area FMRs, SAFMRs), FY 2021 nonmetropolitan county FMRs, FY 2021 income limits, and 2010 Census population counts, as explained below.

Similarly, under IRC Section 42(d)(5)(B)(ii)(I), the Secretary of HUD must designate QCTs, which are areas where either 50 percent or more of the households have an income less than 60 percent of the AMGI for such year or have a poverty rate of at least 25 percent. This notice designates QCTs based on new income and poverty data released in the American Community Survey (ACS). Specifically, HUD relies on the most recent three sets of ACS data to ensure that anomalous estimates, due to sampling, do not affect the QCT status of tracts.

II. Data Used To Designate DDAs

HUD uses data from the 2010 Census on total population of metropolitan areas, metropolitan ZIP Code Tabulation Areas (ZCTAs), and nonmetropolitan areas in the designation of DDAs. The Office of Management and Budget (OMB) published updated metropolitan areas in OMB Bulletin No. 17–01 on August 15, 2017. FY 2021 FMRs and FY 2021 income limits HUD uses to designate DDAs are based on these metropolitan statistical area (MSA) definitions, with modifications to account for substantial differences in rental housing markets (and, in some cases, median income levels) within MSAs. HUD calculates Small Area FMRs for the ZCTAs, or portions of ZCTAs within the metropolitan areas defined by OMB Bulletin No. 17–01.

III. Data HUD Uses To Designate QCTs

HUD uses data from the 2010 Census on total population of census tracts, metropolitan areas, and the nonmetropolitan parts of states in the designation of QCTs. The FY 2021 income limits HUD uses to designate QCTs are based on these MSA definitions with modifications to account for substantial differences in rental housing markets (and in some

cases median income levels) within MSAs. In this QCT designation, HUD uses the OMB metropolitan area definitions published in OMB Bulletin No. 17–01, without modification for purposes of evaluating how many census tracts can be designated under the population cap but uses the HUD-modified definitions and their associated area median incomes for determining QCT eligibility.

Because the 2010 Decennial Census did not include questions on respondent household income, HUD uses ACS data to designate QCTs. The ACS tabulates data collected over 5 years to provide estimates of socioeconomic variables for small areas containing fewer than 65,000 persons, such as census tracts. Due to sample-related anomalies in estimates from year to year, HUD utilizes three sets of ACS tabulations to ensure that anomalous estimates do not affect QCT status.

IV. Background

The U.S. Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) are authorized to interpret and enforce the provisions of IRC Section 42. In order to assist in understanding HUD's mandated designation of DDAs and QCTs for use in administering IRC Section 42, a summary of the section is provided below. The following summary does not purport to bind Treasury or the IRS in any way, nor does it purport to bind HUD, since HUD has authority to interpret or administer the IRC only in instances where it receives explicit statutory delegation.

V. Summary of the Low-Income Housing Credit

A. Determining Eligibility

The LIHTC is a tax incentive intended to increase the availability of low-income rental housing. IRC Section 42 provides an income tax credit to certain owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (credit ceiling) is limited by population. Section 42 allows each state a credit ceiling based on a statutory formula indicated at IRC Section 42(h)(3). States may carry forward unallocated credits derived from the credit ceiling for one year; however, to the extent such unallocated credits are not used by then, the credits go into a national pool to be allocated to qualified states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides IRC Section 42 credits derived from the credit ceiling, states may also provide IRC Section 42 credits to owners of buildings based on the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided based on the use of tax-exempt bond proceeds do not reduce the credits available from the credit ceiling. *See* IRC Section 42(h)(4).

The credits allocated to a building are based on the cost of units placed in service as low-income units under particular minimum occupancy and maximum rent criteria. Prior to the enactment of the Consolidated Appropriations Act, 2018 (the 2018 Act), under IRC Section 42(g), a building was required to meet one of two tests to be eligible for the LIHTC; either: (1) 20 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of AMGI, or (2) 40 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. A unit is ''rent-restricted'' if the gross rent, including an allowance for tenant-paid utilities, does not exceed 30 percent of the imputed income limitation (*i.e.,* 50 percent or 60 percent of AMGI) applicable to that unit. The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The 2018 Act added a third test, the average income test. *See* IRC Section 42(g)(1), as amended by Public Law 115–141, Division T, Section 103(a)(1) (March 23, 2018). A building meets the minimum requirements of the average income test if 40 percent or more (25 percent or more in the case of a project located in a high cost housing area as described in IRC Section 142(d)(6)) of the residential units in such project are both rent-restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit. The taxpayer designates the imputed income limitation for each unit. The designated imputed income limitation of any unit is determined in 10-percentage-point increments, and may be designated as 20, 30, 40, 50, 60, 70, or 80 percent of AMGI. The average of the imputed income limitations designated must not exceed 60 percent of AMGI. *See* IRC Section 42(g)(1)(C).

B. Calculating the LIHTC

The LIHTC reduces income tax liability dollar-for-dollar. It is taken annually for a term of 10 years and is intended to yield a present value of either: (1) 70 percent of the ''qualified basis'' for new construction or substantial rehabilitation expenditures that are not federally subsidized (as defined in IRC Section 42(i)(2)), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing buildings or projects that are federally subsidized. The tax credit rates are determined monthly under procedures specified in IRC Section 42 and cannot be less than 9 percent of the qualified basis of new buildings that are not federally subsidized, and not less than 4 percent of the qualified basis of buildings that are federally subsidized. Individuals can use the credits up to a deduction equivalent of $25,000 (the actual maximum amount of credit that an individual can claim depends on the individual's marginal tax rate). For buildings placed in service after December 31, 2007, individuals can use the credits against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credits against ordinary income tax, and, for buildings placed in service after December 31, 2007, against the alternative minimum tax. These corporations also can deduct losses from the project.

The qualified basis represents the product of the building's ''applicable fraction'' and its ''eligible basis.'' The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low-income units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to a capital account that are incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated DDAs or designated QCTs, or for credits awarded from the state's per capita allocation, buildings designated by the state agency, eligible basis may be increased up to 130 percent from what it would otherwise be. This means that the available credits also may be increased by up to 30 percent. For example, if a 70 percent credit is available, it effectively could be increased to as much as 91 percent (70 percent × 130 percent).

C. Defining Difficult Development Areas (DDAs) and Qualified Census Tracts (QCTs)

As stated above, IRC Section 42 defines a DDA as an area designated by the Secretary of HUD that has high construction, land, and utility costs relative to the AMGI. All designated DDAs in metropolitan areas (taken together) may not contain more than 20 percent of the aggregate population of all metropolitan areas, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all nonmetropolitan areas. *See* IRC Section 42(d)(5)(B)(iii).

Similarly, IRC Section 42 defines a QCT as an area designated by the Secretary of HUD where, for the most recent year for which census data are available on household income in such tract, either 50 percent or more of the households in the tract have an income which is less than 60 percent of the AMGI or the tract's poverty rate is at least 25 percent. All designated QCTs in a single metropolitan area or nonmetropolitan area (taken together) may not contain more than 20 percent of the population of that metropolitan or nonmetropolitan area. Thus, unlike the restriction on DDA designations, QCTs are restricted by the total population of each individual area as opposed to the aggregate population across all metropolitan areas and nonmetropolitan areas. *See* IRC Section 42(d)(5)(B)(ii).

IRC Section 42(d)(5)(B)(v) allows states to award an increase in basis up to 30 percent to buildings located outside of federally designated DDAs and QCTs if the increase is necessary to make the building financially feasible. This state discretion applies only to buildings allocated credits under the state housing credit ceiling and is not permitted for buildings receiving credits entirely in connection with tax-exempt bonds. Rules for such designations shall be set forth in the LIHTC-allocating agencies' qualified allocation plans (QAPs). *See* IRC Section 42(m).

VI. Explanation of HUD Designation Method

A. 2022 Difficult Development Areas

In developing the 2022 list of DDAs, as required by IRC Section 42(d)(5)(B)(iii), HUD compared housing costs with incomes. HUD used 2010 Census population for ZCTAs, and nonmetropolitan areas, and the MSA definitions, as published in OMB Bulletin 17–01 on August 15, 2017, with modifications, as described below. In keeping with past practice of basing the coming year's DDA designations on data from the preceding year, the basis for these comparisons is the FY 2021 HUD income limits for very low-income households (very low-income limits, or VLILs), which are based on 50 percent of AMGI, and modified FMRs based on the FY 2021 FMRs used for the Housing Choice Voucher (HCV) program. For metropolitan DDAs, HUD used Small Area FMRs based on three annual releases of ACS data, to compensate for statistical anomalies which affect estimates for some ZCTAs. For non-metropolitan DDAs, HUD used the FY 2021 FMRs released on August 14, 2020 and effective on October 1, 2020 (85 FR 49666) as updated by the March 19, 2020 publication effective April 1, 2021 (86 FR 14953).

In formulating the FY 2021 FMRs and VLILs, HUD modified the current OMB definitions of MSAs to account for differences in rents among areas within each current MSA that were in different FMR areas under definitions used in prior years. HUD formed these ''HUD Metro FMR Areas'' (HMFAs) in cases where one or more of the parts of newly defined MSAs were previously in separate FMR areas. All counties added to metropolitan areas are treated as HMFAs with rents and incomes based on their own county data, where available. HUD no longer requires recent-mover rents to differ by five percent or more in order to form a new HMFA. All HMFAs are contained entirely within MSAs. All nonmetropolitan counties are outside of MSAs and are not broken up by HUD for purposes of setting FMRs and VLILs. (Complete details on HUD's process for determining FY 2021 FMR areas and FMRs are available at *https://www.huduser.gov/portal/datasets/fmr.html#2021.* Complete details on HUD's process for determining FY 2021 income limits are available at *https://www.huduser.gov/portal/datasets/il.html#2021.*)

HUD's unit of analysis for designating metropolitan DDAs consists of ZCTAs, whose Small Area FMRs are compared to metropolitan VLILs. For purposes of computing VLILs in metropolitan areas, HUD considers entire MSAs in cases where these were not broken up into HMFAs; and HMFAs within the MSAs that were broken up for such purposes. Hereafter in this notice, the unit of analysis for designating metropolitan DDAs will be called the ZCTA, and the unit of analysis for nonmetropolitan DDAs will be the nonmetropolitan county or county equivalent area. The procedure used in making the DDA designations follows:

1. *Calculate FMR-to-Income Ratios.* For each metropolitan ZCTA and each nonmetropolitan county, HUD calculated a ratio of housing costs to income. HUD used a modified FY 2021 two-bedroom Small Area FMR for ZCTAs, a modified FY 2021 two-bedroom FMR for non-metropolitan counties, and the FY 2021 four-person VLIL for this calculation.

The modified FY 2021 two-bedroom Small Area FMRs for ZCTAs differ from the FY 2021 Small Area FMRs in four ways. First, HUD did not limit the Small Area FMR to 150 percent of its metropolitan area FMR. Second, HUD did not limit annual decreases in Small Area FMRs to ten percent, which was first applied in the FY 2018 FMR calculations. Third, HUD adjusted the Small Area FMRs in New York City using the New York City Housing and Vacancy Survey, which is conducted by the U.S. Census Bureau, to adjust for the effect of local rent control and stabilization regulations. No other jurisdictions have provided HUD with data that could be used to adjust Small Area FMRs for rent control or stabilization regulations.[1] Finally, the Small Area FMRs are not limited to the State non-metropolitan minimum FMR.

The FY 2021 two-bedroom FMR for non-metropolitan counties was modified only by removing the state non-metropolitan minimum FMR.

The numerator of the ratio, representing the development cost of housing, was the area's FY 2021 FMR, or Small Area FMR in metropolitan areas. In general, the FMR is based on the 40th-percentile gross rent paid by recent movers to live in a two-bedroom rental unit.

The denominator of the ratio, representing the maximum income of eligible tenants, was the monthly LIHTC income-based rent limit, which was calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where the VLIL was rounded to the nearest $50).

2. *Sort Areas by Ratio and Exclude Unsuitable Areas.* The ratios of the FMR, or Small Area FMR, to the LIHTC income-based rent limit were arrayed in descending order, separately, for ZCTAs and for nonmetropolitan counties. ZCTAs with populations less than 100 were excluded in order to avoid designating areas unsuitable for residential development, such as ZCTAs containing airports.

3. *Select Areas with Highest Ratios and Exclude QCTs.* The DDAs are those areas with the highest ratios that cumulatively comprise 20 percent of the

[1] HUD encourages other jurisdictions with rent control laws that affect rents paid by recent movers into existing units to contact HUD about what data might be provided or collected to adjust Small Area FMRs in those jurisdictions.

2010 population of all metropolitan areas and all nonmetropolitan areas. For purposes of applying this population cap, HUD excluded the population in areas designated as 2022 QCTs. Thus, an area can be designated as a QCT or DDA, but not both.

B. Application of Population Caps to DDA Determinations

In identifying DDAs, HUD applied caps, or limitations, as noted above. The cumulative population of metropolitan DDAs cannot exceed 20 percent of the cumulative population of all metropolitan areas, and the cumulative population of nonmetropolitan DDAs cannot exceed 20 percent of the cumulative population of all nonmetropolitan areas.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains those procedures. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio, as described above, was identical (to four decimal places) to the last area selected, and its inclusion resulted in only a minor overrun of the cap. Thus, for both the designated metropolitan and nonmetropolitan DDAs, there may be minimal overruns of the cap. HUD believes the designation of additional areas in the above examples of minimal overruns is consistent with the intent of the IRC. As long as the apparent excess is small due to measurement errors, some latitude is justifiable, because it is impossible to determine whether the 20 percent cap has been exceeded. Despite the care and effort involved in a Decennial Census, the Census Bureau and all users of the data recognize that the population counts for a given area and for the entire country are not precise. Therefore, the extent of the measurement error is unknown. There can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting small variances above the 20 percent limit.

C. Qualified Census Tracts

In developing the list of QCTs, HUD used 2010 Census 100-percent count data on total population, total households, and population in households; the median household income and poverty rate as estimated in the 2013–2017, 2014–2018 and 2015–2019 ACS tabulations; the FY 2021 Very Low-Income Limits (VLILs) computed at the HMFA level to determine tract eligibility; and the MSA definitions published in OMB Bulletin No. 17–01 on August 15, 2017, for determining how many eligible tracts can be designated under the statutory 20 percent population cap.

HUD uses the HMFA-level AMGIs to determine QCT eligibility because the statute, specifically IRC Section 42(d)(5)(B)(iv)(II), refers to the same section of the IRC that defines income for purposes of tenant eligibility and unit maximum rent, specifically IRC Section 42(g)(4). By rule, the IRS sets these income limits according to HUD's VLILs, which, starting in FY 2006 and thereafter, are established at the HMFA level. HUD uses the entire MSA to determine how many eligible tracts can be designated under the 20 percent population cap as required by the statute (IRC Section 42(d)(5)(B)(ii)(III)), which states that MSAs should be treated as singular areas.

HUD determined the QCTs as follows:

1. *Calculate 60 percent AMGI.* To be eligible to be designated a QCT, a census tract must have 50 percent of its households with incomes below 60 percent of AMGI or have a poverty rate of 25 percent or more. Due to potential statistical anomalies in the ACS 5-year estimates, one of these conditions must be met in at least 2 of the 3 ACS 5-year tabulations for a tract to be considered eligible for QCT designation. HUD calculates 60 percent of AMGI by multiplying by a factor of 1.2 the HMFA or nonmetropolitan county FY 2021 VLIL adjusted for inflation to match the ACS estimates, which are adjusted to the value of the dollar in the last year of the 5-year group.

2. *Determine Whether Census Tracts Have Less than 50 percent of Households Below 60 percent AMGI.* For each census tract, whether or not 50 percent of households have incomes below the 60 percent income standard (income criterion) was determined by: (a) Calculating the average household size of the census tract, (b) adjusting the income standard to match the average household size, and (c) comparing the average-household-size-adjusted income standard to the median household income for the tract reported in each of the three years of ACS tabulations (2013–2017, 2014–2018 and 2015–2019). HUD did not consider estimates of median household income to be statistically reliable unless the margin of error was less than half of the estimate (or a Margin of Error Ratio, MoER, of 50 percent or less). If at least two of the three estimates were not statistically reliable by this measure, HUD determined the tract to be ineligible under the income criterion due to lack of consistently reliable median income statistics across the three ACS tabulations. Since 50 percent of households in a tract have incomes above and below the tract median household income, if the tract median household income is less than the average-household-size-adjusted income standard for the tract, then more than 50 percent of households have incomes below the standard.

3. *Estimate Poverty Rate.* For each census tract, HUD determined the poverty rate in each of the three releases of ACS tabulations (2013–2017, 2014–2018 and 2015–2019) by dividing the population with incomes below the poverty line by the population for whom poverty status has been determined. As with the evaluation of tracts under the income criterion, HUD applies a data quality standard for evaluating ACS poverty rate data in designating the 2022 QCTs. HUD did not consider estimates of the poverty rate to be statistically reliable unless both the population for whom poverty status has been determined and the number of persons below poverty had MoERs of less than 50 percent of the respective estimates. If at least two of the three poverty rate estimates were not statistically reliable, HUD determined the tract to be ineligible under the poverty rate criterion due to lack of reliable poverty statistics across the ACS tabulations.

4. *Designate QCTs Where 20 percent or Less of Population Resides in Eligible Census Tracts.* QCTs are those census tracts in which 50 percent or more of the households meet the income criterion in at least two of the three years evaluated, or 25 percent or more of the population is in poverty in at least two of the three years evaluated, such that the population of all census tracts that satisfy either one or both of these criteria does not exceed 20 percent of the total population of the respective area.

5. *Designate QCTs Where More than 20 percent of Population Resides in Eligible Census Tracts.* In areas where more than 20 percent of the population resides in eligible census tracts, census tracts are designated as QCTs in accordance with the following procedure:

a. The statistically reliable income and poverty criteria are each averaged over the three ACS tabulations (2013–

2017, 2014–2018 and 2015–2019). Statistically reliable values that did not exceed the income and poverty rate thresholds were included in the average.

b. Eligible tracts are placed in one of two groups based on the averaged values of the income and poverty criteria. The first group includes tracts that satisfy both the income and poverty criteria for QCTs for at least two of the three evaluation years; a different pair of years may be used to meet each criterion. The second group includes tracts that satisfy either the income criterion in at least two of the three years, or the poverty criterion in at least two of three years, but not both. A tract must qualify by at least one of the criteria in at least two of the three evaluation years to be eligible.

c. HUD ranked tracts in the first group from highest to lowest by the average of the ratios of the tract average-household-size-adjusted income limit to the median household income. Then, HUD ranked tracts in the first group from highest to lowest by the average of the poverty rates. HUD averaged the two ranks to yield a combined rank. HUD then sorted the tracts on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In the event of a tie, HUD ranked more populous tracts above less populous ones.

d. HUD ranked tracts in the second group from highest to lowest by the average of the ratios of the tract average-household-size-adjusted income limit to the median household income. Then, HUD ranked tracts in the second group from highest to lowest by the average of the poverty rates. HUD then averaged the two ranks to yield a combined rank. HUD then sorted the tracts on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In the event of a tie, HUD ranked more populous tracts above less populous ones.

e. HUD stacked the ranked first group on top of the ranked second group to yield a single, concatenated, ranked list of eligible census tracts.

f. Working down the single, concatenated, ranked list of eligible tracts, HUD identified census tracts as designated until the designation of an additional tract would cause the 20 percent limit to be exceeded. If HUD does not designate a census tract because doing so would raise the percentage above 20 percent, HUD then considers subsequent eligible census tracts to determine if one or more eligible census tract(s) with smaller population(s) could be designated without exceeding the 20 percent limit.

D. Exceptions to OMB Definitions of MSAs and Other Geographic Matters

As stated in OMB Bulletin 17–01, defining metropolitan areas:

> ''OMB establishes and maintains the delineations of Metropolitan Statistical Areas, . . . solely for statistical purposes. . . . OMB does not take into account or attempt to anticipate any non-statistical uses that may be made of the delineations[.] In cases where . . . an agency elects to use the Metropolitan . . . Area definitions in nonstatistical programs, it is the sponsoring agency's responsibility to ensure that the delineations are appropriate for such use. An agency using the statistical delineations in a nonstatistical program may modify the delineations, but only for the purposes of that program. In such cases, any modifications should be clearly identified as delineations from the OMB statistical area delineations in order to avoid confusion.''

Following OMB guidance, HUD's estimation procedure for the FMRs and income limits incorporates the current OMB definitions of metropolitan Core-Based Statistical Areas (CBSAs) based on the CBSA standards, as implemented with 2010 Census data, but makes adjustments to the definitions, in order to separate subparts of these areas in cases where counties were added to an existing or newly defined metropolitan area. In CBSAs where HUD establishes subareas, it is HUD's view that the geographic extent of the housing markets is not the same as the geographic extent of the CBSAs.

In the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), HUD defines HMFAs according to county subdivisions or minor civil divisions (MCDs), rather than county boundaries. However, since no part of an HMFA is outside an OMB-defined, county-based MSA, all New England nonmetropolitan counties are kept intact for purposes of designating Nonmetropolitan DDAs.

VII. Future Designations

HUD designates DDAs annually as updated HUD income limit and FMR data are made public. HUD designates QCTs annually as new income and poverty rate data are released.

A. Effective Date

The 2022 lists of QCTs and DDAs are effective:

(1) For allocations of credit after December 31, 2021; or

(2) for purposes of IRC Section 42(h)(4), if the bonds are issued and the building is placed in service after December 31, 2021.

If an area is not on a subsequent list of QCTs or DDAs, the 2022 lists are effective for the area if:

(1) The allocation of credit to an applicant is made no later than the end of the 730-day period after the applicant submits a complete application to the LIHTC-allocating agency, and the submission is made before the effective date of the subsequent lists; or

(2) for purposes of IRC Section 42(h)(4), if:

(a) The bonds are issued or the building is placed in service no later than the end of the 730-day period after the applicant submits a complete application to the bond-issuing agency, and

(b) the submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete by the credit-allocating or bond-issuing agency. A ''complete application'' means that no more than de minimis clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

In the case of a ''multiphase project,'' the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the project received its first allocation of LIHTC. For purposes of IRC Section 42(h)(4), the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the first of the following occurred: (a) The building(s) in the first phase were placed in service, or (b) the bonds were issued.

For purposes of this notice, a ''multiphase project'' is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria:

(1) The multiphase composition of the project (*i.e.,* total number of buildings and phases in project, with a description of how many buildings are to be built in each phase and when each phase is to be completed, and any other information required by the agency) is made known by the applicant in the first application of credit for any building in the project, and that applicant identifies the buildings in the project for which credit is (or will be) sought;

(2) the aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant, as

defined in the QAP of the LIHTC-allocating agency, or the annual per-capita credit authority of the LIHTC allocating agency, and is the reason the applicant must request multiple allocations over 2 or more years; and

(3) all applications for LIHTC for buildings on the site are made in immediately consecutive years.

Members of the public are hereby reminded that the Secretary of Housing and Urban Development, or the Secretary's designee, has legal authority to designate DDAs and QCTs, by publishing lists of geographic entities as defined by, in the case of DDAs, the Census Bureau, the several states and the governments of the insular areas of the United States and, in the case of QCTs, by the Census Bureau; and to establish the effective dates of such lists. The Secretary of the Treasury, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with the IRC and associated regulations, including **Federal Register** notices published by HUD for purposes of designating DDAs and QCTs. Representations made by any other entity as to the content of HUD notices designating DDAs and QCTs that do not precisely match the language published by HUD should not be relied upon by taxpayers in determining what actions are necessary to comply with HUD notices.

B. Interpretive Examples of Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose QCT or DDA status. The examples covering DDAs are equally applicable to QCT designations.

(*Case A*) Project A is located in a 2022 DDA that is NOT a designated DDA in 2023 or 2024. A complete application for tax credits for Project A is filed with the allocating agency on November 15, 2022. Credits are allocated to Project A on October 30, 2024. Project A is eligible for the increase in basis accorded a project in a 2022 DDA because the application was filed BEFORE January 1, 2023 (the assumed effective date for the 2023 DDA lists), and because tax credits were allocated no later than the end of the 730-day period after the filing of the complete application for an allocation of tax credits.

(*Case B*) Project B is located in a 2022 DDA that is NOT a designated DDA in 2023 or 2024. A complete application for tax credits for Project B is filed with the allocating agency on December 1, 2022. Credits are allocated to Project B on March 30, 2025. Project B is NOT eligible for the increase in basis accorded a project in a 2022 DDA because, although the application for an allocation of tax credits was filed BEFORE January 1, 2023 (the assumed effective date of the 2023 DDA lists), the tax credits were allocated later than the end of the 730-day period after the filing of the complete application.

(*Case C)* Project C is located in a 2022 DDA that was not a DDA in 2021. Project C was placed in service on November 15, 2021. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2022. The tax-exempt bonds that will support the permanent financing of Project C are issued on September 30, 2022. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2022 DDA, because the project was placed in service BEFORE January 1, 2022.

(*Case D*) Project D is located in an area that is a DDA in 2022 but is NOT a DDA in 2023 or 2024. A complete application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2022. Tax-exempt bonds are issued for Project D on April 30, 2024, but Project D is not placed in service until January 30, 2025. Project D is eligible for the increase in basis available to projects located in 2022 DDAs because: (1) One of the two events necessary for triggering the effective date for buildings described in Section 42(h)(4)(B) of the IRC (the two events being tax-exempt bonds issued and buildings placed in service) took place on April 30, 2024, within the 730-day period after a complete application for tax-exempt bond financing was filed, (2) the application was filed during a time when the location of Project D was in a DDA, and (3) both the issuance of the tax-exempt bonds and placement in service of Project D occurred after the application was submitted.

(*Case E*) Project E is a multiphase project located in a 2022 DDA that is NOT a designated DDA or QCT in 2023. The first phase of Project E received an allocation of credits in 2022, pursuant to an application filed March 15, 2022, which describes the multiphase composition of the project. An application for tax credits for the second phase of Project E is filed with the allocating agency by the same entity on March 15, 2023. The second phase of Project E is located on a contiguous site. Credits are allocated to the second phase of Project E on October 30, 2023. The aggregate amount of credits allocated to the two phases of Project E exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP and is the reason that applications were made in multiple phases. The second phase of Project E is, therefore, eligible for the increase in basis accorded a project in a 2022 DDA, because it meets all of the conditions to be a part of a multiphase project.

(*Case F*) Project F is a multiphase project located in a 2022 DDA that is NOT a designated DDA in 2023 or 2024. The first phase of Project F received an allocation of credits in 2022, pursuant to an application filed March 15, 2022, which does not describe the multiphase composition of the project. An application for tax credits for the second phase of Project F is filed with the allocating agency by the same entity on March 15, 2024. Credits are allocated to the second phase of Project F on October 30, 2024. The aggregate amount of credits allocated to the two phases of Project F exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP. The second phase of Project F is, therefore, NOT eligible for the increase in basis accorded a project in a 2022 DDA, since it does not meet all of the conditions for a multiphase project, as defined in this notice. The original application for credits for the first phase did not describe the multiphase composition of the project. Also, the application for credits for the second phase of Project F was not made in the year immediately following the first phase application year.

Findings and Certifications

Environmental Impact

This notice involves the establishment of fiscal requirements or procedures that are related to rate and cost determinations and do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(6) of HUD's regulations, this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any policy document that has federalism implications if the document either imposes substantial direct compliance costs on state and local governments and is not required

by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This notice merely designates DDAs and QCTs as required under IRC Section 42, as amended, for the use by political subdivisions of the states in allocating the LIHTC. This notice also details the technical methods used in making such designations. As a result, this notice is not subject to review under the order.

Todd M. Richardson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2021–19498 Filed 9–8–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6274–N–01]

Annual Indexing of Basic Statutory Mortgage Limits for Multifamily Housing Programs; Annual Indexing of Substantial Rehabilitation Threshold

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: In accordance with Section 206A of the National Housing Act, HUD is providing notice of adjustment to the Basic Statutory Mortgage Limits for Multifamily Housing Programs for Calendar Year 2021. HUD is also providing notice of adjustment to the per unit cost threshold for determining substantial rehabilitation in the Multifamily Housing Programs pursuant to its administrative guidance for Calendar Year 2021.

DATES: Effective January 1, 2021.

FOR FURTHER INFORMATION CONTACT: Patricia M. Burke, Director, Office of Multifamily Production, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–8000, telephone (202) 402–5693 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 206A of the National Housing Act (12 U.S.C. 1712a) provides authority for the annual adjustment for the following FHA multifamily statutory dollar limits:

I. Section 207(c)(3)(A) (12 U.S.C. 1713(c)(3)(A));
II. Section 213(b)(2)(A) (12 U.S.C. 1715e(b)(2)(A));
III. Section 220(d)(3)(B)(iii)(I) (12 U.S.C. 1715k(d)(3)(B)(iii)(I));
IV. Section 221(d)(4)(ii)(I) (12 U.S.C. 1715l(d)(4)(ii)(I));
V. Section 231(c)(2)(A) (12 U.S.C. 1715v(c)(2)(A)); and
VI. Section 234(e)(3)(A) (12 U.S.C. 1715y(e)(3)(A)).

Section 206A goes on to state that the preceding

''Dollar Amounts'' shall be adjusted annually (commencing in 2004) on the effective date of the Federal Reserve Board's adjustment of the $400 figure in the Home Ownership and Equity Protection Act of 1994 (HOEPA). The adjustment of the Dollar Amounts shall be calculated using the percentage change in the Consumer Price Index for All Urban Consumers (CPI–U) as applied by the Federal Reserve Board for purposes of the above-described HOEPA adjustment.

(b) Notification

The Federal Reserve Board on a timely basis shall notify the Secretary, or his designee, in writing of the adjustment described in subsection (a) and of the effective date of such adjustment in order to permit the Secretary to undertake publication in the **Federal Register** of corresponding adjustments to the Dollar Amounts. The dollar amount of any adjustment shall be rounded to the next lower dollar.

Note that 206A has not been updated to reflect the fact that HOEPA has been revised to use $1,000 as the basis for the adjustment rather than $400, and the Consumer Finance Protection Bureau has replaced the Federal Reserve Board in administering the adjustment. These changes were made by the Dodd-Frank Wall Street Reform and Consumer Protection Act's amendments to the Truth in Lending Act, as further explained in the regulatory implementation of said changes found in 78 FR 6856, 6879 (Jan. 31, 2013).

The percentage change in the CPI–U used for the HOEPA adjustment is a 0.3 percent increase and the effective date of the HOEPA adjustment is January 1, 2021. The Dollar Amounts under Section 206A have been adjusted correspondingly and have an effective date of January 1, 2021.

These revised statutory limits may be applied to FHA multifamily mortgage insurance applications submitted or amended on or after January 1, 2021, so long as the loan has not been initially endorsed.

The adjusted Dollar Amounts for Calendar Year 2021 are shown below. To implement the Consumer Finance Protection Bureau's adjustment, a one-time proration is required to the 0.3 percent figure, which was computed from April 2019 to April 2020 (see 85 FR 50944, Aug. 19, 2020). Because HUD's previous Dollar Amounts utilized CPI–U data through December 2019, only interim CPI–U data from January 2020 through April 2020 is reflected in the table calculations. The overall impact of this adjustment resulted in no change for Calendar Year 2021, because CPI–U showed minor inflation of 1 percent in January and February 2020, but was fully offset by minor deflation of 1% in March and April 2020, associated with COVID–19 pandemic economic disruptions.

Moving forward in future years HUD will continue to utilize the CFPB's time period (April to April) used for the HOEPA CPI–U adjustment, which is typically published in the August preceding the following January effective date.

Basic Statutory Mortgage Limits for Calendar Year 2021 Multifamily Loan Program

Section 207—Multifamily Housing;

Section 207 pursuant to Section 223(f)—Purchase or Refinance Housing; and,

Section 220—Housing in Urban Renewal Areas

Bedrooms	Non-elevator	Elevator
0	$54,892	$64,026
1	60,807	70,944
2	72,633	86,990
3	89,525	108,951
4+	101,352	123,193

Section 213—Cooperatives

Bedrooms	Non-elevator	Elevator
0	$59,488	$63,342
1	68,592	71,764
2	82,723	87,265
3	105,887	112,895
4+	117,966	123,927

Section 234—Condominium Housing

Bedrooms	Non-elevator	Elevator
0	$60,702	$63,881
1	69,991	73,230
2	84,411	89,049
3	108,050	115,201
4+	120,372	126,454

Section 221(d)(4)—Moderate Income Housing

Bedrooms	Non-elevator	Elevator
0	$54,628	$59,010
1	62,013	67,649
2	74,959	82,262
3	94,085	106,418
4+	106,314	116,817

Section 231—Housing for the Elderly

Bedrooms	Non-elevator	Elevator
0	$51,937	$59,010
1	58,063	67,649
2	69,336	82,262
3	83,443	106,418
4+	98,101	116,817

Section 207—Manufactured Home Parks Per Space—$25,200

Indexing of Per Unit Limit for Substantial Rehabilitation for Calendar Year 2021

The 2016 Multifamily Accelerated Processing (MAP) Guide established a base amount of $15,000 per unit to define substantial rehabilitation for FHA insured loan programs. Section 5.1.2.A.2.b of the 2020 MAP guide requires that this base amount be annually adjusted for inflation based on the percentage change published by the Bureau of Labor Statistics of the Department of Labor or other inflation cost index. Applying the HOEPA adjustment to the base amount, the 2021 base amount per dwelling unit to determine substantial rehabilitation for FHA insured loan programs is $16,299.

This per unit cost threshold for substantial rehabilitation may be applied to FHA multifamily mortgage insurance applications submitted or amended on or after January 1, 2021, so long as the loan has not been initially endorsed.

Environmental Impact

This issuance establishes mortgage and cost limits that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Lopa P. Kolluri,

Principal Deputy Assistant Secretary for the Office of Housing—Federal Housing Administration.

[FR Doc. 2021–19496 Filed 9–8–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7034–C–48]

30-Day Notice of Proposed Information Collection: Production of Material or Provision of Testimony in Response to Demands in Legal Proceedings Among Private Litigants; OMB Control No.: 2510–0014

AGENCY: Office of the Chief Information Officer, Housing and Urban Development (HUD).

ACTION: Notice: Correction.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment. This notice corrects the notice that was published on September 3, 2021 to remove forms that do not pertain to this collection.

DATES: *Comments Due Date:* October 12, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 14, 2021 at 86 FR 31521.

A. Overview of Information Collection

Title of Information Collection: Production of Material or Provision of Testimony in Response to Demands in Legal Proceedings Among Private Litigants.

OMB Approval Number: 2510–0014.

Type of Request: Extension of a currently approved collection.

Form Number: None—Please see 24 CFR 15.203.

Description of the need for the information and proposed use: Section 15.203 of HUD's regulations in 24 CFR specify the manner in which demands for documents and testimony from the Department should be made. Providing the information specified in 24 CFR 15.203 allows the Department to more promptly identify documents and testimony which a requestor may be seeking and determine whether the Department will be able to produce such documents and testimony.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
§ 15.203	106.00	1.00	106.00	1.50	159.00	$53.00	$8,427.00

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) If the information will be processed and used in a timely manner;

(3) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(4) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(5) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of

information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2021–19477 Filed 9–8–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[212.LLAZC03000.L1220000.EA0000AZ–SRP–030–21–33]

Notice of Temporary Closure and Restrictions of Selected Public Lands in Mohave County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure and restrictions.

SUMMARY: Notice is hereby given that temporary closures and restrictions of activities will be in effect on public lands administered by the Bureau of Land Management (BLM), Lake Havasu Field Office, to minimize the risk of potential collisions with spectators and racers during the permitted operation of the 2021 Mad Media Utility Terrain Vehicle (UTV) World Championship desert races.

DATES: The temporary closure will be in effect from 11:59 p.m., October 13, 2021, through 11:59 p.m., October 16, 2021. The temporary restrictions will be in effect from 6 a.m., October 13, 2021, through 11:59 p.m., October 17, 2021.

FOR FURTHER INFORMATION CONTACT: Jason West, Field Manager, BLM Lake Havasu Field Office, 1785 Kiowa Avenue, Lake Havasu City, Arizona 86403, (928) 505–1200. Also see the Lake Havasu Field Office website: *https://www.blm.gov/office/lake-havasu-field-office.* Persons who use a telecommunications device for hearing impaired (TDD) may call the Federal Relay Service (FRS) at 800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The temporary closure and restrictions affect public lands in Standard Wash Off-Highway Vehicle (OHV) Open Area near Lake Havasu City, Mohave County, Arizona. Location of temporary closure and restrictions are depicted on maps found on online at the BLM National Environmental Policy Act (NEPA) Register web page: *https://go.usa.gov/xfPtM.* In addition, the closure, restrictions, and maps of the closure area will be posted at event access points, available at the Lake Havasu Field Office, and posted on the BLM external web page: *https://www.blm.gov/office/lake-havasu-field-office.*

The closure and restrictions are issued under the authority of 43 CFR 8364.1, which allows the BLM to establish closures for the protection of persons, property, public lands and resources. Violation of any of the terms, conditions or restrictions contained within this closure order may subject the violator to citation or arrest with a penalty or fine or imprisonment, or both as specified by law.

Temporary Closure and Restrictions

1. Environmental Resource Management and Protection

a. No person may deface, disturb, remove, or destroy any natural object.

b. Fireworks: The use, sale, or possession of personal fireworks is prohibited.

c. Cutting or collecting firewood of any kind, including dead and downed wood or other vegetative material is prohibited.

d. Grey Water Discharge: The discharge and dumping of grey water onto the ground surface is prohibited. Grey water is defined as water that has been used for cooking, washing, dishwashing, or bathing and/or contains soap, detergent, food scraps, or food residue, regardless of whether such products are biodegradable or have been filtered or disinfected.

e. Black Water Discharge: The discharge and dumping of black water onto the ground surface is prohibited. Black water is defined as wastewater containing feces, urine, and/or flush water.

f. Human Waste: The depositing of human waste (liquid and/or solid) on the ground surface is prohibited.

g. Trash: The discharge of all trash/litter onto the ground surface is prohibited. All event participants must pack out or properly dispose of all trash at an appropriate disposal facility.

h. Hazardous Materials: The dumping or discharge of vehicle oil, petroleum products, or other hazardous household, commercial, or industrial refuse or waste onto the ground surface is prohibited. This applies to all recreational vehicles, trailers, motorhomes, port-a-potties, generators, and other camp infrastructure.

2. Alcohol/Prohibited Substance

a. Possession of an open container of an alcoholic beverage by the driver or operator of any motorized vehicle is prohibited, whether or not the vehicle is in motion.

b. Possession of alcohol by minors. The following are prohibited:

i. Consumption or possession of any alcoholic beverage by a person under 21 years of age on public lands; and

c. Selling, offering to sell, or otherwise furnishing or supplying any alcoholic beverage to a person under 21 years of age on public lands.

d. Operation of a motor vehicle while under the influence of alcohol, marijuana, narcotics, or drugs is prohibited.

3. Drug Paraphernalia

a. The possession of drug paraphernalia is prohibited.

4. Disorderly Conduct

a. Disorderly conduct is prohibited. Disorderly conduct means that an individual, with the intent of recklessly causing public alarm, nuisance, jeopardy, or violence, or recklessly creating a risk thereof:

i. Engages in fighting or violent behavior;

ii. Uses language, an utterance or gesture, or engages in a display or act that is physically threatening or menacing, or done in a manner that is likely to inflict injury or incite an immediate breach of the peace; or

iii. Obstructs, resists, or attempts to elude a law enforcement officer, or fails to follow their orders or directions.

5. Eviction of Persons

a. The temporary closure and restriction area is closed to any person who:

i. Has been evicted from the event by the permit holder, whether or not the eviction was requested by the BLM;

ii. Has been evicted from the event by the BLM; or

iii. Has been ordered by a law enforcement officer to leave the area of the permitted event.

b. Any person evicted from the event forfeits all privileges to be present within the temporary closure and restriction area.

6. Motor Vehicles

a. Motor vehicles must comply with the following requirements:

i. The operator of a motor vehicle must possess a valid driver's license.

ii. Motor vehicles and trailers must possess evidence of valid registration.

iii. Motor vehicle operators must possess evidence of valid insurance.

iv. Motor vehicles and trailers must not block a street used for vehicular travel or a pedestrian pathway. Parking any off-highway vehicle in violation of posted restrictions; or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles; creating a safety hazard; or endangering any person, property, or feature is prohibited. Vehicles parked in violation are subject to citation, removal, and/or impoundment at the owner's expense.

v. Motor vehicles must not exceed the posted speed limit.

vi. Operating a vehicle through, around, or beyond a restrictive sign, barricade, fence, or traffic control barrier or device is prohibited.

vii. Failure to obey any person authorized to direct traffic or control access to event area including law enforcement officers, BLM officials, and designated race officials is prohibited.

b. The temporary closure area is closed to motor vehicle use, except as provided below. Motor vehicles may be operated within the temporary closure area under the circumstances listed below:

i. Race participants and support vehicles on designated routes.

ii. BLM, medical, law enforcement, and firefighting vehicles are authorized at all times.

iii. Vehicles operated by the permit holder's staff or contractors and volunteers are authorized at all times. These vehicles must display evidence of event registration at all times in such manner that it is visible to the front of the vehicle while the vehicle is in motion.

7. Public Camping

a. The temporary closure and restriction area is closed to public camping with the following exceptions:

i. The permitted event's spectators, who are camped in designated spectator areas, as marked by protective fencing, barriers, and informational signage provided by the permit holder; or

ii. The permit holder's authorized staff, contractors, and BLM-authorized event managers.

b. Spectator area site reservations, denying other visitors or parties from utilizing unoccupied portions of the spectator area by marking with flags, tape, posts, cones, etc., is prohibited. Vehicles and trailers may not be left unattended for over 72 hours.

c. Allowing any pet or other animal to be unrestrained is prohibited. All pets must be restrained by a leash of not more than six feet in length.

d. Failure to observe restricted area quiet hours of midnight to 6 a.m. is prohibited.

8. Weapons

a. Discharging or use of firearms or other weapons is prohibited.

b. The prohibition above shall not apply to county, state, tribal and Federal law enforcement personnel who are working in their official capacity at the event.

9. Racecourse Closure

a. The designated racecourse as shown in the Lake Havasu Field Office approved Resource Management Plan and Decision Record is closed to public entry during the temporary closure.

b. The temporary closure area is closed to use by members of the public with the following exceptions:

i. The person is an employee or authorized volunteer with the BLM, a law enforcement officer, emergency medical service provider, fire protection provider, or another public agency employee working at and assigned to the event; or

ii. The person is working at or attending the event directly on behalf of the permit holder.

c. Failure to obey any official sign posted by the BLM, law enforcement, Mohave County, or the permit holder is prohibited.

d. *Enforcement:* Any person who violates these closure rules may be tried before a United States magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. l733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, state or local officials may also impose penalties for violations of Arizona law. A complete list of laws and regulations applicable to public lands in Arizona may be viewed at: *http://www.azd.uscourts.gov/sites/default/files/general-orders/19-14.pdf.*

Authority: 43 CFR 8364.l.

Jason West,

Field Manager.

[FR Doc. 2021–19479 Filed 9–8–21; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number: 1110–NEW]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Law Enforcement Public Contact Data Collection

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, will be submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until October 12, 2021.

FOR FURTHER INFORMATION CONTACT: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Federal Bureau of Investigation, including whether the information will have practical utility

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used

—Evaluate how the quality, utility, and clarity of the information to be collected can be enhanced

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Establishment of a new collection.

2. *The Title of the Form/Collection:* Law Enforcement Public Contact Data Collection.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no form number for this collection. The applicable component within the Department of Justice is the Criminal Justice Information Services Division, Federal Bureau of Investigation.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Law enforcement agencies.

Abstract: This collection is needed to collect the number of contacts law enforcement officers have with the public in three major categories; citizen calls for service, unit/officer-initiated contacts, and court/bailiff activities.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The Federal Bureau of Investigation Uniform Crime Reporting Program estimates the Law Enforcement Public Contact Collection will generate 18,671 responses per year with an estimated response time of 30 minutes per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 9,335.5 hours, annual burden, associated with this information collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: September 2, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–19425 Filed 9–8–21; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0184]

Agency Information Collection Activities; Proposed Collection Comments Requested; Revision of Currently Approved Collection: 2022 School Crime Supplement (SCS) to the National Crime Victimization Survey (NCVS)

AGENCY: Office of Justice Programs, Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

The proposed information collection was previously published in the **Federal Register** Volume 86, Number 125, page 35347, on July 2, 2021, allowing a 60-day comment period. Following publication of the 60-day notice, the Bureau of Justice Statistics received three requests for the survey instrument and seven communications containing suggestions for revisions to the collection of data and regarding the administration of the instrument, which are addressed in Supporting Statement Part A.

DATES: Comments are encouraged and will be accepted for an additional 30 days until October 12, 2021.

FOR FURTHER INFORMATION CONTACT: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether, and if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* 2022 School Crime Supplement (SCS) to the National Crime Victimization Survey (NCVS).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number for the questionnaire is SCS–1. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The survey will be administered to persons ages 12 to 18 in NCVS sample households in the United States from January through June 2022. The SCS collects, analyzes, publishes, and disseminates statistics on the students' victimization, perceptions of school environment, and safety at school.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimate of the total number of respondents is 7,010 persons ages 12 to 18. Of the 7,010 SCS respondents, 87% or 6,071 are expected to complete the long SCS interview (entire SCS questionnaire) which takes an estimated 17 minutes (0.28 hours) to complete. The remaining 13% or 939 SCS respondents are expected to complete the short interview (*i.e.* will be screened out for not being in school), which takes an estimated 2 minutes (0.03 hours) to complete. There are an estimated 1,728 annual burden hours associated with this collection. Respondents will be asked to respond to this survey only once during the six month period. The burden estimates are based on data from the prior administration of the SCS.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,728 total burden hours associated with this information collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: September 2, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–19412 Filed 9–8–21; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Statement of Recovery Forms

AGENCY: Office of Workers' Compensations, DOL.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL, is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''[Statement of Recovery (SOR) Forms (CA–1108 and CA–1122)].'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by November 8, 2021.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; by email: *suggs.anjanette@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure 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 can be properly assessed.

Background: A Federal employee who sustains a work-related injury is entitled to receive compensation under the Federal Employees' Compensation Act (FECA). If that injury is caused under circumstances that create a legal liability in a third party to pay damages, the FECA authorizes the Secretary of Labor to require the employee to assign his or her right of action to the United States or to prosecute the action in his or her own name. *See* 5 U.S.C. 8131.

When the employee receives a payment for his or her damages, whether from a final court judgment on or a settlement of the action, section 8132 of the FECA (5 U.S.C. 8132) provides that the employee ''shall refund to the United States that amount of compensation paid by the United States. . . .'' To enforce the United States' statutory right of reimbursement, the Office of Workers' Compensation Programs (OWCP) has promulgated regulations. The regulations require a FECA beneficiary to report these types of payments (20 CFR 10.710) and submit the detailed information necessary to calculate the amount of the refund and surplus, if any, according to the formula in the statute (20 CFR 10.707(e)). The information collected by Form CA–1108 and Form CA–1122 from the FECA beneficiary includes this information and is necessary to calculate the amount of the refund and surplus owed to the United States from the FECA beneficiary's settlement or judgment, as required in the statute and the regulations. This information collection is currently approved for use through February 28, 2022. This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Number 1240–0001. Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL-Office of Workers' Compensation Programs.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title of Collection: Statement of Recovery Forms.

Form: CA–1108 and CA–1122.

OMB Number: 1240–0001.

Affected Public: Business or other for profit, Individuals or households.

Estimated Number of Respondents: 1164.

Frequency: As needed.

Total Estimated Annual Responses: 1164.

Estimated Average Time per Response: 5–30 minutes.

Estimated Total Annual Burden Hours: 580.

Total Estimated Annual Other Cost Burden: $41,384.

Authority: 44 U.S.C. 3506(c)(2)(A).

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2021–19429 Filed 9–8–21; 8:45 am]

BILLING CODE 4510–CH–P

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Fund Access for Credit Unions; Funding Opportunity

Funding Opportunity Title: Community Development Revolving Loan Fund (CDRLF) Grants.

Catalog of Federal Domestic Assistance (CFDA) Number: 44.002

The National Credit Union Administration (NCUA) is issuing this Notice of Funding Opportunity (NOFO) to announce the availability of technical assistance grants (awards) for low-income designated credit unions (LICUs) through the CDRLF. The CDRLF serves as a source of financial support in the form of loans and technical assistance grants that better enable LICUs to support the communities in which they operate. All grant awards made under this NOFO are subject to funds availability and are at the NCUA's discretion.

Table of Contents

A. Program Description
B. Award Information
C. Eligibility Information
D. Application and Submission Information
E. Application Review Information
F. Federal Award Administration
G. Federal Awarding Agency
H. Grant Terms and Conditions

A. Program Description

The purpose of the CDRLF is to expand access of financial products and services, and increase diversity, equity, and economic inclusion to underserved communities. Through the CDRLF, the NCUA provides financial support in the form of technical assistance grants to LICUs serving predominantly low-income members to modernize, build capacity and extend outreach into underserved communities.

The NCUA will consider requests for various funding initiatives. More detailed information about the purpose of each initiative, amount of funds available, funding priorities, permissible uses of funds, funding limits, deadlines and other pertinent details will be defined in the grant round guidelines. In addition, the NCUA may periodically publish information regarding the CDRLF in Letters to Credit Unions, press releases, and/or on the NCUA website.

1. Funding Initiatives

The Minority Depository Institution (MDI) Mentoring initiative will be available during the fall 2021.

2. Authority and Regulations

i. *Authority:* 12 U.S.C. 1772c–1, 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786;

ii. *Regulations:* The regulation governing the CDRLF is found at 12 CFR part 705. In general, this regulation is used by the NCUA to govern the CDRLF and set forth the program requirements. Additional regulations related to the low-income designation are found at 12 CFR parts 701.34 and 741.204. For the purposes of this NOFO, an ''Applicant'' is a Participating Credit Union that submits a complete application to the NCUA under the CDRLF. The NCUA encourages Applicants to review the regulations, this NOFO, the grant round guidelines, and other program materials for a complete understanding of the program.

B. Award Information

Approximately $100,000 in awards will be available through this NOFO. The NCUA reserves the right to: (i) Award more or less than the amounts cited above; (ii) fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFO; and (iii) reallocate funds from the amount that is anticipated to be available under this NOFO to other programs, particularly if the NCUA determines that the number of awards made under this NOFO is fewer than projected. General information about the purpose of each funding initiative and the maximum award amount is provided below.

1. Purpose of Funding Initiatives

i. *MDI Mentoring:* The purpose of the MDI Mentoring initiative is to encourage strong and experienced credit unions to provide guidance to small MDI credit unions to increase their ability to thrive and serve low-income and underserved populations. This grant may be used for eligible expenses associated with facilitating a new mentorship relationship. Funding approval will be based on the Applicant's ability to demonstrate a well-developed plan for the mentoring assistance it would receive from a mentor credit union. Applicants are expected to meet the objectives of this initiative by establishing a mentorship to accomplish the following objectives:

a. Credit union growth and expansion, such as growing the membership or the loan portfolio;

b. Improved management and operations, such as leadership training, developing new policy and procedure documents, or responding to exam or audit findings;

c. Increased credit union capabilities, such as introducing a new program or service or improving credit union systems; and/or

d. Other (Applicants will have opportunity to justify additional projects).

2. Maximum Award Amount

The maximum amount for a CDRLF award is determined by the type of funding initiative. There is no minimum amount for CDRLF awards. The maximum award amount for this initiative is $25,000.

C. Eligibility Information

1. Eligible Applicants

This NOFO is open to credit unions that meet the eligibility requirements defined in 12 CFR part 705. A credit union must have a low-income designation obtained in accordance with 12 CFR 701.34 or 741.204 in order to participate in the CDRLF.

i. *Non-Federally Insured Applicants:* Each Applicant that is a non-federally insured, state-chartered credit union must submit additional application materials. These additional materials are more fully described in 12 CFR 705.7(b)(3) and in the application.

a. Non-federally insured, state-chartered credit unions must agree to be examined by the NCUA. The specific terms and covenants pertaining to this condition will be provided in the award agreement of the Participating Credit Union.

2. Data Universal Numbering System (DUNS) Number

The Data Universal Numbering System (DUNS) number is a unique nine-character number used to identify your organization. The federal government uses the DUNS number to track how federal money is allocated. Registering for a DUNS number is FREE. Applicants can obtain a DUNS number by visiting the Dun & Bradstreet (D&B) website or calling 1–866–705–5711. The NCUA will not consider an application that does not include a valid DUNS number issued by Dun and Bradstreet (D&B). Such an application will be deemed incomplete and will be declined.

3. Employer Identification Number

Each application must include a valid and current Employer Identification Number (EIN) issued by the U.S. Internal Revenue Service (IRS). The NCUA will not consider an application that does not include a valid and current EIN. Such an application will be deemed incomplete and will be declined. Information on how to obtain an EIN may be found on the IRS's website.

4. System for Award Management

All Applicants are required by federal law to have an active registration with the federal government's System for Award Management (SAM) prior to applying for funding. SAM is a web-based, government-wide application that collects, validates, stores, and disseminates business information about the federal government's trading partners in support of the contract awards, grants, and electronic payment processes. *An active SAM account status and CAGE number is required* to apply for a CDRLF award. Credit unions that have an existing registration with SAM must recertify and maintain an active status annually. The SAM registration and recertification process is FREE. First-time SAM users can register by following the instructions in the *Quick Start Guide for New Registrations.* Existing users can recertify or renew their SAM account status by following the instructions in the *Quick Start Guide for Renewing Registrations.* The NCUA will not consider an applicant that does not have an active SAM status. Such an application will be deemed incomplete and will be declined.

5. Other Eligibility Requirements

i. *Financial Viability:* Applicants must meet the underwriting standards established by the NCUA, including those pertaining to financial viability, as set forth in the application and defined in 12 CFR 705.7(c).

ii. *Compliance with Past Agreements:* In evaluating funding requests under this NOFO, the NCUA will consider an Applicant's record of compliance with past agreements. The NCUA, in its sole discretion, will determine whether to consider an application from an Applicant with a past record of noncompliance, including any deobligation (*i.e.,* removal of unused awards) of funds.

a. If an Applicant is in default of a previously executed agreement with the NCUA, the NCUA will not consider an application for funding under this NOFO.

b. If an Applicant is a prior Participating Credit Union under the CDRLF and has unused awards as of the date of application, the NCUA may request a narrative from the Applicant that addresses the reason for its record of noncompliance. The NCUA, in its sole discretion, will determine whether the reason is sufficient to proceed with the review of the application.

D. Application and Submission Information

1. Application

Under this NOFO, all applications must be submitted online in the NCUA's web-based application system, CyberGrants, in order to be considered. Applications must be submitted online at *https://www.cybergrants.com/ncua/applications.* The application and related documents are also located on the NCUA's website at *https://www.ncua.gov/services/Pages/resources-expansion/grants-loans.aspx.*

2. Minimum Application Content

At a minimum, each application requires a narrative response that describes the Applicant's proposed use of the CDRLF award. The NCUA reserves the right to waive this requirement for any funding initiatives with a defined list of allowable project activities. The NCUA will identify the funding initiatives that do not require a narrative response in the grant round guidelines. Other application contents will be defined in the grant round guidelines found on NCUA's website.

3. Submission Dates and Times

The NCUA will accept applications beginning October 11, 2021, at 9:00 a.m. eastern time (ET). Applications must be submitted by October 29, 2021, at 11:59 p.m. ET. Late applications will not be considered.

E. Application Review Information

1. Eligibility and Completeness Review

The NCUA will review each application to determine whether it is complete and that the Applicant meets the eligibility requirements described in the regulations, the grant round guidelines, and in this NOFO. An incomplete application or one that does not meet the eligibility requirements will be declined without further consideration.

2. Evaluation Criteria

Each funding initiative, due to its structure and impact, may have varying degrees of evaluation criteria assigned. The evaluation criteria for each funding initiative is fully described in the grant round guidelines.

3. Application Review

The purpose of the application review is to determine whether an application satisfies the criteria set forth for each particular funding initiative. The NCUA will evaluate each application in accordance with the criteria and procedures described in the grant round guidelines. The NCUA reserves the right to contact the Applicant during its review for the purpose of clarifying or confirming information contained in the application. If so contacted, the Applicant must respond within the time specified by the NCUA or the NCUA, in its sole discretion, may decline the application without further consideration.

4. Scoring and Funding Decision

The NCUA will make its funding decision based on a scoring system that establishes a ranking position for each application. The applications will be ranked according to the scoring criteria set forth for each funding initiative in the grant round guidelines.

F. Federal Award Administration

1. NCUA Award Notice

The NCUA will notify each Applicant of its funding decision by email. In addition, the NCUA will announce the successful applications through a press release that includes a list of the Awardees. Applicants that are approved for funding will also receive instructions on how to proceed with the post-award activities.

2. Administrative and National Policy Requirements

i. *Award Agreement:* The specific terms and conditions will be established in the award agreement each Participating Credit Union must sign prior to formally accepting an award. Each Participating Credit Union under this NOFO must enter into an agreement with the NCUA before the NCUA will disburse the award funds. The agreement includes the terms and conditions of funding, including but not limited to the: (i) Award amount; (ii) grant award details; (iii) roles and responsibilities; (iv) accounting treatment; (v) signature pages; and (vi) reporting requirements.

ii. *Failure to Sign Agreement:* The NCUA, in its sole discretion, may rescind an award if the Applicant fails to sign and return the agreement or any other requested documentation, within the time specified by the NCUA.

3. Reimbursement Process

Applicants that are approved for funding will be responsible for the complete and timely submission of the post-award activities. This includes, but it is not limited to, signing the award agreement and completing a reimbursement request. Successful Applicants must submit a reimbursement request in order to receive the awarded funds. The reimbursement requirements are different depending on the funding initiative. The NCUA will define the reimbursement requirements for each funding initiative in the post-award guidelines.

The reimbursement request may require, all or a combination of, the following items: (i) Certification of expenses, (ii) project related documentation, (iii) a summary of project accomplishments and outcomes, or (iv) a certification form signed by a credit union official (*e.g.,* CEO, manager, or Board Chairperson) authorized to request the reimbursement and make the certifications. The NCUA, in its sole discretion, may modify these requirements. Additional reimbursement request requirements will be described in the post-award guidelines.

G. Federal Awarding Agency

1. Methods of Contact

Further information can be found at *https://www.ncua.gov/services/Pages/resources-expansion/grants-loans.aspx.* For questions related to the CDRLF, email the NCUA's Office of Credit Union Resources and Expansion at *CUREAPPS@ncua.gov.*

2. Information Technology Support

People who have visual or mobility impairments that prevent them from using the NCUA's website should call (703) 518–6610 for guidance (this is not a toll-free number).

H. Grant Terms and Conditions

1. *All credit unions are required to certify the following terms and conditions prior to submitting an application:*

i. The Applicant is a low-income designated credit union, as defined in Section 701.34 of the NCUA's Rules and Regulations.

ii. The Applicant shall comply with United States Office of Management and Budget, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

iii. The Applicants are required to have an audit conducted if they hold $750,000 or more in Federal awards during a fiscal year. Applicants that hold less than $750,000 in Federal awards are exempt from this law.

a. For example, if a credit union uses a $250,000 loan from the NCUA's CDRLF and a $500,000 grant from the Community Development Financial Institutions (CDFI) Fund, totaling $750,000 in Federal awards during the same fiscal year; then the credit union must have an audit conducted.

iv. The Applicant is responsible for the efficient and effective administration of the Federal Award through application of sound management practices. Applicant assumes the responsibility for administering Federal Funds in a manner consistent with underlying agreements, program objectives, and the term and conditions of the Federal Award.

v. No employee, contractor, consultant or vendor has participated substantially for this grant-funded activity, nor otherwise benefited directly or indirectly from the grant, who, to its knowledge (assuming reasonable diligence), has a ''covered relationship'' with an NCUA employee who presently holds a position that would enable him or her to influence a pending or future grant award, or a reimbursement of permitted expenses thereunder.

vi. An employee, contractor, consultant or vendor of the Applicant would have such a ''covered relationship'' if he or she were either: (1) A member of the household of an NCUA employee who presently holds a position that would enable him or her to influence a pending or future grant award, or a reimbursement thereunder; or (2) a relative of such an NCUA employee with whom he or she has a close personal relationship. 5 CFR 2635.502(b)(1)(ii).

vii. The Applicant must disclose in writing to the NCUA any potential conflict of interest in accordance with applicable Federal awarding agency policy.

viii. Per 2 CFR 200.113, the Applicant must disclose all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award.

ix. The Applicant conducts its activities such that no person is excluded from participation in, is denied the benefits of, or is subject to discrimination on the basis of race, color, national origin, sex, age or disability in the distribution of services and/or benefits provided under this grant program. The credit union agrees to provide evidence of its compliance as required by the NCUA. Furthermore, credit unions should ensure compliance with Title VI of the Civil Rights Act of 1964.

x. If a credit union enters into commitments for a project before the grant decision is made, credit union will be obligated to pay project expenses from its own funds should the grant not be approved; if the grant is approved the credit union may be responsible for a portion of the expenses due prior to the grant approval date.

xi. Requests to reallocate or change approved project(s) and/or request an extension to the deadline must be submitted in writing prior to the original deadline and approved by the NCUA prior to Applicant incurring expenses.

xii. The Applicant is aware that the NCUA will correspond with the credit union regarding this application by email (utilizing the email provided in this application).

xiii. The Applicant hereby acknowledges that the NCUA reserves full discretion to deny reimbursement under this grant in the event the NCUA determines the Applicant is, or previously was, either in breach of any-condition or limitation in the grant guidelines, or in breach of the 'covered relationship' restriction set forth above.

xiv. Information included in Outcome Summary or Success Stories is considered by the NCUA to be Research Data and is governed by 2 CFR 200.315 and may be made publicly available.

xv. The Applicant is aware that any false, fictitious, or fraudulent information or the omission of any material fact, may subject Applicant to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730, and 3801–3812).

xvi. The Applicant is aware recipients and subrecipients are prohibited from obligating or expending loan or grant funds to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system in accordance with Public Law 115–232, section 889 and 2 CFR 200.216.

By the National Credit Union Administration Board on September 3, 2021.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2021–19491 Filed 9–8–21; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331; NRC–2020–0148]

NextEra Energy Duane Arnold, LLC; Duane Arnold Energy Center; Post-Shutdown Decommissioning Activities Report

AGENCY: Nuclear Regulatory Commission.

ACTION: Public meetings and request for comment.

SUMMARY: On June 19, 2020, the U.S. Nuclear Regulatory Commission (NRC) solicited comments on the post-shutdown decommissioning activities report (PSDAR) for the Duane Arnold Energy Center (DAEC). The PSDAR, which includes the site-specific decommissioning cost estimate (DCE), provides an overview of NextEra Energy Duane Arnold, LLC's planned decommissioning activities, schedule, projected costs, and environmental impacts for DAEC. The NRC will hold an in-person as well as a virtual public meeting to discuss the DAEC PSDAR and DCE and to receive comments.

DATES: The in-person public meeting will be held on Tuesday, September 28, 2021, from 6:00 p.m. until 9:00 p.m. (CT) (7:00 p.m. until 10:00 p.m. ET), at the Palo Community Center, located at 2800 Hollenbeck Road, in Palo, Iowa. The virtual meeting will occur during the week of October 4, 2021; additional details for the virtual meeting will be provided on the NRC's public meeting website. Comments are due by December 20, 2021. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0148. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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

FOR FURTHER INFORMATION CONTACT: Kim Conway, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1335; email: *Kimberly.Conway@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0148 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0148.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking Website (*https://www.regulations.gov*). Please include Docket ID NRC–2020–0148 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. Discussion

Paragraph 50.82(a)(4)(i) of title 10 of the *Code of Federal Regulations* (10 CFR) states that a PSDAR must contain a description of the planned decommissioning activities along with a schedule for their accomplishment, a discussion that provides the reasons for concluding that the environmental impacts associated with site-specific decommissioning activities will be bounded by appropriate previously issued environmental impact statements, and a site-specific DCE, including the projected cost of managing irradiated fuel.

Accordingly, pursuant to 10 CFR 50.82(a)(4)(ii), the NRC noticed receipt of the DAEC PSDAR, including the DCE, and made it available for public comment on June 19, 2020 (85 FR 37116). The PSDAR, dated April 2, 2020, is available at ADAMS Accession No. ML20094F603. The purpose of the original **Federal Register** notice (85 FR 37116; June 19, 2020) was to inform the public of a meeting to discuss and accept comments on the PSDAR and DCE. The public comment period closed on October 19, 2020, but was reopened on October 26, 2020 (85 FR 67780), to account for the restrictions associated with the Coronavirus Disease 2019 public health emergency. The DAEC PSDAR was supplemented on February 5, 2021; the updated version is available at ADAMS Accession No. ML21036A160. The public comment period closed again on February 19, 2021, was reopened on March 5, 2021 (86 FR 12990), and extended again on August 9, 2021 (86 FR 43570). The DAEC PSDAR public comment period will currently close on December 20, 2021.

III. Request for Comment and Public Meetings

The NRC will hold an in-person public meeting to discuss the DAEC PSDAR and receive comments on Tuesday, September 28, 2021, from 6:00

p.m. until 9:00 p.m. (CT), at the Palo Community Center, located at 2800 Hollenbeck Road, in Palo, Iowa. The virtual public meeting will occur during the week of October 4, 2021, and will be noticed separately with details provided on the NRC's public meeting website at *https://www.nrc.gov/pmns/mtg.*

The NRC is continuing to closely monitor the Coronavirus Disease 2019 public health emergency and will make changes or cancellations to these meetings as necessary to protect public health and safety. The most current information for both the planned DAEC PSDAR meetings will be available on the NRC's public meeting website previously referenced, or by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. The NRC requests that comments that are not provided during the meetings be submitted in writing, as noted in section I, ''Obtaining Information and Submitting Comments,'' of this document, by December 20, 2021.

Dated: September 2, 2021.

For the Nuclear Regulatory Commission.

Bruce A. Watson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021–19417 Filed 9–8–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92868; File No. SR–IEX–2021–10]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Eliminate IEX Rule 11.420 (Order Audit Trail System (''OATS'') Requirements) To Reflect the September 1, 2021 Retirement of OATS

September 2, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2021, the Investors Exchange LLC (''IEX'' or the ''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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Act, and Rule 19b–4 thereunder, IEX is filing with the Commission a proposed rule change to eliminate IEX Rule 11.420 (Order Audit Trail System (''OATS'') Requirements) to reflect that as of September 1, 2021, the Financial Industry Regulatory Authority, Inc. (''FINRA'') will have retired OATS, and Industry Members will be effectively reporting to the consolidated audit trail (''CAT'') adopted pursuant to the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'').

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

IEX is filing with the Commission a proposed rule change to eliminate IEX Rule 11.420 to reflect that as of September 1, 2021, FINRA will have retired OATS, and Industry Members will be effectively reporting to the CAT adopted pursuant to the CAT NMS Plan.

I Background

IEX, FINRA, and the other national securities exchanges (collectively, the ''Participants'')[3] filed with the Commission, pursuant to Section 11A of the Exchange Act[4] and Rule 608 of Regulation NMS thereunder,[5] the CAT NMS Plan.[6] The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act.[7] The Plan was published for comment in the **Federal Register** on May 17, 2016,[8] and approved by the Commission, as modified, on November 15, 2016.[9] On March 15, 2017, the Commission approved the new IEX Rule Series 11.600[10] to implement provisions of the CAT NMS Plan that are applicable to IEX Members.[11]

The CAT NMS Plan is intended to create, implement, and maintain a consolidated audit trail that will capture in a single consolidated data source customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution.[12] Among other things, the CAT NMS Plan, as modified by the Commission, requires each Participant to ''file with the SEC the relevant rule change filing to eliminate or modify its duplicative rules within six (6) months of the SEC's approval of the CAT NMS Plan.''[13] The Plan notes that ''the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For a complete list of Participants, see Exhibit A to the Limited Liability Company Agreement of Consolidated Audit Trail, LLC, available at *www.catnmsplan.com/sites/default/files/2020-07/LLC-Agreement-of-Consolidated-Audit-Trail-LLC-as-of-7.24.20.pdf.*

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] *See* Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

[7] 17 CFR 242.613.

[8] *See* Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

[9] *See* Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016).

[10] *See* Securities Exchange Act Rel. No. 80255 (March 15, 2017), 82 FR 14563 (March 21, 2017).

[11] *See* IEX Rule 1.160(s).

[12] *See, e.g.,* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45723 (August 1, 2012).

[13] *See* CAT NMS Plan, Appendix C, Section C.9. In compliance with this requirement, on May 15, 2017, IEX, alongside the other Participants, filed a proposed rule change to eliminate the OATS Rules and amend IEX Rule 8.220 (the Electronic Blue Sheets or ''EBS'' rule). *See* Securities Exchange Act Release No. 80788 (May 26, 2017), 82 FR 25400 (June 1, 2017) (SR–IEX–2017–18) (''original proposal''). IEX filed an amendment to the original proposal on August 24, 2017. *See* Letter from Claudia Crowley to Brent Fields dated August 24, 2017, available at *https://www.sec.gov/comments/sr-iex-2017-18/iex201718-2243339-160872.pdf.* The original proposal was subsequently withdrawn but provided similar views and mechanisms for eliminating the OATS rule as this proposed rule change does, and, as noted above, also proposed to amend the EBS rules. *See* Securities Exchange Act Release No. 82524 (January 17, 2018), 83 FR 3239 (January 23, 2018) (Notice of Withdrawal of File No. SR–IEX–2017–18). IEX notes that the current filing addresses only the elimination of the OATS rule.

elimination of such rules and the retirement of such systems [will] be effective at such time as CAT Data meets minimum standards of accuracy and reliability.'' [14] Specifically, the Plan requires the rule filing to discuss the following:

- Specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired;
- whether the availability of certain data from Small Industry Members [15] two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems; and
- whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.[16]

On November 30, 2020, the Commission approved a FINRA rule filing proposing to eliminate the FINRA OATS system once FINRA members are effectively reporting to the CAT and the CAT's accuracy and reliability meet certain standards.[17] Specifically, FINRA proposed that before OATS could be retired, the CAT generally must achieve a sustained error rate for Industry Member reporting in five categories for a period of at least 180 days [18] of 5% or lower on a pre-correction basis, and 2% or lower on a post-correction basis (measured at T+5). In addition to the maximum error rates and matching thresholds (hereafter the ''threshold requirements''), FINRA's use of CAT Data must confirm that (i) there are no material issues that have not been corrected, (ii) the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage in the initial phase of reporting (''Phase 2a'') of Industry Member Data.

In the OATS Retirement Plan Order, the Commission approved FINRA's proposal for how it would measure the CAT Data's accuracy and reliability. Specifically, the Commission endorsed FINRA's proposal that FINRA's review of CAT Data and error rates would be based on data and linkages in Phase 2a, which replicate the data in OATS today and thus are most relevant for OATS retirement purposes. Phase 2a Data includes all events and scenarios covered by OATS and applies only to equities. And FINRA would not consider options order events or Phase 2c data and validations, which are not in OATS today, for purposes of OATS retirement.[19]

On June 17, 2021, FINRA made an immediately effective filing setting forth the basis for its determination that the accuracy and reliability of the CAT met the standards approved by the Commission in the OATS Retirement Plan Order and designating September 1, 2021 as the date on which FINRA would retire OATS.[20] Specifically, FINRA determined that the CAT met the threshold requirements endorsed by the Commission in the OATS Retirement Plan Order for Industry Member reporting in each of the following categories:

A. Rejection Rates and Data Validations

As described in the OATS Retirement Filing, the Plan Processor must perform certain basic data validations, and if a record does not pass these basic data validations, it must be rejected and returned to the CAT Reporter to be corrected and resubmitted.[21] FINRA determined that for the applicable period, aggregate rejection rates across all Industry Member Reporters were 0.03% pre-correction and 0.01% post-correction, which far exceeds the threshold requirements of a 5% or lower pre-correction error rate and a 2% or lower post-correction error rate.

B. Intra-Firm Linkages

As described in the OATS Retirement Filing, the Plan Processor must be able to link all related order events from all CAT Reporters involved in the lifecycle of an order. At a minimum, this requirement includes the creation of an order lifecycle between all order events handled within an individual CAT Reporter, including orders routed to internal desks or departments with different functions (*e.g.,* an internal ATS). FINRA determined that for the applicable period, the intra-firm linkage accuracy rates across all Industry Member Reporters were 99.07% pre-correction and 99.99% post-correction, which far exceeds the threshold requirements of 95% or higher pre-correction and 98% or higher post-correction (in other words, the intra-firm linkages accuracy far exceeds the threshold requirement that there be less than 5% inaccuracy pre-correction and less than 2% inaccuracy post-correction).

C. Inter-Firm Linkages

As described in the OATS Retirement Filing, the Plan Processor must be able to create the lifecycle between orders routed between broker-dealers. FINRA determined that for the applicable period, the intra-firm linkage accuracy rates across all Industry Member Reporters were 99.08% pre-correction and 99.84% post-correction, which far exceed the threshold requirements of 95% or higher pre-correction and 98% or higher post-correction (in other words, the inter-firm linkages accuracy far exceeds the threshold requirement that there be less than 5% inaccuracy pre-correction and less than 2% inaccuracy post-correction).

Proposed amendments to the EBS rules would be subject to a separate rule filing made in conjunction with SEC rulemaking to amend Rule 17a–25 under the Exchange Act. 17 CFR 240.17a–25.

[14] *See* CAT NMS Plan, Appendix C, Section C.9.

[15] ''Small Industry Member'' is defined in IEX Rule 11.610(pp) as an Industry Member that qualifies as a small broker-dealer as defined in Rule 0–10(c) of the Exchange Act. On April 20, 2020, the Commission granted exemptive relief from certain provisions of the CAT NMS Plan related to broker-dealers that do not qualify as Small Industry Members solely because such broker-dealers satisfy Rule 0–10(i)(2) under the Exchange Act in that they introduce transactions on a fully disclosed basis to clearing firms that are not small businesses or small organizations (referred to as ''Introducing Industry Members''). Specifically, the Commission provided exemptive relief from requiring Introducing Industry Members to comply with the requirements of the CAT NMS Plan that apply to Industry Members other than Small Industry Members (''Large Industry Members''), provided that the Participants require such Introducing Industry Members to comply with the requirements of the CAT NMS Plan that apply to Small Industry Members. *See* Securities Exchange Act Release No. 88703 (April 20, 2020), 85 FR 23115 (April 24, 2020) (Order Granting Limited Exemptive Relief Related to Certain Introducing Brokers From the Requirements of the CAT NMS Plan) (the ''Introducing Brokers Exemptive Order''). As used herein, the term ''Small Industry Member'' includes Introducing Industry Members in accordance with the Introducing Brokers Exemptive Order.

[16] *See supra* note 14.

[17] *See* Securities Exchange Act Release No. 90535 (November 30, 2020), 85 FR 78395 (December 4, 2020) (SR–FINRA–2020–024) (''OATS Retirement Plan Order'').

[18] As set forth in the OATS Retirement Plan Order, the 180 day ''applicable period'' ran from October 26, 2020 to April 26, 2021. October 26, 2020 was the date that Industry Members were required to begin correcting all errors for inter-firm linkages and exchange/TFR/ORF match validations.

[19] *See supra* note 17.

[20] *See* Securities Exchange Act Release No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021) (SR–FINRA–2021–017) (''OATS Retirement Filing'').

[21] Appendix D of the CAT NMS Plan, Section 7.2, for example, requires that certain file validations (*e.g.,* file transmission and receipt are in the correct formats, confirmation of a valid SRO-Assigned Market Participant Identifier, etc.), and syntax and context checks (*e.g.,* format checks, data type checks, consistency checks, etc.) be performed on all submitted records.

D. Order Linkage Rates

As described in the OATS Retirement Filing, in addition to creating linkages within and between broker-dealers, the Plan Processor must be able to create lifecycles to link various pieces of related orders. For example, the Plan requires linkages of order information to create an order lifecycle from origination or receipt to cancellation or execution. This category essentially combines all of the order-related linkages to capture an overall snapshot of order linkages in the CAT.[22] FINRA determined that for the applicable period, the order-related linkage accuracy rates across all Industry Member Reporters were 99.66% pre-correction and 99.93% post-correction, which far exceed the threshold requirements of 95% or higher pre-correction and 98% or higher post-correction (in other words, the order linkages accuracy far exceeds the threshold requirement that there be less than 5% inaccuracy pre-correction and less than 2% inaccuracy post-correction).

E. Exchange and TRF/ORF Match Rates

As described in the OATS Retirement Filing, an order lifecycle must be created to link orders routed from broker-dealers to exchanges and executed orders and trade reports. FINRA determined that for the applicable period, the match rate across all equity exchanges for orders routed from Industry Members to an exchange was 99.51% pre-correction and 99.87% post-correction. This match rate far exceeds the threshold requirements of 95% or higher pre-correction and 98% or higher post-correction (in other words, the match rate accuracy far exceeds the threshold requirement that there be less than 5% inaccuracy pre-correction and less than 2% inaccuracy post-correction).

Based upon the accuracy and reliability of the above five categories of CAT Data, FINRA determined that the CAT Data met the accuracy and reliability standards required for OATS retirement.[23]

II. FINRA's Use of CAT Data

Additionally, the OATS Retirement Plan Order set forth that before retiring OATS, FINRA's use of CAT data must confirm that (i) there are no material issues that have not been corrected (*e.g.,* delays in the processing of data, issues with query functions, etc.); (ii) the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations;[24] and (iii) the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Data.

As set forth in FINRA's OATS Retirement Filing, by September 1, 2021, FINRA will be ready to retire its use of OATS data for cross-market surveillance, and replace it with a newly created surveillance data mart, the Pattern Optimized Datamart (''POD''), which incorporates equities (and options) data submitted by both Participants such as IEX and Industry Members. IEX, like other Participants, transitioned from reporting to FINRA via the RSA specification, to reporting via the CAT technical specification as of April 26, 2021, and full Participant equities reporting and linkage validations commenced on June 1, 2021.[25] Successful completion of the transition to the CAT specification for Participants was a prerequisite for FINRA to retire the OATS-based cross market surveillance patterns and leverage CAT Data and linkages in POD for its surveillance patterns. FINRA has completed all planned activities on schedule, including substantially completing the process of integrating CAT Data into POD and successfully running large amounts of production CAT Data for the month of May through POD.[26] FINRA anticipates completing additional activities before the proposed OATS retirement date of September 1, 2021, including planned user acceptance testing.[27]

Additionally, FINRA has confirmed that all of the data required to support the transition from OATS to CAT is available in CAT.[28] Specifically, FINRA, supported by the Participants, conducted a mapping of all OATS data to CAT data, and then completed a ''gap analysis'' to address any issues with the field-level mapping of OATS to CAT data. Furthermore, IEX, along with other Participants, has had a very high compliance rate in reporting CAT Data using the CAT specifications (both in the testing and production environments).[29] Reviewing the Participant submitted CAT Data and matching it with Industry Member data, FINRA determined that the data linkages in CAT are ''comparable to the linkages between RSA exchange data and OATS data'' currently used by FINRA.[30] Accordingly, the CAT NMS Plan Operating Committee approved the cutover from the RSA specification to the CAT specification as the official source of Participant data as of June 1, 2021, and today, all Industry Member and Participant equities data reported via the CAT specification is linked in the CAT production environment.

Thus, FINRA will use OATS data for surveillance patterns run through the end of the second quarter of 2021 and has already begun using CAT Data for its surveillance patterns for review periods beginning in the third quarter of 2021.[31] As detailed in the OATS Retirement Filing, FINRA will continue to conduct regular reviews to ensure confidence in the completeness and accuracy of Industry Member reporting, along with the ability to remediate any issues in a timely manner.[32]

III. OATS May be Retired in Light of the Accuracy and Reliability of the CAT Data

IEX, like FINRA, believes that the three additional standards set forth in the OATS Retirement Order for retiring OATS have been satisfied. With respect to the first factor, IEX, like FINRA, does not believe that there are any material issues that have not been corrected (or could not be corrected in the course of operation of CAT, as approved by the Operating Committee) that would impact FINRA's ability to incorporate and use CAT Data in FINRA's surveillance program, which it conducts on behalf of IEX pursuant to the RSA. For example, the Plan requires that raw unprocessed data that has been ingested by the Plan Processor must be available to Participant regulatory staff and the SEC prior to 12:00 p.m. Eastern Time on T+1, and access to all iterations of processed data must be available to

[22] *See* Letter from Lisa C. Horrigan, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated October 29, 2020.

[23] *See supra* note 20.

[24] FINRA conducts surveillance on behalf of IEX pursuant to the Regulatory Service Agreement entered into by IEX and FINRA (''RSA''). Therefore, any references in this rule filing to FINRA surveillance include FINRA's use of either OATS or CAT Data in furtherance of the regulatory services it provides on behalf of IEX.

[25] For example, according to the CAT Reporting Technical Specification for Participants (version 4.0.0–r4 dated April 20, 2021), additional linkage error feedback for off-exchange trade reports was effective as of June 1, 2021. The Technical Specifications can be found on the CAT NMS Plan website at *www.catnmsplan.com/sites/default/files/2021-04/04.20.2021-CAT-Reporting-Technical-Specifications-for-Participants-4.0.0-r4.pdf.*

[26] *See supra* note 20.

[27] As noted in the FINRA OATS Retirement Filing, user acceptance testing is the final stage of any software development lifecycle and enables actual users to test the system to confirm it is able to carry out the required tasks it was designed to address in real-world situations.

[28] *See supra* note 20.

[29] For example, for the month of July 2021, IEX's compliance error rate for CAT Data reporting was 0.0435% (*i.e.,* 99.9565% of records were successfully reported).

[30] *See supra* note 20.

[31] *See supra* note 20.

[32] *See supra* note 20.

Participant regulatory staff and the SEC between 12:00 p.m. Eastern Time on T+1 and T+5.[33] The Plan Processor also must ensure that regulators have access to corrected and linked order data by 8:00 a.m. Eastern Time on T+5.[34] Additionally, after ingestion by the Central Repository, the raw unprocessed data must be transformed into a format appropriate for data querying and regulatory output.[35] The user-defined direct queries and bulk extracts must provide authorized users with the ability to retrieve CAT Data via a query tool or language that allows users to query all available attributes and data sources.[36] FINRA's use of the CAT Data has not uncovered any processing delays or other material issues impacting the availability of, and FINRA's access to, the data.[37]

With respect to the second factor, IEX, like FINRA, believes that the CAT includes all data necessary for FINRA to meet its surveillance obligations after the retirement of OATS. FINRA must ensure that the CAT, as the single source of order and trade data, can enable FINRA to conduct accurate and effective market surveillance in accordance with its regulatory obligations. As noted above, Phase 2a Data includes all events and scenarios covered by OATS and is the most relevant for OATS retirement purposes. FINRA's testing, analysis and use of the CAT Data (including integration into POD), as described above, has confirmed that the CAT includes all data necessary for FINRA to meet its surveillance obligations and that CAT is a reliable substitute for OATS. In addition, based on its qualitative data reviews, FINRA has concluded that Industry Member CAT Data, in the aggregate, is a sufficient replacement for OATS for purposes of FINRA's surveillance program.

With respect to the third factor, IEX, like FINRA, believes that the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Data. As detailed in the Implementation Plan and Quarterly Progress Reports submitted by the Plan Participants, the Plan Processor has met its targeted completion dates for the milestones for Phase 2a, including, for example, production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters) on June 22, 2020; Production Go-Live for Equities 2a Intrafirm Linkage validations on July 27, 2020; and production go-live for firm-to-firm linkage validations for equities (Large Industry Members and Small OATS Reporters) and exchange and TRF/ORF linkage validations for equities (Large Industry Members and Small OATS Reporters) on October 26, 2020.[38]

Based on the foregoing, IEX agrees with FINRA's determination that the CAT meets the accuracy and reliability standards approved by the Commission in the OATS Retirement Order for purposes of eliminating OATS. FINRA has determined to retire OATS effective September 1, 2021.[39] Firms must continue to report to OATS all order events that occur on or prior to August 31, 2021. Reports submitted to OATS for order events that occur after August 31, 2021 will be rejected. In other words, August 31, 2021 will be the last ''OATS Business Day,'' as defined under FINRA Rule 7450(b)(3), for which OATS will accept order events and perform routine processing (including incorporation of corrections and repairs of rejections) occurring within the normal OATS timeframe for such activities. OATS will continue to accept reports for order events that occur on or prior to August 31, 2021 (including, but not limited to, late and corrected reports for such order events) through September 16, 2021. Firms must ensure that their OATS reporting is accurate and complete for all order events that occur on or prior to August 31, 2021. IEX Rule 11.420, like the FINRA OATS Rules, will be deleted from the IEX rulebook effective September 1, 2021.[40]

In light of the foregoing, IEX, like FINRA, believes that retiring OATS as of September 1, 2021 is appropriate, particularly given the potential risks of continuing to run OATS and CAT in parallel for an additional period of time. Such potential risks may include, for example, on an industry-wide basis: (1) Processing and storage capacity issues from operating two systems (particularly in the event of extraordinary market volume); (2) cybersecurity risks from having data flow through two separate systems for a longer time period; (3) systems issues from reporting infrastructure that is near end-of-life; and (4) the expense and burden on CAT Reporters of dual reporting, particularly in the event of systems issues requiring correction and/or resubmission of data and competing resource priorities between OATS and CAT reporting and repair activities.

IEX has filed the proposed rule change for immediate effectiveness and is seeking a waiver of the 30 day operative delay to allow its OATS rules to be retired concurrent with the September 1, 2021 retirement of FINRA's OATS Rules. IEX will also announce the retirement of OATS via a trader alert to its Members.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[41] which require, among other things, that IEX's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. IEX believes that the proposed retirement of IEX Rule 11.420 fulfills the obligation in the CAT NMS Plan for IEX to submit a proposed rule change to eliminate or modify duplicative rules, and that the CAT NMS Plan has achieved the accuracy and reliability standards required by the Commission in the OATS Retirement Order.

Additionally, as discussed in the Purpose section, IEX believes that the use of CAT Data, whether by IEX directly, or by FINRA pursuant to the RSA, will continue to allow for accurate and effective surveillance of market activity on IEX. Therefore, IEX will continue to be able to fulfill its statutory obligation to protect investors and the public interest after the retirement of OATS.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. IEX notes that the proposed rule change implements provisions of the CAT NMS Plan, facilitates the retirement of certain existing regulatory systems, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. IEX also notes that the proposed rule change will apply equally to all firms that trade NMS Securities. In addition, all national securities exchanges and FINRA are

[33] *See* CAT NMS Plan, Appendix D, Section 6.2.

[34] *See* CAT NMS Plan, Appendix C, Section A.2(a).

[35] *See* CAT NMS Plan, Appendix C, Section A.1(b).

[36] *See* CAT NMS Plan, Section 6.10(c).

[37] *See supra* note 20.

[38] The Implementation Plan and Quarterly Progress Reports are available at *www.catnmsplan.com/implementation-plan.*

[39] *See* FINRA Regulatory Notice 21–21 (June 2021).

[40] In the unlikely event that FINRA determines it is unable to retire OATS effective September 1, 2021, IEX will delay the retirement of IEX Rule 11.420 pending the actual retirement of FINRA OATS.

[41] 15 U.S.C. 78f(b)(5).

proposing substantially similar rule filings. Therefore, this is not a competitive rule filing, and, therefore, it does not impose a burden on competition.

Furthermore, IEX notes that FINRA undertook an economic impact assessment of the potential costs and benefits associated with OATS retirement and determined that CAT meets or exceeds the OATS standards.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [42] and Rule 19b–4(f)(6) thereunder.[43] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [44] and Rule 19b–4(f)(6)(iii) thereunder.[45]

A proposed rule change filed under Rule 19b–4(f)(6) [46] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[47] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative by September 1, 2021, the first day on which FINRA will no longer accept OATS data (unless FINRA delays the OATS retirement past that date.) [48] As discussed above, IEX believes that it is appropriate for FINRA to retire OATS as of September 1, 2021. IEX states that the use of CAT Data, whether by IEX directly, or by FINRA pursuant to IEX's RSA with FINRA, will continue to allow for accurate and effective surveillance of market activity on IEX. In addition, August 31, 2021, will be the last ''OATS Business Day,'' as defined under FINRA Rule 7450(b)(3), and reports submitted to OATS for order events that occur after August 31, 2021, will be rejected. The Commission believes that it is consistent with the protection of investors and the public interest for IEX to delete its OATS reporting rules at the same time that FINRA retires OATS. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative on September 1, 2021.[49]

At any time within 60 days of the filing of this 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–IEX–2021–10 *on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2021–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its internet website at *www.iextrading.com.* All comments received will be posted without change. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–IEX–2021–10, and should be submitted on or before September 30, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19422 Filed 9–8–21; 8:45 am]

BILLING CODE 8011–01–P

[42] 15 U.S.C. 78s(b)(3)(A)(iii).

[43] 17 CFR 240.19b–4(f)(6).

[44] 15 U.S.C. 78s(b)(3)(A).

[45] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[46] 17 CFR 240.19b–4(f)(6).

[47] 17 CFR 240.19b–4(f)(6)(iii).

[48] *See supra* note 40.

[49] 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).

[50] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92867; File No. SR–NYSEArca–2021–65]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the Sprott ESG Gold ETF Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)

September 2, 2021.

On July 19, 2021, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission

(''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Sprott ESG Gold ETF under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on July 30, 2021.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is September 13, 2021. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates October 28, 2021 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2021–65).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19421 Filed 9–8–21; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92506 (July 26, 2021), 86 FR 41109.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92860; File No. SR–NSCC–2021–010]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Establish the Securities Financing Transaction Clearing Service and Make Other Changes

September 2, 2021.

On July 22, 2021, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2021–010 (''Proposed Rule Change'') 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 August 12, 2021.[3] The Commission has received comment letters on the Proposed Rule Change.[4]

Section 19(b)(2) of the Act [5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for the Proposed Rule Change is September 26, 2021.

The Commission is extending the 45-day 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 it has sufficient time to consider and take action on the Proposed Rule Change.

Accordingly, pursuant to Section 19(b)(2) of the Act [6] and for the reasons stated above, the Commission designates November 10, 2021 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–NSCC–2021–010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19418 Filed 9–8–21; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 92570 (August 5, 2021), 86 FR 44482 (August 12, 2021) (SR–NSCC–2021–010) (''Notice''). NSCC also filed the proposal contained in the Proposed Rule Change as advance notice SR–NSCC–2021–803 (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act''). 12 U.S.C. 5465(e)(1); 17 CFR 240.19b–4(n)(1)(i). Notice of filing of the Advance Notice was published for comment in the **Federal Register** on August 12, 2021. Securities Exchange Act Release No. 92568 (August 5, 2021), 86 FR 44530 (August 12, 2021) (SR–NSCC–2021–803). The proposal contained in the Proposed Rule Change and the Advance Notice shall not take effect until all regulatory actions required with respect to the proposal are completed.

[4] Comment letters are available at *https://www.sec.gov/comments/sr-nscc-2021-010/srnscc2021010.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–10976; 34–92872; File No. 265–32]

SEC Small Business Capital Formation Advisory Committee

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: The Securities and Exchange Commission Small Business Capital Formation Advisory Committee, established pursuant to the Securities Exchange Act of 1934 as added by the SEC Small Business Advocate Act of 2016, is providing notice that it will hold a public meeting by videoconference. The public is invited to submit written statements to the Committee.

DATES: The meeting will be held on Monday, September 27, 2021, from 10:00 a.m. to 2:30 p.m. (ET) and will be open to the public. Written statements should be received on or before September 27, 2021.

ADDRESSES: The meeting will be conducted by remote means (videoconference). Members of the public may attend the meeting by viewing the webcast on the Commission's website at *www.sec.gov.* Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's internet submission form (*https://www.sec.gov/rules/submitcomments.htm*); or
- Send an email message to *rule-comments@sec.gov.* Please include File Number 265–32 on the subject line; or

Paper Statements

- Send paper statements to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. 265–32. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the SEC's website at *www.sec.gov.*

Statements also 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. (ET). All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Julie Z. Davis, Senior Special Counsel, Office of the Advocate for Small Business Capital Formation, at (202) 551–5407, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Persons needing special accommodations because of a disability should notify the contact person listed in the section above entitled **FOR FURTHER INFORMATION CONTACT**. The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging companies and their investors under the federal securities laws.

Dated: September 2, 2021.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2021–19416 Filed 9–8–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92861; File No. SR–DTC–2021–014]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Provide Settlement Services for Transactions Entered Into Under the Proposed Securities Financing Transaction Clearing Service of the National Securities Clearing Corporation

September 2, 2021.

On July 22, 2021, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2021–014 (''Proposed Rule Change'') 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 August 11, 2021.[3] The Commission has received no comment letters on the Proposed Rule Change.

Section 19(b)(2) of the Act [4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for the Proposed Rule Change is September 25, 2021.

The Commission is extending the 45-day 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 it has sufficient time to consider and take action on the Proposed Rule Change.

Accordingly, pursuant to Section 19(b)(2) of the Act [5] and for the reasons stated above, the Commission designates November 9, 2021 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–DTC–2021–014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19419 Filed 9–8–21; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 92572 (August 5, 2021), 86 FR 44077 (August 11, 2021) (SR–DTC–2021–014) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92865; File No. SR–NASDAQ–2021–066]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Valkyrie XBTO Bitcoin Futures Fund Under Nasdaq Rule 5711(g)

September 2, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 23, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On August 25, 2021, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the Valkyrie XBTO Bitcoin Futures Fund (the ''Trust'') under Nasdaq Rule 5711(g) (''Commodity Futures Trust Shares''). The shares of the Trust are referred to herein as the ''Shares.''

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[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 ETF community has worked for many years to obtain the approval of an exchange tradeable product that provides investors with the important opportunity to gain exposure to digital currencies such as bitcoin. Since March 2017, the Commission has disapproved more than a dozen such proposals and failed to act on many others that were filed and later withdrawn. During that period, digital assets have gained substantial traction in the global and domestic economy; have become a sought-after investment tool for a rapidly-expanding number of institutional and individual investors; and have spurred significant investment and improvement in all aspects of digital currency ownership, including storage, security, payments, and exchange.[3]

Nasdaq believes that bitcoin and its surrounding ecosystem have evolved sufficiently to support the approval of a Bitcoin Futures ETF because the concerns the Commission has identified previously have been addressed. To that end, Nasdaq believes that its current proposal differs from previous filings recently submitted due to significant developments in the domestic bitcoin futures market, including:

(1) In previous disapproval orders, the Commission expressed concern over a bitcoin fund holding physical bitcoin, but the Trust instead will pursue its investment objective solely by holding CME Bitcoin Futures that are cash-settled and traded on the Chicago Mercantile Exchange, Inc. (the ''CME''), which was self-certified with the Commodity Futures Trading Commission (the ''CFTC'') (aside from holding cash and Money Market Instruments, as defined herein);

(2) The Commission expressed concern in previous disapproval orders about self-regulation and the oversight necessary to maintain and promote the fair and transparent trading of listed products, including bitcoin futures. Specifically, the Commission expressed concern with the listing exchange's ability to deter fraud and manipulation in compliance with Section 6(b)(5) of the Act. The Commission stated that this could be addressed by entering into a surveillance agreement with a ''regulated market of significant size.'' Since the previous disapproval orders, both the bitcoin and bitcoin futures markets have developed to the point that the CME Bitcoin Futures market is a ''regulated market of significant size,'' for purposes of compliance with Section 6(b)(5) of the Act.

(3) The CME's compliance with the CFTC's Core Principles (detailed further herein) also serves to strengthen the Trust's resistance to fraud and manipulation and should appropriately address the Commission's concerns regarding investor protection. The CME Bitcoin Futures contract is cash settled, is not readily subject to manipulation or distortion, and is subject to real-time trade monitoring and comprehensive and accurate trade reconstruction.

Background

The Exchange proposes to list and trade Shares of the Trust under Nasdaq Rule 5711(g), which governs the listing and trading of Commodity Futures Trust Shares on the Exchange.[4] The Shares will be offered by the Trust, which was established as a Delaware statutory trust on May 18, 2021. According to the Draft Registration Statement (as defined below), the Trust will not be registered as an investment company under the Investment Company Act of 1940 and is not required to register under such act.[5] The Trust is registered as a commodity pool under the Commodity Exchange Act (''CEA'').[6] The Shares of the Trust will be registered with the Commission by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'') under the Securities Act of 1933, as amended (the ''Securities Act''). The Registration Statement will be effective as of the date of any offer and sale pursuant to the Registration Statement. A draft registration statement (the ''Draft Registration Statement'') was filed confidentially with the Commission on May 21, 2021.[7]

Valkyrie Funds LLC (the ''Sponsor'') serves as the Trust's sponsor and commodity pool operator. Vident Investment Advisory, LLC (the ''Sub-Advisor'') serves as the Trust's sub-advisor and commodity trading advisor. XBTO Trading, LLC is the research provider for the Sponsor and the Sub-Advisor. Delaware Trust Company (the ''Trustee'') serves as the trustee for the Trust. The Sponsor is currently considering third-party service providers for the roles of Administrator, Transfer Agent, Custodian and Marketing Agent, as described in the Draft Registration Statement.

The Bitcoin Industry and Market

Bitcoin

Bitcoin is the digital asset that is native to, and created and transmitted through the operations of, the peer-to-peer Bitcoin Network, a decentralized network of computers that operates on cryptographic protocols. No single entity owns or operates the Bitcoin Network, the infrastructure of which is collectively maintained by a decentralized user base. The Bitcoin Network allows people to exchange tokens of value, called bitcoin, which are recorded on a public transaction ledger known as the Blockchain. Bitcoin can be used to pay for goods and services, or it can be converted to fiat currencies, such as the U.S. dollar, at rates determined on bitcoin trading platforms or in individual end-user-to-end-user transactions under a barter system.

The Bitcoin Network is decentralized and does not require governmental authorities or financial institution intermediaries to create, transmit, or determine the value of bitcoin. In addition, no party may easily censor transactions on the Bitcoin Network. As a result, the Bitcoin Network is often

[3] For example, Coinbase (COIN) alone sports an enterprise market capitalization of around $67 billion and it recently reported over 68 million individual accounts holding $180 billion of digital currencies, and $462 billion in quarterly notional value of trading volume.

[4] Nasdaq Rule 5711(g)(iii) defines Commodity Futures Trust Shares as ''a security that (A) is issued by a trust (''Trust'') that (1) is a commodity pool as defined in the Commodity Exchange Act and regulations thereunder, and that is managed by a commodity pool operator registered with the Commodity Futures Trading Commission, and (2) holds positions in futures contracts that track the performance of a specified commodity, or interests in a commodity pool which, in turn, holds such positions; and (B) is issued and redeemed daily in specified aggregate amounts at net asset value.''

[5] 15 U.S.C. 80a–1.

[6] 7 U.S.C. 1.

[7] *See* Draft Registration Statement on Form S–1 confidentially filed with the Commission on May 21, 2021 (file no. 377–04910). The descriptions of the Trust and the Shares contained herein are based, in part, on information in the Draft Registration Statement.

referred to as decentralized and censorship resistant.

The value of bitcoin is determined by the supply of and demand for bitcoin. New bitcoins are created and rewarded to the parties providing the Bitcoin Network's infrastructure (''miners'') in exchange for their expending computational power to verify transactions and add them to the Blockchain. The Blockchain is effectively a decentralized database that includes all blocks that have been solved by miners, and is updated to include new blocks as they are solved. Each bitcoin transaction is broadcast to the Bitcoin Network and, when included in a block, recorded in the Blockchain. Each new block records outstanding bitcoin transactions, and outstanding transactions are settled and validated through such recording. The Blockchain represents a complete, transparent, and unbroken history of all transactions of the Bitcoin Network.

The method for creating new bitcoin is mathematically controlled in a manner so that the supply of bitcoin grows at a limited rate pursuant to a pre-set schedule. The number of bitcoin awarded for solving a new block is automatically halved every 210,000 blocks. Thus, the current fixed reward for solving a new block is 6.25 bitcoin per block; the reward decreased from twenty-five bitcoin in July 2016 and 12.5 in May 2020. It is estimated to halve again at the start of 2024. This deliberately controlled rate of bitcoin creation means that the number of bitcoin in existence will never exceed twenty-one million and that bitcoin cannot be devalued through excessive production unless the Bitcoin Network's source code (and the underlying protocol for bitcoin issuance) is altered. As of January 1, 2021, approximately 18,587,000 bitcoin have been mined. It is estimated that more than ninety percent of the twenty-one million bitcoin will have been produced by 2022.

Bitcoin Network

The first step in directly using the Bitcoin Network for transactions is to download specialized software referred to as a ''bitcoin wallet.'' A user's bitcoin wallet can run on a computer or smartphone and can be used both to send and to receive bitcoin. Within a bitcoin wallet, a user can generate one or more unique ''bitcoin addresses,'' which are conceptually similar to bank account numbers. After establishing a bitcoin address, a user can send or receive bitcoin from his or her bitcoin address to another user's address. Sending bitcoin from one bitcoin address to another is similar in concept to sending a bank wire from one person's bank account to another person's bank account, provided, however, that such transactions are not managed by an intermediary and erroneous transactions generally may not be reversed or remedied once sent.

The amount of bitcoin associated with each bitcoin address, as well as each bitcoin transaction to or from such address, is transparently reflected in the Blockchain and can be viewed by websites that operate as ''blockchain explorers.'' Copies of the Blockchain exist on thousands of computers on the Bitcoin Network. Anyone can view the blockchain as it is available to observe without restriction. A user's bitcoin wallet will either contain a copy of the blockchain or be able to connect with another computer that holds a copy of the blockchain. The innovative design of the Bitcoin Network protocol allows each Bitcoin user to trust that their copy of the Blockchain will generally be updated consistent with each other user's copy because it is extraordinarily unlikely that the Blockchain could be retroactively changed.

When a Bitcoin user wishes to transfer bitcoin to another user, the sender must first have the recipient's Bitcoin address. The sender then uses his or her Bitcoin wallet software to create a proposed transaction to be added to the Blockchain. The proposal would reduce the amount of bitcoin allocated to the sender's address and increase the amount allocated to the recipient's address, in each case by the amount of bitcoin desired to be transferred. The proposal is completely digital in nature, similar to a file on a computer, and it can be sent to other computers participating in the Bitcoin Network.

Bitcoin Transactions

A bitcoin transaction contains the sender's bitcoin address, the recipient's bitcoin address, the amount of bitcoin to be sent, a transaction fee, and the sender's digital signature. Bitcoin transactions are secured by a type of cryptography known as public-private key cryptography, represented by the bitcoin addresses and digital signature in a transaction's data file. Each Bitcoin Network address, or wallet, is associated with a unique ''public key'' and ''private key'' pair, both of which are lengthy alphanumeric codes, derived together and possessing a unique relationship.

The public key is visible to the public and analogous to the Bitcoin Network address. The private key is a secret and may be used to digitally sign a transaction in a way that proves the transaction has been signed by the holder of the public-private key pair, without having to reveal the private key. A user's private key must be kept in accordance with appropriate controls and procedures to ensure that it is used only for legitimate and intended transactions. If an unauthorized third person learns of a user's private key, that third person could forge the user's digital signature and send the user's bitcoin to any arbitrary bitcoin address, thereby stealing the user's bitcoin. Similarly, if a user loses his private key and cannot restore such access (*e.g.,* through a backup), the user may permanently lose access to the bitcoin contained in the associated address.

The Bitcoin Network incorporates a system to prevent double-spending of a single bitcoin. To prevent the possibility of double-spending a single bitcoin, each validated transaction is recorded, time stamped and publicly displayed in a ''block'' in the Blockchain, which is publicly available. Thus, the Bitcoin Network provides confirmation against double-spending by memorializing every transaction in the Blockchain, which is publicly accessible and downloaded in part or in whole by all users of the Bitcoin Network software program. Any user may validate, through their Bitcoin wallet or a blockchain explorer, that each transaction in the Bitcoin Network was authorized by the holder of the applicable private key. Bitcoin Network mining software consistent with reference software requirements typically validates each such transaction before including it in the Blockchain. This cryptographic security ensures that bitcoin transactions may not generally be counterfeited, although it does not protect against the ''real world'' theft or coercion of use of a Bitcoin user's private key, including the hacking of a Bitcoin user's computer or a service provider's systems.

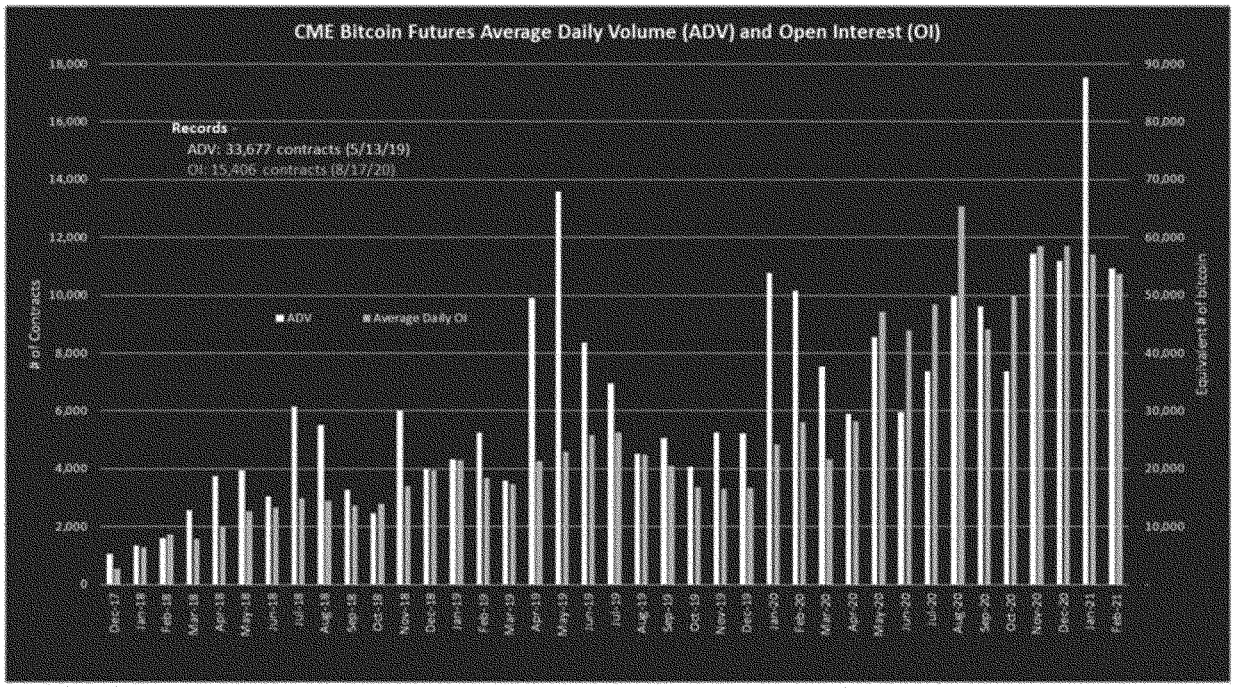
A Bitcoin transaction between two parties is settled when recorded in a block added to the Blockchain. Validation of a block is achieved by confirming the cryptographic hash value included in the block's solution and by the block's addition to the longest confirmed Blockchain on the Bitcoin Network. For a transaction, inclusion in a block on the Blockchain constitutes a ''confirmation'' of a Bitcoin transaction. As each block contains a reference to the immediately preceding block, additional blocks appended to and incorporated into the Blockchain constitute additional confirmations of the transactions in such prior blocks, and a transaction included in a block for the first time is confirmed once against

double-spending. The layered confirmation process makes changing historical blocks (and reversing transactions) exponentially more difficult the further back one goes in the Blockchain.

To undo past transactions in a block recorded on the Blockchain, a malicious actor would have to exert tremendous computer power in re-solving each block in the Blockchain starting with and after the target block and broadcasting all such blocks to the Bitcoin Network. The Bitcoin Network is generally programmed to consider the longest Blockchain containing solved and valid blocks to be the most accurate Blockchain. In order to undo multiple layers of confirmation and alter the Blockchain, the malicious actor would have to re-solve all of the old blocks sought to be regenerated and be able to continuously add new blocks to the Blockchain at a speed that would have to outpace that of all of the other miners on the Bitcoin Network, who would be continuously solving for and adding new blocks to the Blockchain. There are no known reports of malicious parties taking control of the Bitcoin Network or undoing past transactions in a block recorded on the Blockchain.

Bitcoin Futures

The CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate (the ''CME CF BRR'').[8] The contracts trade and settle like other cash-settled commodity futures contracts. Nearly every measurable metric related to CME Bitcoin Futures has trended consistently up since launch and/or accelerated upward in the past year.[9] For example, there was approximately $2.7 billion in trading in Bitcoin Futures in March 2021 compared to $118 million, $70 million, and $262 million in total trading in March 2018, March 2019 and March 2020, respectively. Bitcoin Futures traded over $63 billion in notional amount on the CME in March 2021 and represented $2.5 billion in average daily open interest compared to $151 million in March 2020. This general upward trend in trading volume and open interest is captured in the following chart:



[8] According to CME, the CME CF Bitcoin Reference Rate aggregates the trade flow of major bitcoin spot exchanges during a specific calculation window into a once-a-day reference rate of the U.S. dollar price of bitcoin. Calculation rules are geared toward maximum transparency and real-time replicability in underlying spot markets, including Bitstamp, Coinbase, Gemini, itBit, and Kraken. For additional information, refer to *https://www.cmegroup.com/trading/cryptocurrency-indices/cf-bitcoin-reference-rate.html?redirect=/trading/cf-bitcoin-reference-rate.html.*

[9] The recent launch of a bitcoin futures-based mutual fund from ProShares, the Bitcoin Strategy ProFund (BTCFX), has increased approximately 14% since its July launch.

Prior to listing a new commodity futures contract, a designated contract market must either submit a self-certification to the CFTC that the contract complies with the CEA and CFTC regulations or voluntarily submit the contract for CFTC approval. This process applies to all futures contracts and all commodities underlying the futures contracts, whether the new futures contracts are related to oil, gold, or any other commodity.[10] On December 1, 2017, it was announced [11] that the CME had self-certified with the CFTC new contracts for bitcoin futures products.[12] The CME Bitcoin Futures [13] trade and settle like any other cash-settled commodity futures contracts.[14] Like other futures products on the CME, Bitcoin Futures are subject to oversight by the CFTC, and the CME itself is empowered to enforce its own rulebook as it relates to the Bitcoin Futures. Furthermore, the CME has a surveillance team that monitors the trading of Bitcoin futures at all times along with the underlying bitcoin spot exchanges with which the CME has a surveillance agreement.

As such, the Exchange is proposing to list and trade Shares of the Trust under Nasdaq Rule 5711(g), which governs the listing and trading of Commodity Futures Trust Shares on the Exchange.

Investment Objective

According to the Draft Registration Statement, the investment objective of the Trust is for the Shares to reflect the performance of bitcoin as represented by the CME CF BRR, less the Trust's liabilities and expenses.

Investment Strategy

The Trust pursues its investment objective primarily by investing in Bitcoin Futures. Futures are financial contracts, the value of which depends on, or is derived from, the underlying reference asset. In the case of Bitcoin Futures, the underlying reference asset is Bitcoin. Futures contracts may be cash-settled or physically-settled. When a cash-settled future expires, if the value of the underlying asset exceeds the futures price, the seller pays to the purchaser cash in the amount of that excess, and if the futures price exceeds the value of the underlying asset, the purchaser pays to the seller cash in the amount of that excess. When a physically-settled future expires, the seller is obligated to deliver the underlying asset to the purchaser in exchange for the futures price agreed to at the outset of the contract. The only Bitcoin Futures in which the Trust invests are cash-settled Bitcoin Futures traded on commodity exchanges registered with the CFTC.

At expiration, the cash settlement amount for the Bitcoin Futures held by the Trust will be determined by comparing the price at which the Trust purchased the futures contract on the relevant futures exchange with the reference rate specified by that exchange on the expiration date. For example, the CME has specified that the reference rate for its Bitcoin Futures will be a volume-weighted composite of Bitcoin prices on multiple Bitcoin exchanges. The Trust does not invest in Bitcoin or other digital assets directly.

The Trust seeks to purchase a number of Bitcoin Futures so that the total value of the Bitcoin underlying the Bitcoin Futures held by the Trust is as close to 100% of the net assets of the Trust (the ''Target Exposure'') as it is reasonably practicable to achieve, although as described further in the Draft Registration Statement, there can be no assurance that the Trust will be able to achieve or maintain the Target Exposure. The Trust intends to execute these purchases on commodity exchanges registered with the CFTC through futures commission merchants (''FCMs''). An FCM is a brokerage firm that solicits or accepts orders to buy or sell futures contracts and accepts money or other assets from customers to support such orders. The Trust does not intend to hold short positions in any futures, and accordingly, the most an investor could lose is the amount of his or her investment in the Trust. Although the Trust's Bitcoin Futures will provide leverage to the extent that they give the Trust exposure to an amount of underlying Bitcoin with a greater value than the amount of collateral the Trust is required to post, the Trust does not intend to provide investors with exposure to an amount of Bitcoin in excess of the Trust's net assets. The Trust will engage in active and frequent trading of Bitcoin Futures in seeking to maintain the Target Exposure.

In addition to the Trust's investments in Bitcoin Futures, the Trust expects to have significant holdings of cash and high-quality, short-term debt instruments that have terms-to-maturity of less than 397 days, such as U.S. government securities and repurchase agreements (the ''Money Market Instruments''). The Money Market Instruments are intended to provide liquidity, to serve as collateral for the Trust's Bitcoin Futures and to support the Trust's use of leverage through the Trust's Bitcoin Futures. The amount of Money Market Instruments held by the Trust may change over time and will be determined primarily by the amount needed to seek to achieve or maintain the Target Exposure.

The Trust will generally hold its investments in Bitcoin Futures during periods in which the price of Bitcoin is flat or declining as well as during periods in which the price of Bitcoin is rising, and the Advisor will generally not seek to change the Trust's Target Exposure based on daily price changes. For example, if the Trust's positions in Bitcoin Futures are declining in value, the Trust generally will not close out its positions except in order to meet redemption requests. As a result, any decrease in value of the Bitcoin Futures in which the Trust invests will result in a decrease in the Trust's net asset value (''NAV'').

Calculation of the Trust's NAV

According to the Draft Registration Statement, the NAV of the Trust will be determined in accordance with Generally Accepted Accounting Principles (''GAAP'') as the total value of bitcoin held by the Trust, plus any cash or other assets, less any liabilities including accrued but unpaid expenses. The NAV per Share will be determined by dividing the NAV of the Trust by the number of Shares outstanding.

The NAV of the Trust is typically determined as of 4:00 p.m. (Eastern time) on each day the Shares trade on the Exchange (a ''Business Day''). The Trust's daily activities are generally not reflected in the NAV determined for the Business Day on which the transactions are effected (the trade date), but rather on the following Business Day.

Bitcoin Futures traded on a U.S. exchange are generally valued using the

[10] Section 1a(9) of the CEA defines commodity to include, among other things, ''all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.'' The definition of commodity is broad. 7 U.S.C. 1a(9).

[11] *See* ''CFTC Statement on Self-Certification of Bitcoin Products by CME, CFE and Cantor Exchange,'' dated December 1, 2017, available at *http://www.cftc.gov/PressRoom/PressReleases/pr7654-17.*

[12] Bitcoin is a commodity as defined in Section 1a(9) of the CEA. 7 U.S.C. 1a(9). *See* In re Coinflip, Inc., No. 15–29 (CFTC Sept. 17, 2015), available at *http://www.cftc.gov/ucm/groups/public/@lrenforcementactions/documents/legalpleading/enfcoinfliprorder09172015.pdf.*

[13] The CME Bitcoin Futures are also cash-settled futures contracts based on the CME CF BRR, which is based on an aggregation of trade flow from several bitcoin spot exchanges, that will expire on a monthly and quarterly basis. CME Futures began trading on December 17, 2017.

[14] The CME is registered with the CFTC and seek to provide a neutral, regulated marketplace for the trading of derivatives contracts for commodities, such as futures, options and certain swaps. The CME is a member of the Intermarket Surveillance Group.

last traded price before the NAV calculation time on the date with respect to which the NAV is being determined. Money Market Instruments will generally be valued at their market price using market quotations or information provided by a pricing service.

For more information regarding the valuation of Trust investments in calculating the Trust's NAV, see the Draft Registration Statement.

Preventing Fraudulent and Manipulative Practices

Applicable Standard of Review

In disapproving prior proposals to list and trade shares of various bitcoin trusts and bitcoin-based trust issued receipts, the Commission noted that such proposals did not adequately demonstrate that they were designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest, consistent with Section 6(b)(5) of the Act.[15] The Commission does not apply a ''cannot be manipulated'' standard, but instead seeks to examine whether a proposal meets the requirements of the Act.[16] The Commission has explained that a proposal could satisfy the requirements of the Act in the first instance by demonstrating that the listing exchange has entered into a comprehensive surveillance sharing agreement (''CSSA'') with a regulated market of significant size relating to the underlying assets.[17] The Commission has also recognized that a listing exchange would not necessarily need to enter into a CSSA with a regulated significant market if the underlying commodity market inherently possessed a unique resistance to manipulation beyond the protections that are utilized by traditional commodity or securities markets or if the listing exchange could demonstrate that there were sufficient ''other means to prevent fraudulent and manipulative acts and practices.'' [18] While the earliest of the prior disapproval orders applied these standards to a commodity-trust based on bitcoin, the Commission has stated its belief that these standards are also appropriate for an ETP based on Bitcoin Futures.[19]

The Commission has noted that information sharing agreements with primary markets trading index components underlying a derivative product are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products.[20] In addition, the Commission's approval orders for commodity-futures ETPs note the ability of an ETP listing exchange to share surveillance information either through surveillance sharing agreements or through membership by the listing exchange and the relevant futures exchanges in the Intermarket Surveillance Group (''ISG'').[21] While the Commission in those orders did not explicitly undertake an analysis of whether the related futures markets were of ''significant size,'' the exchanges proposing commodity-futures ETPs on a single reference asset or benchmark generally made representations regarding the trading volume of the futures markets, and the Commission was in each of those cases dealing with a large futures market that had been trading for a number of years before an exchange proposed an ETP based on those futures.[22] And where the Commission has considered a proposed ETP based on futures that had only recently begun trading, the Commission specifically addressed whether the futures on which the ETP was based—which were futures on an index of well-established commodity futures—were illiquid or susceptible to manipulation.[23]

As described below, the Exchange believes the structure and operation of the Trust are designed to prevent fraudulent and manipulative acts and practices, to protect investors and the public interest, and to respond to the specific concerns that the Commission has identified with respect to potential fraud and manipulation in the context of a bitcoin ETP. In particular, the Exchange believes that it has addressed the Commission's previously stated concern that the Exchange must have entered into a surveillance-sharing agreement with a regulated market of significant size as evidence of the Trust's resistance to manipulation. In addition, the Exchange believes that Bitcoin Futures market has sufficiently developed since the prior disapproval orders such that the market for Bitcoin Futures now resembles the markets for other commodities at the time the related commodity futures-based ETP was approved for listing. Finally, the Exchange believes it has demonstrated that the Trust possesses other means to prevent fraud or manipulation through the CME's use of the CME CF BRR as the reference rate for Bitcoin Futures contracts. The Exchange also believes that listing of the Trust's Shares on the Exchange will provide investors with such an opportunity to obtain exposure to bitcoin within a regulated environment.

Surveillance Sharing Agreements With a Market of Significant Size

In previous orders rejecting the listing of Bitcoin ETFs, the Commission noted its concerns that the bitcoin market could be subject to manipulation.[24] In these orders, the Commission cited numerous precedents [25] in which 19b–4 listing applications were approved based on findings that the particular market was either inherently resistant to manipulation or that the listing exchange had entered into a surveillance sharing agreement with a

[15] *See, e.g.,* Order Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to BZX Rule 14.11(e)(4), To List and Trade Shares Issued by the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 80206 (Mar. 10, 2017), 82 FR 14076 (Mar. 16, 2017) (SR–BatsBZX–2016–30) (''Winklevoss I Order''); Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (Aug. 1, 2018) (SR–BatsBZX–2016–30) (''the Winklevoss II Order''); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201–E, Securities Exchange Act Release No. 87267 (October 9, 2019), 84 FR 55382 (October 16, 2019) (SR–NYSEArca–2019–01) (the ''Bitwise Order''); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and to List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201–E, Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (Mar. 3, 2020) (SR–NYSEArca–2019–39) (the ''Wilshire Phoenix Order''); Order Disapproving a Proposed Rule Change to List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF, Securities Exchange Act Release No. 83904 (August 22, 2018), 83 FR 43934 (August 28, 2018) (SR–NYSEArca–2017–139); Order Disapproving a Proposed Rule Change Relating to Listing and Trading of the Direxion Daily Bitcoin Bear 1X Shares, Direxion Daily Bitcoin 1.25X Bull Shares, Direxion Daily Bitcoin 1.5X Bull Shares, Direxion Daily Bitcoin 2X Bull Shares, and Direxion Daily Bitcoin 2X Bear Shares Under NYSE Arca Rule 8.200–E, Securities Exchange Act Release No. 83912 (August 22, 2018), 83 FR 43912 (August 28, 2018) (SR–NYSEArca–2018–02); Order Disapproving a Proposed Rule Change to List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF, Securities Exchange Act Release No. 83913 (August 22, 2018), 83 FR 43923 (August 28, 2018) (SR–CboeBZX–2018–01) (the ''GraniteShares Order'').

[16] *See* Winklevoss II Order, 84 FR at 37582.

[17] *See* Wilshire Phoenix Order, 85 FR at 12596–97.

[18] *See* Winklevoss II Order, 84 FR at 37580, 37582–91; Bitwise Order, 84 FR at 55383, 55385–406; Wilshire Phoenix Order, 85 FR at 12597.

[19] *See* GraniteShares Order, 83 FR 43925.

[20] *Id* at 43926.

[21] *Id* at 43926, n. 35.

[22] *Id* at 43927.

[23] *Id.*

[24] *See* Winklevoss I Order and Winklevoss II Order.

[25] For an extensive listing of such precedents, *see* Winklevoss I Order, at 14083 n. 96.

market of significant size.[26] The Commission noted that, for commodity-trust ETPs ''there has been in every case at least one significant, regulated market for trading futures in the underlying commodity—whether gold, silver, platinum, palladium or copper—and the ETP listing exchange has entered into surveillance sharing agreements with, or held [ISG] membership in common with, that market.'' [27]

The CME [28] is a member of the ISG, the purpose of which is ''to provide a framework for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and related products to address potential intermarket manipulations and trading abuses.'' [29] Membership of a relevant futures exchange in ISG is sufficient to meet the surveillance sharing requirement.[30]

The Commission has previously noted that the existence of a surveillance sharing agreement by itself is not sufficient for purposes of meeting the requirements of Section 6(b)(5); the surveillance sharing agreement must be with a market of significant size.[31] The Commission has provided an example of how it interprets the terms ''significant market'' and ''market of significant size,'' though that definition is meant to be illustrative and not exclusive: ''the terms 'significant market' and 'market of significant size' . . . include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP so that a surveillance sharing agreement would assist the ETP listing market in detecting and deterring misconduct and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.'' [32]

As discussed below, the Exchange maintains that the CME is a ''market of significant size'' as it satisfies both elements of the example provided by the Commission.

Attempts To Manipulate the ETP Could Only Occur on the CME

The first element of what constitutes a ''significant market'' or ''market of significant size'' is that there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on a market (or group of markets) to successfully manipulate the ETP so that a surveillance sharing agreement would assist the ETP listing market in detecting and deterring misconduct. The Commission has stated that establishing a lead-lag relationship (*i.e.,* that price formation occurs on the lead market and informs or causes the price on the lagging market) between the Bitcoin Futures market and the spot market is central to understanding whether it is reasonably likely that a would-be manipulator of the ETP would need to trade on the Bitcoin Futures market to successfully manipulate prices on those spot platforms that feed into the proposed ETP's pricing mechanism.[33]

The Exchange believes that a lead-lag relationship between the Bitcoin Futures market and the spot market currently exists. There is robust evidence of this relationship that has become available since the Commission's prior disapproval orders. First, the Bitcoin Futures market has grown considerably since the Commission's Wilshire Phoenix Disapproval Order, which is evidenced by plentiful empirical data. Second, the staff of the Commission has itself acknowledged the maturity of the Bitcoin Futures market such that it has indicated its comfort with allowing investment companies registered under the Investment Company Act of 1940 to invest in Bitcoin Futures in certain circumstances. Finally, current academic research builds upon and supplements the findings of previous studies reviewed by the Commission that a lead-lag relationship can be statistically observed in relatively recent data sets of the Bitcoin Futures and spot market data.

Growth of the Bitcoin Futures Market

Since the dates of the GraniteShares Order (the most recent disapproval order related to a Bitcoin Futures ETP) and the Wilshire Phoenix Order (the most recent disapproval order related to a spot bitcoin ETP), there has been steady and robust growth observed on the CME Bitcoin Futures market. The following chart displays such development in terms of trading volumes and open interest:

TRADE DATA ON CME BITCOIN FUTURES [34]

	Daily average for week including August 24, 2018 (week of the GraniteShares order)	*Daily average for week including February 26, 2020 (week of the Wilshire Phoenix order)* [35]	*Daily average for the week ending May 28, 2021*
Trading Volume—Notional Amount	$117,000,000	$354,750,000	$2,412,000,000
Trading Volume—Number of Contracts	3,629	7,731	12,610
Open Interest—Notional Amount	$95,400,000	$250,250,000	$1,662,600,000
Open Interest—Number of Contracts	2,956	5,407	8,677

[26] The Exchange to date has not entered into surveillance sharing agreements with any cryptocurrency platform. However, the CME, which calculates the CME CF BRR, and which has offered contracts for bitcoin futures products since 2017, is, as noted below, a member of the ISG. In addition, each Constituent Platform has entered into a data sharing agreement with CME. *See https://docs-cfbenchmarks.s3.amazonaws.com/CME+CF+Constituent+Exchanges+Criteria.pdf.*

[27] *See* Winklevoss II Order, at 37594.

[28] The CME is regulated by the CFTC, which has broad reaching anti-fraud and anti-manipulation authority including with respect to the bitcoin market since bitcoin has been designated as a commodity by the CFTC. *See* A CFTC Primer on Virtual Currencies (October 17, 2017), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/documents/file/labcftc_primercurrencies100417.pdf* (the ''CFTC Primer on Virtual Currencies'') (''The CFTC's jurisdiction is implicated when a virtual currency is used in a derivatives contract or if there is fraud or manipulation involving a virtual currency traded in interstate commerce.''). *See also* 7 U.S.C. Sec. 7(d)(3) (''The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.'').

[29] *See https://isgportal.org/overview.*

[30] *See, e.g.,* Winklevoss II Order, at 37594.

[31] *See, e.g.,* Winklevoss II Order, at 37589–90.

[32] *See, e.g.,* Winklevoss II Order, at 37594; and *see* GraniteShares Order, n. 85 and accompanying text.

[33] *See* Wilshire Phoenix Order at 12612.

[34] Figures calculated by the Exchange based on data available at *https://www.cmegroup.com/ftp/bitcoinfutures/.* Each Bitcoin Futures contract represents 5 bitcoin.

[35] Data for February 28, 2020 was not available and thus not included in calculating the daily averages.

The table above unequivocally demonstrates that the Bitcoin Futures market has grown at an accelerating pace since the prior disapproval orders, likely as a result of the entry of institutional participants into both the Bitcoin Futures market and the spot bitcoin market (*e.g.,* Tesla, MicroStrategy, etc. have taken substantial bitcoin positions). Accordingly, the Exchange maintains that because the Bitcoin Futures market has grown to resemble other futures markets, a lead-lag relationship that exists in other mature futures markets has also likely developed between the Bitcoin Futures market and the bitcoin spot market.[36] Such a relationship is demonstrated through analytical models or other methods that show that the activities in one market cause the price formation on the other market, and there is an emerging consensus among academics that such a lead-lag relationship in fact exists.

Recent Statements by the Staff of the Commission

The Staff of the Commission's Division of Investment Management recently issued its *Staff Statement on Funds Registered under the Investment Company Act Investing in the Bitcoin Futures Market.*[37] In that statement, the Staff stated that mutual funds registered under the Investment Company Act of 1940 could invest in the Bitcoin Futures market so long as the fund had an appropriate investment strategy and its prospectus contained full disclosure of material risks. In reaching such a determination, the Staff noted that while previously the Bitcoin Futures market was in a nascent state with limited trading volume, ''[t]he Bitcoin futures market has developed since then, with increased trading volumes and open-interest positions. In addition, the Bitcoin futures market consistently has produced a reportable price for Bitcoin futures. The Bitcoin futures market also has not presented the custody challenges associated with some cryptocurrency-based investing because the futures are cash-settled.'' [38] In support of this finding, the Staff cited to the same CME data cited above regarding trading volumes and open-interest.[39] While the statement did not go so far as to reach a conclusion that the Bitcoin Futures market is a significant market or market of significant size related to bitcoin in the context of the requirements of Exchange Act Section 6(b)(5), the Staff's own observations regarding the maturity of the Bitcoin Futures market is strong evidence that concerns previously raised regarding price manipulation in that market have been significantly reduced.

Third-Party Research

In the most recent denial order, the Commission found that academic evidence on whether a lead-lag relationship between the Bitcoin Futures market and spot market was ''mixed'' and could not conclude based on that research that a would-be manipulator of a proposed ETP would transact on the CME Bitcoin Futures market.[40] The Commission critiqued the choices made by the authors of such research regarding ''time period, futures contracts, spot market platforms, spot market prices, and analytic methodologies.'' The Exchange notes that the studies cited in that denial order generally analyzed data sets covering the first several years of the Bitcoin Futures market's existence and therefore may not be indicative of current market behavior. While scholarship stating the price discovery takes place in the bitcoin spot market continues to be produced,[41] the majority of the academic literature, including more recent studies with more recent data sets, supports the proposition that price discovery does take place in the Bitcoin Futures market and therefore a lead-lag relationship exists between the spot and futures markets.

In ''What Role do Futures Markets Play in Bitcoin Pricing? Causality, Cointegration and Price Discovery from a Time-Varying Perspective?'',[42] the authors investigated the existence of causal relationships, cointegration and price discovery between bitcoin spot and futures markets from December 2017 to June/July 2019 from a time-varying perspective. The study's authors applied both a time-varying Granger causality approach and Hasbrouck information share approach to explore the causal relationship between bitcoin spot and futures markets.[43] As the authors explain therein, the time-varying approach taken for this study is an important distinction from other studies that have reached an opposite conclusion, as it is now well known in econometrics literature that some possible cointegration relationships may be missed if the underlying model formulation is constrained to be time invariant.[44] This study, like others before it, reached the conclusion that the CME futures market, apart from some short-period exceptions, appears to dominate the underlying spot market under both a Granger and Hasbrouck analysis.

In ''Fractional Cointegration in Bitcoin Spot and Futures Markets'', the authors concluded that, with the exception of the extraordinary market events in early months of the Covid-19 pandemic period, ''the futures market dominates in the price discovery for bitcoin.'' [45] The dataset reviewed in that analysis involved 1-min intraday data of bitcoin spot and futures prices in the US dollar from December 18, 2017 to July 31, 2020. Unlike other research previously reviewed by the Commission that used Granger and/or Hasbrouck analysis to determine price formation, the authors of this study used a fractionally cointegrated vector autoregressive model (''FCVAR'') to determine which of the spot and futures price contributes more to price discovery. According to the study, the FCVAR model ''is more general [than the CVAR model] and less restricted when analyzing the relationship between different variables'' in that it allows for fractional values for the order of cointegration, whereas a CVAR model allows only integers. The study found that while studies using a nonfractional CVAR model significantly overestimate the price discovery of the futures market, the FCVAR model still

[36] While the Exchange believes that the size of the bitcoin futures market relative to the spot market has also grown, data on the global bitcoin exchanges is difficult to state with certainty.

[37] *See* Staff Statement on Funds Registered Under the Investment Company Act Investing in the Bitcoin Futures Market (May 11, 2021), available at *https://www.sec.gov/news/public-statement/staff-statement-investing-bitcoin-futures-market#_ftnref5.*

[38] *Id.*

[39] *Id* at n. 4.

[40] *See* Wilshire Phoenix Order at 12612–13.

[41] *See, e.g.,* Jui-Cheng Hung, Hung-Chun Liu, and J. Jimmy Yang, ''Trading Activity and Price Discovery in Bitcoin Futures Markets'' (March 2021). The Exchange maintains that the vector error correction model and the modified information shares model used in this study are inferior to the Granger and Hasbrouck models used in other studies for determining price-discovery over longer periods. Even so, the authors of this study find that ''Bitcoin futures contracts launched by the CME exhibit superior competitiveness in the price discovery relative to those by CBOE.''

[42] Yang Hu, Yang Greg Hou and Les Oxley, International Review of Financial Analysis 72 (September 2020). The Exchange notes that while the Commission has reviewed a working draft of this study in a previous denial order, the study has since been peer-reviewed and published.

[43] *Id* at 3. According to the study, ''Granger causality is widely used to formally test for lead-lag relationships (temporal ordering) to determine which market (the spot or the futures prices) leads the other.'' The time-varying procedures employed in assessing the Granger causality allowed the study to determine whether the causal relationship varies over the time studied.

[44] *Id* at 2.

[45] Jinhong Wu et al., ''Fractional Cointegration in Bitcoin Spot and Futures Markets'', Journal of Futures Markets, 1–17 (April 2021).

concurred with the finding that the futures market leads the spot market.

The research results discussed above build upon the already emerging academic consensus,[46] demonstrated using multiple analytical models, that the Bitcoin Futures market does lead the spot market such that a would-be manipulator would necessarily conclude that it must trade in the futures market to successfully manipulate the spot price of bitcoin.

The Trust Will Not Be the Predominant Influence on Prices in the Bitcoin Spot and Futures Markets

The second element to determine whether a market or group of markets is of ''significant size'' requires that it is unlikely that trading in the ETP would be the predominant influence on prices in that market. The Exchange also believes that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market (or spot market) for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap (approximately $1 trillion), and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid.

According to data from CoinRoutes from February 2021, the cost to buy or sell $5 million worth of bitcoin averages roughly 10 basis points with a market impact of 30 basis points.[47] For a $10 million market order, the cost to buy or sell is roughly 20 basis points with a market impact of 50 basis points. Stated another way, a market participant could enter a market buy or sell order for $10 million of bitcoin and only move the market 0.5%. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market—which is consistent with MicroStrategy,[48] Tesla[49] and Square[50] being able to collectively purchase billions of dollars in bitcoin without resulting in significant price movements.

The results from a study conducted by CF Benchmarks simulating to determine the extent of ''slippage'' (*i.e.,* the difference between the expected price of a trade and the price at which the trade was actually executed) offer further evidence that trading in the Shares is unlikely to be the predominant influence in either the bitcoin spot or futures market.[51] The CF Benchmarks Analysis simulated the purchase of 50 bitcoins a day for 686 days (an amount chosen specifically to replicate hypothetical trades by a bitcoin ETP) and found that the maximum amount of slippage on a particular day was 0.3%, with the remainder of values between 0% and 0.15%. Thus, according to CF Benchmarks, the slippage in this study could be described as having been largely negligible or, at most, minor during the observation period.[52] While the study focused on the impact of a hypothetical ETP in the bitcoin spot market, arbitrage mechanisms in the spot and futures market dictate that it would be unlikely for a Bitcoin Futures ETP such as the Trust to overrun the Bitcoin Futures market without also overrunning the bitcoin spot market. Accordingly, the CF Benchmarks analysis further bolsters the Exchange's contention that the Trust and other similar ETPs would be unlikely to overrun the market.

As such, the combination of Bitcoin Futures leading price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized participants creating and redeeming in-kind with the Trust, to buy or sell large amounts of bitcoin without significant market impact will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or Bitcoin Futures markets, satisfying part (b) of the test outlined above.

For these reasons, the Exchange believes that all evidence strongly suggests that the CME Bitcoin Futures market has matured to a ''market of significant size'' for purposes of the Commission's standard of review as (a) a would-be manipulator of either bitcoin or Bitcoin Futures would necessarily have to execute its scheme on the CME in order to manipulate the ETP; and (b) the proposed ETP is unlikely to be the predominant influence on prices in that market as the absolute size of both the futures and spot markers have grown tremendously since the prior disapproval orders.

Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange maintains that the CME CF BRR is not readily susceptible to manipulation due to the design of the methodology, which adequately protects the Trust from potential price manipulation in the Bitcoin Futures and spot bitcoin markets.[53] The use of medians in the methodology reduces the effect of outlier prices on one or more constituent exchange.[54] The volume-weighting of medians filters out high numbers of small trades that may otherwise control the value of a non-volume weighted median.[55] The use of twelve non-weighted partitions assures that price information is sourced equally over the entire observation period.[56] Influencing the rate would therefore require trading activity during multiple partitions on several exchanges over an extended period, which would prove a costly and an operationally intensive undertaking. The methodology is designed to remove the reliance on any single contributing exchange, where

[46] *See, e.g.,* Burcu Kapar and Jose Olmo, ''An Analysis of Price Discovery Between Bitcoin Futures and Spot Markets'', Economics Letters 174 (January 2019) (''. . . [T]he Bitcoin futures market dominates the price discovery process.''); Erdinc Akyildirim, ''The Development of Bitcoin Futures: Exploring the Interactions Between Cryptocurrency Derivatives'', Finance Research Letters 34 (May 2020) (''While analysing breakpoints in efficiency, we verify the view that Bitcoin futures dominate price discovery relative to spot markets.''); Alexander Chang, William Herrmann and William Chai, ''Efficient Price Discovery in the Bitcoin Markets'', Wilshire Phoenix (October 2020) (''[W]e conclude that the CME bitcoin futures contribution to price formation was greater than the contribution from the related spot markets made up of the Constituent Exchanges, indicating that the futures lead the spot markets and thus contribute more to price formation. . . .[T]his analysis was performed using a methodology similar to the one employed by the Division of Economic and Risk Analysis at the SEC to evaluate the IEX exchange's contribution to price formation in the equities markets.'') available at *https://www.wilshirephoenix.com/efficient-price-discovery-in-the-bitcoin-markets/.*

[47] These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021.

[48] *See* Form 10–Q submitted by MicroStrategy Incorporated for the quarterly period ended September 30, 2020 at 8: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1050446/000156459020047995/mstr-10q_20200930.htm.*

[49] *See* Form 10–K submitted by Tesla, Inc. for the fiscal year ended December 31, 2020 at 23: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k_20201231.htm.*

[50] *See* Form 10–Q submitted by Square, Inc. for the quarterly period ended September 30, 2020 at 51: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1512673/000151267320000012/sq-20200930.htm.*

[51] *See* CF Benchmarks, ''An Analysis of the Suitability of the CME CF BRR for the Creation of Regulated Financial Products,'' December 2020 (the ''CF Benchmarks Analysis''), available at: *https://docsend.com/view/kizk7rarzaba6jxf.*

[52] *Id.*

[53] *See* CME CR Cryptocurrency Reference Rates Methodology Guide (Version 9.0) (July 31, 2021), available at *https://docs-cfbenchmarks.s3.amazonaws.com/CME+CF+Reference+Rates+Methodology.pdf.*

[54] *Id* at 6.

[55] *Id.*

[56] *Id* at 13.

delayed or missing data from an exchange does not cause a calculation failure.

In accordance with the methodology, if for any constituent exchange the absolute percentage deviation of the volume-weighted median trade price in comparison with the median of the volume-weighted median trade prices of all constituent exchanges exceeds a given threshold (currently set at 10% and defined in the methodology), all relevant transactions of that constituent exchange are flagged as potentially erroneous and are disregarded in the calculation of CME CF BRR for that calculation day.[57] Furthermore, for inclusion in the CME CF BRR's calculation, a constituent exchange's bitcoin U.S. Dollar spot trading volume must meet the minimum threshold (currently, 3% relative contribution over two (2) consecutive quarters) as detailed in the methodology.[58] The criteria collectively cause the constituent exchanges to deliver transparent and consistent trade and order data to CF Benchmarks via an API with sufficient reliability, detail and timeliness.[59]

Furthermore, the constituent exchanges maintain fair and transparent market conditions to impede illegal, unfair or manipulative trading practices, and comply with applicable law and regulations including, capital markets regulations, money transmission regulations, client money custody requirements, know-your-client (KYC) requirements, and anti-money-laundering (AML) regulations.[60] The constituent exchanges are also required to cooperate with inquiries and investigations of the administrator (CF Benchmarks) and execute a data sharing agreement with CME.[61]

Core Principles Certification of CME BTC Futures Contracts

The CME Bitcoin Futures comply with all Core Principles of the CEA. In adhering to the Core Principles[62] applicable to all Designated Contract Markets (''DCM''), the CME certified that the CME Bitcoin Futures met specific Core Principles as they apply to futures contracts traded on a DCM. This compliance results in the Trust's core asset being a well-regulated instrument that is not readily susceptible to manipulation. The following Core Principles are of particular relevance to the analysis of this filing.

Contracts Not Readily Subject to Manipulation

In certifying the CME BTC Futures Contracts to the CFTC, the CME was required to include an analysis describing the contract, a discussion of the market research it conducted and note that the contract was designed to meet the risk management needs of prospective users and promote price discovery of bitcoin. The CME consulted with market users to obtain their views and opinions during the contract's design process to ensure that the contract's terms and conditions reflected the underlying cash market and would perform the intended risk management and/or price discovery functions.

Since the CME BTC Futures Contract is cash settled by reference to the CME CF BRR, the CME CF BRR's methodology was provided to the CFTC with supporting information showing how the CME CF BRR is reflective of the underlying cash market, is not readily subject to manipulation or distortion, and is based on a cash price series that is reliable, acceptable, publicly available and timely (as defined in paragraphs (c)(2) and (c)(3) of Appendix C to part 38 of the CFTC's Regulations).[63]

Prevention of Market Disruption

The Core Principles also required CME to certify that it has the ability to prevent manipulation, price distortion, and disruptions of the cash-settlement process through market surveillance, compliance, and enforcement practices and procedures. This would include the ability to conduct real-time trade monitoring and comprehensive and accurate trade reconstruction. Such trade monitoring also allows for the detection of developing market anomalies, such as abnormal price movements and unusual trading volumes, and position-limit violations. CME rules grant exchanges broad powers to intervene to prevent or reduce market disruptions. Once a threatened or actual disruption is detected, the CME may take steps to prevent the disruption or reduce its severity. CME's program includes automated trading alerts to detect market anomalies and position-limit violations as they develop and before market disruptions occur or become more serious. CFTC guidance also requires a DCM to have access to its traders' position and transaction data in the underlying reference market. The CME has, through an information sharing agreement with CF Benchmarks, the ability to access information about trader positions and transactions in the underlying spot BTC markets that contribute to the CME CF BRR. The CME has also implemented a series of risk controls as outlined in the CFTC Regulation's Acceptable Practices.[64]

Position Limits

The CFTC's Core Principles also call for the use of position limits or position accountability to reduce the threat of market manipulation or congestion. The CME has set a position limit of 2,000 contracts for the CME Bitcoin Futures. As a result of this position limit, an attempt to manipulate the price of the CME Bitcoin Futures, and consequently the shares in the Trust, would yield little benefit due to the limited potential profit available from the trading of 2,000 contracts.

Ongoing Coordination With CFTC on CME Bitcoin Futures

Since the launch of CME Bitcoin Futures, the CME has worked with the CFTC on a regular and frequent basis to assess the trading in the contract and ensure that the market is free from fraud and manipulation. CFTC staff, in the recent past, has actively engaged CME in reviewing CME's surveillance program for bitcoin products pursuant to part 38 (Designated Contract Markets) of the CFTC's regulations. This engagement has concerned CME's analysis of the trading activities and strategies of bitcoin futures market participants of significant size and outreach to these market participants. It has also concerned CME's ability to obtain transactional information from the constituent exchanges that contribute data to the bitcoin reference rate in addition to CME's continued monitoring of the bitcoin reference rate as a price series, particularly during the index's one-hour calculation window.

Creation and Redemption of Shares

According to the Draft Registration Statement, the Trust will issue and

[57] *Id* at 11.

[58] *See* CME CF Cryptocurrency Pricing Products Constituent Exchange Criteria (Version 5.0) (May 20, 2020) at 4, available at *https://docs-cfbenchmarks.s3.amazonaws.com/CME+CF+Constituent+Exchanges+Criteria.pdf.*

[59] *Id.*

[60] *Id.*

[61] *Id.*

[62] 17 CFR part 38.

[63] *Id.* at Appendix C paragraphs (c)(2) and (c)(3).

[64] These risk controls include: (1) Dynamic circuit breakers, which monitor for significant price movements within a trading session by defining an upper and lower limit of how far bitcoin futures can move (10%) in any one hour rolling window and, if triggered, matching is suspended for 2 minutes; (2) velocity logic, which is designed to detect market movement of a predefined number of ticks either up or down within a predefined time and, if triggered, matching is suspended for 10 seconds; (3) daily price limits, which is the maximum daily price range permitted for BTC futures (+/− 30% from prior day settlement); and (4) initial margin (currently set at 35% of notional value for outright positions) charged for all open positions based on expected volatility over a two-day close out period.

redeem Shares on a continuous basis at the NAV per Share only in large, specified blocks each consisting of a certain number of Shares (each such block of shares called a ''Creation Unit,'' and collectively, the ''Creation Units'') in transactions with broker-dealers and large institutional investors that have entered into participation agreements (''Authorized Participants''). It is currently anticipated that a Creation Unit will consist of 50,000 Shares, although this number may change from time to time. It is currently expected that the Trust's Creation Units will generally be issued and redeemed for cash. Except when aggregated in Creation Units, the Shares are not redeemable securities. Once created, Shares of the Trust may trade on the secondary market in amounts less than a Creation Unit.

Creation Procedures. On any Business Day, an Authorized Participant may place an order to create one or more Creation Units. Purchase orders must be placed by 2:00 p.m. (Eastern time). The cut-off time may be earlier if, for example, the Exchange or another exchange material to the valuation or operation of the Trust closes before the cut-off time. If a purchase order is received prior to the applicable cut-off time, the day on which the Marketing Agent receives a valid purchase order is the purchase order date. If the purchase order is received after the applicable cut-off time, the purchase order date will be the next Business Day. Purchase orders are irrevocable. By placing a purchase order, and prior to delivery of such Creation Units, an Authorized Participant's DTC account will be charged the non-refundable transaction fee due for the purchase order.

Redemption Procedures. On any Business Day, an Authorized Participant may place an order with the Marketing Agent to redeem one or more Creation Units. Redemption orders must be received prior to 2:00 p.m. (Eastern time), or earlier if, for example, the Exchange or another exchange material to the valuation or operation of the Trust closes before the cut-off time. If a redemption order is received prior to the applicable cut-off time, the day on which the Marketing Agent receives a valid redemption order is the redemption order date. If the redemption order is received after the applicable cut-off time, the redemption order date will be the next day. Redemption orders are irrevocable. Individual shareholders may not redeem directly from the Trust.

By placing a redemption order, an Authorized Participant agrees to deliver the Creation Units to be redeemed through DTC's book-entry system to the applicable Trust not later than noon (Eastern time), on the first Business Day immediately following the redemption order date (T+1). The Sponsor reserves the right to extend the deadline for the Trust to receive the Creation Units required for settlement up to the second Business Day following the redemption order date (T+2). By placing a redemption order, and prior to receipt of the redemption proceeds, an Authorized Participant must wire to the Custodian the non-refundable transaction fee due for the redemption order or any proceeds due will be reduced by the amount of the fee payable. At its sole discretion, the Sponsor may agree to a delivery date other than T+2. Additional fees may apply for special settlement.

Upon the request of an Authorized Participant made at the time of a redemption order, the Sponsor at its sole discretion may determine, in addition to delivering redemption proceeds, to transfer futures contracts to the Authorized Participant pursuant to an exchange of a futures contract for related position (''EFCRP'') or to a block trade sale of futures contracts to the Authorized Participant.

Availability of Information

The Trust's website (*www.valkyriefunds.io*) will include quantitative information on a per Share basis updated on a daily basis, including (i) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (ii) the mid-point of the bid-ask price [65] in relation to the NAV as of the time the NAV is calculated (''Bid-Ask Price'') and a calculation of the premium or discount of such price against such NAV; and (iii) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid-Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or for the life of the Trust, if shorter). In addition, on each business day the Trust's website will provide pricing information for the Shares. Also, an estimated value that reflects an estimated intraday value of the Trust's portfolio (the ''Intraday Indicative Value''), will be disseminated.

The Trust's website will provide an intra-day indicative value (''IIV'') per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Market Session (9:30 a.m. to 4:00 p.m. (Eastern time)).[66] The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during the Exchange's Regular Market Session to reflect changes in the value of the Trust's NAV during the trading day.

The IIV disseminated during the Exchange's Regular Market Session should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Market Session by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The NAV for the Trust will be calculated by the Sponsor once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

Initial and Continued Listing

The Shares will be subject to Nasdaq Rule 5711(g)(vi), which sets forth the initial and continued listing criteria applicable to Commodity Futures Trust Shares. The Exchange will obtain a representation that the Trust's NAV will be calculated daily and will be made available to all market participants at the same time. Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Nasdaq Rule 5711(g)(vi)(D) and no change will be made to the trustee without prior notice to and approval of the Exchange.

As required in Nasdaq Rule 5711(g)(vii), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying commodity, related futures or options on futures, or any other related derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker in the Shares shall trade in the underlying

[65] The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

[66] The IIV on a per Share basis disseminated during the Regular Market Session should not be viewed as a real-time update of the NAV, which is calculated once a day.

commodity, related futures or options on futures, or any other related derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by Nasdaq Rule 5711(g). In addition to the existing obligations under Exchange rules regarding the production of books and records, the registered Market Maker in the Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Exchange.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 4:00 a.m. to 8:00 p.m. (Eastern time). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The Shares of the Trust will conform to the initial and continued listing criteria set forth in Nasdaq Rule 5711(g).

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including without limitation the conditions specified in Nasdaq Rule 4120(a)(9) and the trading pauses under Nasdaq Rules 4120(a)(11) and (12).

Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the futures contracts underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

As indicated in Commentary .03 to Nasdaq Rule 5711(g), if the IIV or the value of the underlying futures contract is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the value of the underlying futures contract occurs. If the interruption to the dissemination of the IIV or the value of the underlying futures contract persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Shares on the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the Trust to represent to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Additionally, the Bitcoin Futures will be subject to the rules and surveillance programs of CME and the CFTC.[67] The Exchange or the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the underlying Bitcoin Futures via ISG from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[68] The Exchange may also obtain information regarding trading in the spot bitcoin market from exchanges with which the CME or the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Section 10 of Nasdaq General Rule 9, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the IIV is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated IIV will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Trust is subject to various fees and expenses described in the Draft Registration Statement. The Information Circular will also disclose the trading hours of the Shares. The Information Circular will disclose that information about the Shares will be

[67] The CFTC issued a press release on December 1, 2017, noting the self-certifications from CFE and CME and highlighting the rigorous process that the CFTC had undertaken in its engagement with CFE and CME prior to the self-certification for the Bitcoin Futures. The press release focused on the ongoing surveillances that will occur on each listing exchange, including surveillance based on information sharing with the underlying cash bitcoin exchanges as well as the actions that the CFTC will undertake after the contracts are launched, including monitoring and analyzing the size and development of the market, positions and changes in positions over time, open interest, initial margin requirements, and variation margin payments, stress testing positions, conduct reviews of designated contract markets, derivatives clearing organizations, clearing firms, and individual traders involved in trading and clearing bitcoin futures. For more information, *see http://www.cftc.gov/PressRoom/PressReleases/pr7654-17.*

[68] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.* The Exchange notes that not all components of the Disclosed Portfolio for the Trust may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Not more than 10% of the net assets of the Trust in the aggregate invested in Bitcoin Futures shall consist of Bitcoin Futures whose principal market is not a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

publicly available on the Trust's website.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [69] in general and Section 6(b)(5) of the Act [70] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Additionally, the Bitcoin Futures will be subject to the rules and surveillance programs of CME and the CFTC. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity Futures Trust Shares. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the underlying Bitcoin Futures via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Exchange may also obtain information regarding trading in the spot bitcoin market via the ISG, from other exchanges who are members or affiliates of the ISG, or from other exchanges with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to TRACE. The Exchange prohibits the distribution of material non-public information by its employees.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. The Exchange further believes that the proposal is designed to prevent fraudulent and manipulative acts and practices in that the Exchange expects that the market for Bitcoin Futures will be sufficiently liquid to support numerous ETPs shortly after launch. This belief is based on numerous conversations with market participants, issuers, and discussions with personnel of CFE. As such, the Exchange believes that the expected liquidity in the market for Bitcoin Futures, combined with the Exchange surveillance procedures related to the Shares, and the broader regulatory structure will prevent trading in the Shares from being susceptible to manipulation.

Because of its innovative features as a cryptoasset, bitcoin has gained wide acceptance as a secure means of exchange in the commercial marketplace and has generated significant interest among investors. In less than a decade since its creation in 2008, bitcoin has achieved significant market penetration, with payments giant PayPal and thousands of merchants and businesses accepting it as a form of commercial payment, as well as receiving official recognition from several governments, including Japan and Australia. Accordingly, investor interest in gaining exposure to bitcoin is increasing exponentially as well. As expected, the total volume of bitcoin transactions in the market continues to grow exponentially.

Despite the growing investor interest in bitcoin, the primary means for investors to gain access to bitcoin exposure remains either through the Bitcoin Futures or direct investment through bitcoin exchanges or over-the-counter trading. For regular investors simply wishing to express an investment viewpoint in bitcoin, investment through the Bitcoin Futures is complex and requires active management, and direct investment in bitcoin brings with it significant inconvenience, complexity, expense and risk. The Shares would therefore represent a significant innovation in the bitcoin market by providing an inexpensive and simple vehicle for investors to gain exposure to bitcoin in a secure and easily accessible product that is familiar and transparent to investors. Such an innovation would help to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest by improving investor access to bitcoin exposure through efficient and transparent exchange-traded derivative products.

In addition to improved convenience, efficiency and transparency, the Trust will also help to prevent fraudulent and manipulative acts and practices by enhancing the security afforded to investors as compared to a direct investment in bitcoin. Despite the extensive security mechanisms built into the Bitcoin network, a remaining risk to owning bitcoin directly is the need for the holder to retain and protect the ''private key'' required to spend or sell bitcoin after purchase. If a holder's private key is compromised or simply lost, their bitcoin can be rendered unavailable—*i.e.,* effectively lost to the investor. Investment vehicles that invest directly in bitcoin or investors that hold their bitcoin through digital wallets or other storage mechanisms must take extraordinary steps in order to protect their bitcoin, such as placing their bitcoin in ''cold storage.'' This risk will be eliminated for the Trust because the exposure to bitcoin is gained through cash-settled Bitcoin Futures that do not present any of the security issues that exist with direct investment in bitcoin.

The Trust expects that it will generally seek to remain fully exposed to Bitcoin Futures even during times of adverse market conditions. Under Normal Market Conditions, the Trust will generally hold only Bitcoin Futures and Money Market Instruments (which are used to collateralize the Bitcoin Futures).

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Trust and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value will be disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. On each business day, before commencement of trading in Shares during Regular Trading Hours, the Trust will disclose on its website the Disclosed Portfolio that will form the basis for the Trust's calculation of NAV at the end of the business day. Pricing information will be available on the Trust's website including: (1) The prior business day's reported NAV, the Bid/Ask Price of the Trust, and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the

[69] 15 U.S.C. 78f.

[70] 15 U.S.C. 78f(b)(5).

NAV, within appropriate ranges, for each of the four previous calendar quarters.

Additionally, information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available on the facilities of the CTA. The Trust's website will include a form of the prospectus for the Trust and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Trust will be halted under the conditions specified in Nasdaq Rule 4120(b). Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to Nasdaq Rule 4120(a)(9), which sets forth circumstances under which Shares of the Trust may be halted and delisting proceedings commenced. In addition, as noted above, investors will have ready access to information regarding the Trust's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

Intraday price quotations on Money Market Instruments of the type held by the Trust are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay, or ''live'' with a paid fee. For Bitcoin Futures, such intraday information is available directly from the applicable listing venue. Intraday price information is also available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors. Pricing information related to Money Market Instruments will be available through issuer websites and publicly available quotation services such as Bloomberg, Markit and Thomson Reuters.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement as well as trade information for certain fixed income instruments as reported to FINRA's TRACE. Not more than 10% of the net assets of the Trust in the aggregate invested in Bitcoin Futures shall consist of Bitcoin Futures whose principal market is not a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Trust's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 purpose of the Act. The Exchange notes that the proposed rule change rather will facilitate the listing and trading of additional actively-managed exchange-traded products that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2021–066 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2021–066. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2021–066 and should be submitted on or before September 30, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[71]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19420 Filed 9–8–21; 8:45 am]

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[71] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92873; File No. SR–Phlx–2021–48]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Phlx Rules

September 2, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 23, 2021, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by 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 Phlx Options 2, Section 5, Electronic Market Maker Obligations and Quoting Requirements, Options 2, Section 10, Directed Orders, Options 3, Section 13, Price Improvement XL (''PIXL''), and Options 3, Section 26, Message Traffic Mitigation.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Phlx Rules at Options 2, Section 5, Electronic Market Maker Obligations and Quoting Requirements, Options 2, Section 10, Directed Orders, Options 3, Section 13, Price Improvement XL (''PIXL''), and Options 3, Section 26, Message Traffic Mitigation. Each change is described below.

Options 2, Section 5

The Exchange proposes to amend Options 2, Section 5, which describes quoting obligations for Market Makers [3] and Lead Market Makers,[4] to conform the description of a LEAP for index options with Options 4A, Section 12(b)(2). Today, SQTs and RSQTs are not required to make two-sided markets in any Quarterly Option Series, any adjusted option series, and any option series with an expiration of nine months or greater, otherwise known as long-term options series or ''LEAPs.'' Current Options 2, Section 5(c)(2)(A) describes a LEAP as any option series with an expiration of nine months or greater, while Options 4A, Section 12(b)(2) describes a LEAP on an index option as a series of options having not less than twelve and up to 60 months to expiration.[5] The Exchange proposes to amend Options 2, Section 5(c)(2)(A) to explicitly define a LEAP by product. Specifically, the Exchange proposes to add the following phrase to end of the paragraph, ''for options on equities and exchange-traded funds (''ETFs'') or with an expiration of twelve months or greater for index options'' to distinguish LEAPs for options on equities and ETFs, which have an opening month of 9 months, from LEAPS for index options, which have an opening month of 12 months. This proposal is non-substantive as Options 4A, Section 12(b)(2) already defines a LEAP on an index option. The Exchange is simply conforming Options 2, Section 5(c)(2)(A) to Options 4A, Section 12(b)(2).

Similar changes to distinguish terms for LEAPs on index options are proposed for Options 2, Section 5(c)(2)(B) and (C) which are applicable to Lead Market Makers,[6] and Directed SQTs and Directed RSQTs.[7] Also, a similar change is proposed to be added to Options 2, Section 5(c)(2)(D) which generally describes the manner in which the Exchange calculates quoting obligations. This amendment will bring greater clarity to the Exchange's rules.

Options 2, Section 10

The Exchange proposes to correct an improper citation within Options 2, Section 10(a)(iii) to Options 10, Section 11(a)(1)(C). The citation should refer to the allocation rule at Options 3, Section 10(a)(1).

Options 3, Section 13

The Exchange proposes to amend Options 3, Section 13, Price Improvement XL (''PIXL''). Specifically, the Exchange proposes to update rule citations within Options 3, Section

[3] A ''Market Maker'' means a Streaming Quote Trader or a Remote Streaming Quote Trader who enters quotations for his own account electronically into the System. *See* Options 1, Section 1(b)(28). A ''Streaming Quote Trader'' or ''SQT'' means a Market Maker who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the trading floor of the Exchange. An SQT may only submit quotes in classes of options in which the SQT is assigned. *See* Options 1, Section 1(b)(54). A ''Remote Streaming Quote Trader'' or ''RSQT'' means a Market Maker that is a member affiliated with an Remote Streaming Quote Trader Organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Lead Market Maker upon Exchange approval. An RSQT is also known as a Remote Market Maker (''RMM'') pursuant to Options 2, Section 11. A Remote Streaming Quote Organization (''RSQTO'') or Remote Market Maker Organization (''RMO'') are Exchange member organizations that have qualified pursuant to Options 2, Section 1. *See* Options 1, Section 1(b)(49).

[4] A ''Lead Market Maker'' means a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). A Lead Market Maker includes a Remote Lead Market Maker which is defined as a Lead Market Maker in one or more classes that does not have a physical presence on an Exchange's trading floor and is approved by the Exchange pursuant to Options 2, Section 11. *See* Options 1, Section 1(b)(27).

[5] Phlx previously amended its Options 4A, Section 12, Terms of Option Contracts, to change the number of expirations that the Exchange may open for trading in series of options related to Long-Term Options Series of index options. *See* Securities Exchange Act Release No. 88460 (March 23, 2020), 85 FR 17146 (March 26, 2020) (SR–Phlx–2020–10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 4A, Section 12, Terms of Option Contracts). This proposal amended Phlx's current expiration for long-term index options from those series not having less than nine and up to 60 months to expirations to a number of expirations not having less than twelve and up to 60 months to expiration with respect to Long-Term Options Series.

[6] Lead Market Makers are required to make two-sided markets in any Quarterly Option Series, any Adjusted Option Series, and any LEAP. See Options 2, Section 5(c)(2)(B).

[7] Directed SQTs and Directed RSQTs are not required to make two-sided markets in any Quarterly Option Series, any Adjusted Option Series, and any LEAP. See Options 2, Section 5(c)(2)(C).

13(c)—(e) to Options 9. The rule citations to ''Options 9, Section 1'' and ''Options 9, Section'' are being replaced with ''General 9, Section 1(c).'' The Exchange previously relocated Options 9, Section 1, Conduct Inconsistent with Just and Equitable Principles of Trade, to General 9, Section 1(c).[8] Certain citations were missing the Section ''1'' as well. The Exchange also proposes to make ''exceed'' plural within Options 3, Section 13(d).

Options 3 Section 26

The Exchange proposes to amend Options 3, Section 26, Message Traffic Mitigation. Specifically, the Exchange proposes to amend Options 3, Section 26(a)(3) which currently provides, ''The Exchange shall disseminate an updated bid and offer price, together with the size associated with such bid and offer, when:. . . the size associated with the Exchange's bid (offer) increases by an amount greater than or equal to a percentage (never to exceed 20%) of the size associated with previously disseminated bid (offer). Such percentage, which shall never exceed 20%, shall be determined on an issue-by-issue basis by the Exchange and announced to membership via Exchange circular.'' The Exchange proposes to make some non-substantive amendments to the sentence, such as changing ''shall'' to ''will'' and moving the phrase ''by the Exchange''. The Exchange also proposes to amend the practice of issuing a circular to announce the percentage specified in Options 3, Section 26(a)(3) to instead posting the percentage on the Exchange's website. The Exchange believes that posting the information on the Exchange's website will provide members and member organizations a reference to the current percentage provided for within Options 3, Section 26(a)(3) without the need to locate a notice that was previously issued. Further, this practice will continue to provide transparency to members and member organizations.

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 and to protect investors and the public interest.

Options 2, Section 5

The proposed amendment to Options 2, Section 5 is consistent with the Act because it will distinguish LEAPs for options on equities and ETFs, which have an opening month of 9 months, from LEAPS for index options, which have an opening month of 12 months. This proposal is non-substantive as Options 4A, Section 12(b)(2) already defines a LEAP on an index option. The Exchange is simply conforming Options 2, Section 5(c)(2)(A) to Options 4A, Section 12(b)(2). This amendment will bring greater clarity to the Exchange's rules.

Options 2, Section 10

The Exchange's proposal to correct an improper citation within Options 2, Section 10(a)(iii) is consistent with the Act and will bring greater clarity to the Exchange's rules.

Options 3, Section 13

The Exchange's proposal to update rule citations within Options 3, Section 13(c)—(e) from ''Options 9'' or ''Options 9, Section 1'' to ''General 9, Section 1(c)'' is consistent with the Act and will bring greater clarity to the Exchange's Rulebook.

Options 3 Section 26

The Exchange's proposal to amend Options 3, Section 26(a)(3) to make some non-substantive amendments, such as changing ''shall'' to ''will'' and moving the phrase ''by the Exchange'' and amending the practice of issuing a circular to instead posting the percentage on the Exchange's website are consistent with the Act. The Exchange believes that posting the information on the Exchange's website will provide members and member organizations a reference to the current percentage within Options 3, Section 26(a)(3) without the need to locate a notice that was previously issued. Further, this practice will continue to provide transparency to members and member organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Options 2, Section 5

The proposed amendment to Options 2, Section 5 does not impose an undue burden on competition because the proposal is a non-substantive amendment to add specificity to the rule by distinguishing LEAPs for options on equities and ETFs, which have an opening month of 9 months, from LEAPS for index options, which have an opening month of 12 months. This proposal will conform Options 2, Section 5(c)(2)(A) to Options 4A, Section 12(b)(2).

Options 2, Section 10

The Exchange's proposal to correct an improper citation within Options 2, Section 10(a)(iii) does not impose an undue burden on competition, rather it will bring greater clarity to the Exchange's rules.

Options 3, Section 13

The Exchange's proposal to update rule citations within Options 3, Section 13(c)—(e) from ''Options 9'' or ''Options 9, Section 1'' to ''General 9, Section 1(c)'' does not impose an undue burden on competition, rather the proposal will bring greater clarity to the Exchange's Rulebook.

Options 3 Section 26

The Exchange's proposal to amend Options 3, Section 26(a)(3) to make some non-substantive amendments, such as changing ''shall'' to ''will'' and moving the phrase ''by the Exchange'' and amending the practice of issuing a circular to instead posting the percentage within Options 3, Section 26(a)(3) on the Exchange's website does not impose an undue burden on competition. The Exchange believes that posting the information on the Exchange's website will continue to provide transparency to members and member organizations.

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[11] and

[8] *See* Securities Exchange Act Release No. 91058 (February 4, 2021), 86 FR 8966 (February 10, 2021) (SR-Phlx-2021–04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Its PSX Equity and General Rules From Its Current Rulebook Into Its New Rulebook Shell and Make Other Changes to the Phlx Rules).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked that the Commission waive the operative delay to permit the Exchange to immediately amend Options 2, Section 5 to distinguish LEAPs for options on equities and ETFs, which have an opening month of 9 months or greater, from LEAPS for index options, which have an opening month of 12 months or greater, thereby conforming Options 2, Section 5(c)(2)(A) to Options 4A, Section 12(b)(2). Further, the Exchange states that amending Options 3, Section 26(a)(3) will continue to provide transparency to members and member organizations with respect to the manner in which the Exchange manages quote traffic. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because (1) it will allow the Exchange to immediately implement the proposed changes which are designed to add clarity and consistency to the Exchange's rules concerning LEAPs and (2) it will allow the Exchange to immediately implement a change designed to better communicate to market participants information concerning quote mitigation. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[15]

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–2021–48 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–2021–48. 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-2021–48 and should be submitted on or before September 30, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19423 Filed 9–8–21; 8:45 am]

BILLING CODE 8011–01–P

[12] 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.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 86 FR 50201, September 7, 2021.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, September 9, 2021 at 2:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Thursday, September 9, 2021 at 2:00 p.m., has been changed to Thursday, September 9, 2021 at 3:00 p.m.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: September 7, 2021.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2021–19557 Filed 9–7–21; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 11519]

30-Day Notice of Proposed Information Collection: Statement Regarding a Lost or Stolen U.S. Passport Book and/or Card

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 30 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to October 12, 2021.

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.

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Passport Forms Officer; at *PPTFormsOfficer@state.gov.* You must include the DS form number (if applicable), information collection title, and the OMB control number in the email subject line. Regular mail option has been suspended to centralize receiving and addressing all requests in a timely manner.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Statement Regarding a Lost or Stolen U.S. Passport Book and/or Card.
- *OMB Control Number:* 1405–0014.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support (CA/PPT/S/PMO).
- *Form Number:* DS–64.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 529,122.
- *Estimated Number of Responses:* 529,122.
- *Average Time per Response:* 5 minutes.
- *Total Estimated Burden Time:* 44,094 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Secretary of State is authorized to issue U.S. passports under 22 U.S.C. 211a et seq., 8 U.S.C. 1104, and Executive Order 11295 (August 5, 1966). Department regulations provide that individuals whose valid or potentially valid U.S. passports were lost or stolen must report the lost or stolen passport to the Department of State before receiving a new passport so that the lost or stolen passport can be invalidated (22 CFR parts 50 and 51). The Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1737) requires the Department of State to collect accurate information on lost or stolen U.S. passports and to enter that information into a data system. Form DS–64 collects information identifying the person who held the valid lost or stolen passport and describing the circumstances under which the passport was lost or stolen. As required by the cited authorities, we use the information collected to accurately identify the passport that must be invalidated and to make a record of the circumstances surrounding the lost or stolen passport.

Methodology

Passport bearers may submit their form electronically on *www.travel.state.gov* or call the National Passport Information Center at 1–877–487–2778. A person may also download the form from the internet or obtain one at any passport agency or acceptance facility.

Amanda E. Jones,

Acting Deputy Assistant Secretary, Bureau of Consular Affairs, Passport Services, U.S. Department of State.

[FR Doc. 2021–18829 Filed 9–8–21; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 11524]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''André Kertész: Postcards From Paris'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''André Kertész: Postcards from Paris'' at the Art Institute of Chicago, in Chicago, Illinois, the High Museum of Art, Atlanta, Georgia, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Matthew R. Lussenhop,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021–19547 Filed 9–8–21; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 11527]

60-Day Notice of Proposed Information Collection: Application for Immigrant Visa and Alien Registration

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to November 8, 2021.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2021–0030'' in the Search field. Then click the

''Comment Now'' button and complete the comment form.

FOR FURTHER INFORMATION CONTACT: Dylan Aikens at *PRA_BurdenComments@state.gov* or over telephone at (202) 485–7586.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Application for Immigrant Visa and Alien Registration.
- *OMB Control Number:* 1405–0185.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* CA/VO.
- *Form Number:* DS–260, DS–230.
- *Respondents:* Immigrant Visa Applicants.
- *Estimated Number of Respondents:* 730,000.
- *Estimated Number of Responses:* 730,000.
- *Average Time per Response:* 155 minutes.
- *Total Estimated Burden Time:* 1,885,833.33 hours.
- *Frequency:* Once per respondent's application.
- *Obligation to respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden of this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Electronic Application for Immigrant Visa and Alien Registration (DS–260) is used to collect biographical information from individuals seeking an immigrant visa. This information collection is the Department's main immigrant visa application form and is used by most immigrant visa applicants.

The Application for Immigrant Visa and Alien Registration (DS–230) is primarily used to collect biographical information from individuals seeking for Cuban Family Reunification Parole. While this discretionary parole authority is exercised by the Department of Homeland Security, an applicant must demonstrate that he or she is eligible for an immigrant visa.

In rare circumstances, an applicant for an immigrant visa may complete the DS–230 in lieu of the online version of the application, the DS–260. Consular officers use the information collected by both versions of the form to elicit information necessary to determine an applicant's immigrant visa eligibility.

Methodology

The DS–260 is submitted electronically over an encrypted connection to the Department via the internet. The applicant will be instructed to print a confirmation page containing a bar coded record locator, which will be scanned at the time of processing.

Applicants using the DS–230 will complete the form and submit it directly to a consular post. A consular officer will review the submitted application to determine whether the applicant is eligible for an immigrant visa. To submit the DS–230 in lieu of a DS–260 the applicant must first receive permission from the consular officer.

Julie M. Stufft,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2021–19438 Filed 9–8–21; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0008]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt eight individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. They are unable to meet the vision requirement in one eye for various reasons. The exemptions enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: The exemptions were applicable on August 19, 2021. The exemptions expire on August 19, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2021–0008, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

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

II. Background

On July 19, 2021, FMCSA published a notice announcing receipt of applications from eight individuals requesting an exemption from vision requirement in 49 CFR 391.41(b)(10) and requested comments from the public (86 FR 38180). The public comment period ended on August 18, 2021, and three comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the

level that would be achieved by complying with § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received three comments in this proceeding. The Minnesota Department of Public Safety submitted a comment in support of the Agency's decision to grant an exemption to Karl C. Christenson. Mike Altman and Kyle McKee submitted comments that are outside of the scope of this notice.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on medical reports about the applicants' vision, as well as their driving records and experience driving with the vision deficiency. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the July 19, 2021, **Federal Register** notice (86 FR 38180) and will not be repeated here.

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The eight exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, corneal scarring, prosthesis, refractive amblyopia, and retinal detachment. In most cases, their eye conditions did not develop recently. Five of the applicants were either born with their vision impairments or have had them since childhood. The three individuals that developed their vision conditions as adults have had them for a range of 3 to 8 years. Although each applicant has one eye that does not meet the vision requirement in § 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV.

Doctors' opinions are supported by the applicants' possession of a valid license to operate a CMV. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV with their limited vision in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions.

The applicants in this notice have driven CMVs with their limited vision in careers ranging for 5 to 57 years. In the past 3 years, one driver was involved in a crash, and three drivers were convicted of moving violations in CMVs. All the applicants achieved a record of safety while driving with their vision impairment that demonstrates the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

Consequently, FMCSA finds that in each case exempting these applicants from the vision requirement in § 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in § 391.41(b)(10) and (b) by a certified medical examiner (ME) who attests that the individual is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the eight exemption applications, FMCSA exempts the following drivers from the vision requirement, § 391.41(b)(10), subject to the requirements cited above:

Karl C. Christenson (MN)

James G. Cothren (GA)

Gregory C. Grubb (KY)

Ernest Herrera (TX)

Leonard G. Hill (OH)

Saul Quintero (IN)

Mersad Redzovic (TX)

Tyler J. Worthen (PA)

In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021–19439 Filed 9–8–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FY 2021 American Rescue Plan Additional Assistance

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of Funding Opportunity (NOFO).

SUMMARY: The Federal Transit Administration (FTA) announces the opportunity to apply for $2,207,561,294 in discretionary grants under the American Rescue Plan Act's Additional Assistance Funding (Additional Assistance Funding). As required by the American Rescue Plan Act, funds will be awarded to eligible recipients or eligible subrecipients of Urbanized Area Formula funds or Rural Area Formula funds that, as a result of the Coronavirus disease 2019 (COVID–19), require additional assistance for costs related to operations, personnel, cleaning, and sanitization combating the spread of pathogens on transit systems, and debt service payments incurred to maintain operations and avoid layoffs and furloughs. FTA may award additional funding made available to the program prior to the announcement of project selections.

DATES: Complete proposals must be submitted electronically through the *GRANTS.GOV* ''APPLY'' function by 11:59 p.m. Eastern time, November 8, 2021. Prospective applicants should initiate the process by promptly registering on the *GRANTS.GOV* website to ensure completion of the application process before the submission deadline. Instructions for applying can be found on FTA's website at *https://www.transit.dot.gov/funding/grants/applying/applying-fta-funding* and in the ''FIND'' module of *GRANTS.GOV*. The funding opportunity ID is 2021–012–TPM–AAF. Mail and fax submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: For questions regarding this notice, please email *FTAarpassistance@dot.gov*. If you need immediate assistance you may call Sarah Clements, FTA Office of Program Management, (202) 366–3062.

SUPPLEMENTARY INFORMATION:

Table of Contents

A. Program Description
B. Federal Award Information
C. Eligibility Information
D. Application and Submission Information
E. Application Review Information
F. Federal Award Administration Information
G. Federal Awarding Agency Contact(s)
H. Other Information

A. Program Description

The American Rescue Plan Act (ARP), Public Law 117–2 (March 11, 2021), appropriated funding to award grants for additional assistance to transit agencies in response to COVID–19 through a discretionary process, as described in this notice. The Federal Assistance Listing numbers for this opportunity are 20.507 and 20.509. Additional Assistance Funding is made available to eligible recipients or subrecipients of Urbanized Area Formula funds (49 U.S.C. 5307) or Rural Area Formula funds (49 U.S.C. 5311). Eligible expenses are operating costs related to operations, personnel, cleaning, and sanitization combating the spread of pathogens on transit systems, and debt service payments incurred to maintain operations and avoid layoffs and furloughs as a result of COVID–19. Additional Assistance Funding supports FTA's strategic goals and objectives through timely and efficient investment in public transportation.

B. Federal Award Information

ARP appropriated $ 2,207,561,294 in FY 2021 funds for Additional Assistance grants. FTA may award additional funding made available to the program prior to the announcement of project selections.

There is no minimum or maximum grant award amount, although FTA may cap the amount a single recipient or State may receive as part of the selection process. FTA intends to fund as many eligible projects as possible. FTA does not expect there to be sufficient funding to support shortfalls beyond September 30, 2023.

C. Eligibility Information

1. Eligible Applicants

Eligible applicants include eligible recipients of Urbanized Area Formula funds (49 U.S.C. 5307) or Rural Area Formula funds (49 U.S.C. 5311) who, as a result of COVID–19, require additional assistance. This includes Indian tribes that are eligible recipients of Urbanized Area Formula funds or Rural Area Formula funds.

FTA will administer applications and awards under this NOFO in a manner similar to the Urbanized Area and Rural Area Formula funding programs. Only designated and direct recipients under those programs, including States and Indian tribes, may apply directly to FTA under this NOFO, and FTA will make awards under this NOFO only to applicants that are designated or direct recipients of those programs. A designated or direct recipient may apply on behalf of one or more public transportation subrecipients of Urbanized Area and Rural Area Formula funding.

Eligible applicants that do not currently have an active grant with FTA will, upon selection, be required to work with the FTA regional office to establish their organization as an active grant recipient. This process may require additional documentation to support the organization's technical, financial, and legal capacity to receive and administer Federal funds under this program. Traditional subrecipients of FTA funding are strongly encouraged to work with their direct/designated recipient on a consolidated application to assist with the quick obligation of these funds.

2. Cost Sharing or Matching

The Federal share is 100 percent of the net project cost. Applicants will not provide match.

3. Eligible Projects

Eligible projects are operating costs related to operations, personnel, cleaning, and sanitization combating the spread of pathogens on transit systems, and debt service payments incurred to maintain operations and avoid layoffs and furloughs as a result of COVID–19. As required by ARP, amounts made available for Additional Assistance Funding are available only for operating expenses.

In general, operating expenses are those costs necessary to operate, maintain, and manage a public transportation system. Operating expenses usually include such costs as driver salaries, fuel, and items having a useful life of less than one year, including personal protective equipment and cleaning supplies. Preventive maintenance is considered an operating expense for the purposes of Additional Assistance Funding. For more information, please see Frequently Asked Question ''CA2: What is eligible as an operating expense?'' on FTA's website at *https://www.transit.dot.gov/frequently-asked-questions-fta-grantees-regarding-coronavirus-disease-2019-covid-19#CARES.*

Actual and anticipated expenses incurred on or after January 20, 2020, are eligible for this funding. However, FTA does not expect there to be sufficient funding to support shortfalls beyond September 30, 2023.

D. Application and Submission Information

1. Address to Request Application Package

The application package can be downloaded from *GRANTS.GOV* or the FTA website at: *https://www.transit.dot.gov/funding/american-rescue-plan-act-2021.*

2. Content and Form of Application Submission

a. Proposal Submission

A complete proposal submission consists of two forms: (1) The SF–424 Application for Federal Assistance; and (2) the Additional Assistance Funding supplemental form. The supplemental form and any supporting documents must be attached to the ''Attachments'' section of the SF–424. The application must include responses to all sections of the SF–424 Application for Federal Assistance and the supplemental form, unless indicated as optional. The information on the supplemental form will be used to determine applicant and project eligibility for the program, and to evaluate the proposal against the selection criteria described in Section E of this notice.

FTA will only accept one supplemental form per SF–424 submission. FTA encourages States and other applicants to consider submitting a single supplemental form that includes multiple activities to be evaluated as a consolidated proposal. If a State or other applicant chooses to submit separate proposals for individual consideration by FTA, each proposal must be submitted using a separate SF–424 and supplemental form.

Applicants may attach additional supporting documents to the SF–424 submission, including but not limited to estimates of financial need, data on reduction in farebox or other sources of local revenue for sustained operations, a spending plan for such funds, and demonstration of expenditure of greater than 90 percent of CARES Act funding allocated to the applicant. Supporting documentation should be described and referenced by file name in the appropriate response section of the supplemental form, or it may not be reviewed.

Information such as applicant name, Federal amount requested, description of areas served, etc. may be requested in varying degrees of detail on both the SF–424 and supplemental form. Applicants must fill in all fields unless stated otherwise on the forms. Applicants should not place N/A or ''refer to attachment'' in lieu of typing in responses in the field sections. If information is copied into the supplemental form from another source, applicants should verify that the pasted text is fully captured on the supplemental form and has not been truncated by the character limits built into the form. Applicants should use both the ''Check Package for Errors'' and the ''Validate Form'' validation buttons on both forms to check all required fields and ensure that the Federal and local amounts specified are consistent.

b. Application Content

The SF–424 Application for Federal Assistance and the supplemental form will prompt applicants for the required information, including:

a. Applicant name
b. Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number
c. Key contact information (including contact name, address, email address, and phone)
d. Congressional district(s) where project will take place
e. Project information (including title, executive summary, and type)
f. A detailed description of the need for additional funding
g. Data on 2018 operating expenses
h. Data on reductions in farebox revenue and other sources of state or local funding
i. Information on CARES Act allocations and expenditures as of the application deadline
j. Information on CRRSAA and ARP formula funding allocations and expenditures
k. Information on other Federal sources of funding for operating expenses
l. A detailed project budget
m. A detailed implementation timeline

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant is required to: (1) Be registered in SAM before submitting an application; (2) provide a valid unique entity identifier in its application; and (3) continue to maintain an active SAM registration with current information at all times during which the applicant has an active Federal award or an application or plan under consideration by FTA. FTA may not make an award until the applicant has complied with all applicable unique entity identifier and SAM requirements. If an applicant has not fully complied with the requirements by the time FTA is ready to make an award, FTA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a Federal award to another applicant. These requirements do not apply if the applicant has an exception approved by FTA or the U.S. Office of Management and Budget under 2 CFR 25.110(c) or (d)

All applicants must provide a unique entity identifier provided by SAM. Registration in SAM may take as little as 3–5 business days, but since there could be unexpected steps or delays (for example, if there is a need to obtain an Employee Identification Number), FTA recommends allowing ample time, up to several weeks, for completion of all steps. For additional information on obtaining a unique entity identifier, please visit *www.sam.gov.*

4. Submission Dates and Times

Project proposals must be submitted electronically through *GRANTS.GOV* by 11:59 p.m. Eastern Time on November 8, 2021. *GRANTS.GOV* attaches a time stamp to each application at the time of submission. Mail and fax submissions will not be accepted.

FTA urges applicants to submit applications at least 72 hours prior to the due date to allow time to correct any problems that may have caused either *GRANTS.GOV* or FTA systems to reject the submission.

Deadlines will not be extended due to scheduled website maintenance. *GRANTS.GOV* scheduled maintenance and outage times are announced on the *GRANTS.GOV* website.

Within 48 hours after submitting an electronic application, the applicant should receive an email message from *GRANTS.GOV* with confirmation of successful transmission to *GRANTS.GOV*. If a notice of failed validation or incomplete materials is received, the applicant must address the reason for the failed validation, as described in the email notice, and resubmit before the submission deadline. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated, and check the box on the supplemental form indicating this is a resubmission.

Applicants are encouraged to begin the process of registration on the *GRANTS.GOV* site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted. Registered applicants may still be required to take steps to keep their registration up to date before submissions can be made successfully: (1) Registration in SAM is renewed annually; and (2) persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in

GRANTS.GOV by the AOR to make submissions.

Failure to submit the required information as requested may delay review or disqualify the application.

5. Funding Restrictions

ARP Additional Assistance funds may be used only for operating costs. Allowable direct and indirect expenses must be consistent with the Governmentwide Uniform Administrative Requirements and Cost Principles (2 CFR part 200) and FTA Circular 5010.1E. Funding is being made available for reimbursement of costs normally covered by fare revenue or other non-Federal sources of funding and is not intended to support new initiatives to reduce or eliminate fares, except for temporary fare policy changes implemented to improve safety in response to the COVID–19 pandemic.

6. Other Submission Requirements

FTA may award a lesser amount than the applicant requests.

All applications must be submitted via the *GRANTS.GOV* website. FTA does not accept applications on paper, by fax machine, email, or other means. For information on application submission requirements, please see Section D.1., Address to Request Application Package.

E. Application Review Information

1. Criteria

Applications will be reviewed primarily based on the responses provided in the supplemental form. Additional information may be provided to support the responses; however, any additional documentation must be directly referenced on the supplemental form, including the file name where the additional information can be found. FTA will review funding proposals for Additional Assistance Funding based on the criteria described in this notice.

a. Reduction in Farebox or Other Sources of Revenue

Responses will be reviewed based on the extent to which the applicant has suffered a reduction in farebox revenue or other sources of revenue from any non-Federal source. Applicants must provide totals for their 2018 fare revenue and 2018 non-Federal revenue that supported operations. The narrative section should detail the sources of these funds. Applicants also must provide their actual or projected farebox and non-Federal revenue used or needed for operations for each of the given Federal fiscal years (FFYs) identified in the supplemental form, beginning with the eligible timeframe for FFY 2020 (January 20, 2020, or a date later in 2020 if the applicant's accounting system cannot provide the data as of January 20, 2020, through September 30, 2020) and for each FFY for which the applicant is requesting funding, ending with FFY 2023 (October 1, 2022, through September 30, 2023). Additionally, should the applicant choose to submit a request for funding for shortfalls for FFY 2024 through FFY 2029, the applicant may provide a narrative describing the anticipated reduction in revenue.

The narrative response should identify the reason for any differences between the 2018 amounts and the actual or projected amounts for the time period for which you are requesting assistance.

b. Estimate of Financial Need

Responses will be reviewed based on the financial need demonstrated by the applicant, including actual or projected financial need to maintain service that has not been replaced by funds allocated to the applicant under the CARES Act, Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA), and other ARP funding, as a percentage of 2018 operating costs.

The applicant must provide their 2018 operating expense total as reported to the National Transit Database (NTD) to establish a baseline for the request. The applicant also must provide the amount of CARES Act, CRRSAA, and ARP funding allocated to it. Applicants then must provide their operating expense total for each FFY for which they are requesting funding. Applicants should also provide the amount of Federal funding used or projected to be used toward operating expenses in each year. Note that Urbanized Area providers should be sure to provide their total operating expenses from the F–40 form of their NTD Report, which is inclusive of all operating expenses, including those that are not used for apportionment purposes. States should submit all relevant operating expense reports for any urbanized area or rural area subrecipients to which they would allocate Additional Assistance Funding.

The applicant must attach completed CARES Act, CRRSAA, and ARP split letters or allocation announcements to the application. Failure to include this information will result in the total amount of CARES Act, CRRSAA, and ARP funding allocated to the urbanized area(s) or state being considered available to the applicant or its subrecipients to address the additional funding needs identified in the application.

In the narrative section of the report, the applicant must describe (1) how actual and/or projected revenues have fallen short of 2018 revenues, as a percentage of 2018 operating expenses; (2) how much of the lost revenues has been or will be replaced by CARES Act, CRRSAA, and ARP funding; (3) how the requested assistance will support unmet operating expense needs, after fully using CARES Act, CRRSAA, and ARP funding; and (4) how the requested assistance will not displace regular formula grant assistance from FTA.

c. Demonstration of Expenditure of CARES Act Funding

Per ARP, the applicant must demonstrate that it has expended 90 percent of the CARES Act funding allocated to the applicant no later than the application deadline in order to receive ARP Additional Assistance Funding. The applicant must include the amount of CARES Act funding it received or was allocated and documentation supporting disbursement of at least 90 percent of its CARES Act allocations.

d. Project Spending Plan

Responses will be reviewed based on the extent to which the funding is ready to be obligated by September 30, 2023, and disbursed by September 30, 2029, as well as whether the applicant's proposed spending plans are reasonable and complete.

In assessing whether the proposed spending plan is reasonable and complete, FTA will review the description of the amounts needed and activities performed in each of FFYs 2020, 2021, 2022, and 2023, as well as the period of FFY 2024 through 2029. Although FTA does not expect there to be sufficient funding to support shortfalls after FFY 2023, this does not preclude applicants from submitting such requests. For projects that will require formal coordination, approvals, or permits from other agencies or project partners, the applicant must demonstrate coordination with these organizations and their support for the project, such as through letters of support.

2. Review and Selection Process

A technical evaluation committee will evaluate proposals based on the published criteria. Members of the technical evaluation committee and other FTA staff may request additional information from applicants, if necessary. Based on the findings of the technical evaluation committee, the FTA Administrator will determine the final allocation of funding based on the

level of financial need demonstrated by an eligible recipient or subrecipient, including projections of future financial need to maintain service, as a percentage of the 2018 operating costs, that has not been replaced by the funds made available from CARES Act, CRRSAA, or ARP to the eligible recipient or subrecipient for the operating expenses of transit agencies. FTA intends to fund projects with financial needs before September 30, 2023, before funding projects with needs after that date. In determining the allocation of funds, FTA may consider geographic diversity, diversity in the size of the transit systems receiving funding, and an applicant's immediate funding need.

Prior to making an award, FTA is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information Systems accessible through SAM. An applicant may review and comment on information about itself that a Federal awarding agency previously entered. FTA may 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 the Office of Management and Budget's Uniform Requirements for Federal Awards (2 CFR 200.205).

F. Federal Award Administration Information

1. Federal Award Notices

Final project allocations will be posted on the FTA website. Only proposals from eligible applicants for eligible activities will be considered for funding. There is no minimum or maximum grant award amount; however, FTA intends to fund as many meritorious projects as possible. Due to funding limitations, projects that are selected for funding may receive less than the amount originally requested.

Recipients should contact their FTA regional offices for additional information regarding allocations for projects under the Additional Assistance Funding.

2. Administrative and National Policy Requirements

i. Pre-Award Authority

At the time the project selections are announced, FTA will extend pre-award authority for the selected projects back to January 20, 2020. For more information about FTA's policy on pre-award authority, please see the FTA Fiscal Year 2021 Apportionments, Allocations and Program Information Notice at *https://www.transit.dot.gov/regulations-guidance/notices/2021-15576*.

ii. Grant Requirements

If selected, awardees will apply for a grant through FTA's Transit Award Management System (TrAMS). All Additional Assistance Funding recipients are subject to the grant requirements of the Urbanized Area Formula Grant program (49 U.S.C. 5307), including those of FTA Circular ''Urbanized Area Formula Program: Program Guidance and Application Instructions'' (FTA.C.9030.1E), or the Rural Area Formula Grant program (49 U.S.C. 5311), including those of FTA Circular ''Formula Grants for Rural Areas'' (FTA.C.9040.1G). All recipients must also follow FTA Circular ''Award Management Requirements'' (FTA.C.5010.1E) and the labor protections required by Federal public transportation law (49 U.S.C. 5333(b)). Technical assistance regarding these requirements is available from each FTA regional office.

iii. Buy America

FTA requires that all procurements meet FTA's Buy America requirements (49 U.S.C. 5323(j)), which require all iron, steel, and manufactured products be produced in the United States. Applicants should read the policy guidance carefully to determine the applicable domestic content requirement for their projects. Any proposal that will require a waiver must identify the items for which a waiver will be sought in the application. Applicants should not proceed with the expectation that waivers will be granted.

iv. Disadvantaged Business Enterprise

Projects that include acquisitions are subject to the Disadvantaged Business Enterprise (DBE) program regulations (49 CFR part 26). FTA will provide additional guidance as grants are awarded. For more information on DBE requirements, please contact Monica McCallum, Office of Civil Rights, 206–220–7519, email: *Monica.McCallum@dot.gov.*

v. Planning

FTA encourages applicants to notify the appropriate State Departments of Transportation and Metropolitan Planning Organizations in areas likely to be served by the project funds made available under these initiatives and programs.

vi. Standard Assurances

The applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, directives, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. The applicant must submit the Certifications and Assurances before receiving a grant if it does not have current certifications on file.

3. Reporting

Post-award reporting requirements include the electronic submission of Federal Financial Reports and Milestone Progress Reports. Applicant should include any goals, targets, and indicators referenced in their application to the project in the Executive Summary of the TrAMS application. Recipients of funds made available through this NOFO are also required to regularly submit data to the NTD.

As part of completing the annual Certifications and Assurances required of FTA grant recipients, a successful applicant must report on the suspension or debarment status of itself and its principals. If the award recipient's 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 an award made pursuant to this Notice, the recipient must comply with the Recipient Integrity and Performance Matters reporting requirements described in Appendix XII to 2 CFR part 200.

G. Federal Awarding Agency Contacts

For further information concerning this notice, please contact *FTAarpassistance@dot.gov.* If you require immediate assistance please contact the Additional Assistance Program manager, Sarah Clements, by phone at (202) 366–3062. A TDD is available for individuals who are deaf or hard of hearing at 800–877–8339. In addition, FTA will post additional

information about this NOFO as it becomes available on FTA's website at: *https://www.transit.dot.gov/funding/american-rescue-plan-act-2021.* To ensure receipt of accurate information about eligibility or the program, the applicant is encouraged to contact FTA directly, rather than through intermediaries or third parties.

For issues with *GRANTS.GOV*, please contact *GRANTS.GOV* by phone at 1–800–518–4726 or by email at *support@grants.gov.* Contact information for FTA's regional offices can be found on FTA's website at *http://www.transit.dot.gov/.*

H. Other Information

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Nuria I. Fernandez,

Administrator.

[FR Doc. 2021–19397 Filed 9–8–21; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Transportation (DOT).

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before October 12, 2021.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 2, 2021.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21274–N	CF Industries Sales, LLC	172.401, 172.502	To authorize the transportation in commerce of nitric acid mixtures with nitric acid concentrations of equal to or greater than 64.5% and less than 65.0% as having a Division 5.1 subsidiary hazard. (modes 1, 2).
21279–N	Davey Bickford USA, Inc	173.56(b)	To authorize the transportation in commerce of certain explosives utilizing a shipping description that has not yet been incorporated into the HMR. (modes 1, 4).
21280–N	Crown Cork & Seal USA, Inc.	178.33a–7	To authorize the manufacture, marking, sale, and use of non-DOT specification containers conforming with all regulations applicable to a DOT specification 2Q inner metal receptacle except for wall thickness, for the transportation in commerce of certain Division 2.1 and 2.2 aerosols. (modes 1, 2, 3, 4, 5).
21281–N	South/Win, LLC	173.156(c)(1)(iv)	To authorize the transportation in commerce of limited quantities of certain hazardous materials on pallets that weight 1,350 pounds. (mode 1).
21282–N	The Boeing Company	178.47	To authorize the transportation in commerce of DOT 4DS cylinders that have not been tested as required by 49 CFR 178.47. (mode 1).
21283–N	Gas Innovations Inc.	173.315	To authorize the transportation in commerce of cryogenic ethane in tank cars via rail freight. (mode 2).
21284–N	General Motors LLC	173.185(a)(1)	To authorize the transportation in commerce via motor vehicle of production batteries that have not been proven to be of a type that meets the testing requirements of the UN Manual of Test and Criteria Section 38.3. (mode 1).

[FR Doc. 2021–19461 Filed 9–8–21; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Waiver of 60-Day Rollover Requirement

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments must be received on or before October 12, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: Waiver of 60-Day Rollover Requirement.

OMB Control Number: 1545–2269.

Type of Review: Reinstatement without change of a currently approved collection.

Description: Revenue Procedure 2020–46 modifies and updates Rev. Proc. 2016–47, 2016–37 I.R.B. 346. Section 3.02(2) of Rev. Proc. 2016–47 provides a list of permissible reasons for self-certification of eligibility for a waiver of the 60-day rollover requirement, and, in response to requests from stakeholders, this revenue procedure modifies that list by adding a new reason: A distribution was made to a state unclaimed property fund. As under Rev. Proc. 2016–47, a self-certification relates only to the reasons for missing the 60-day deadline, not to whether a distribution is otherwise eligible to be rolled over. An appendix contains a model letter that may be used for self-certification.

Upon receipt of a self-certification, a plan administrator or IRA trustee may accept the contribution and treat it as having satisfied the requirements for a waiver of the 60-day requirement. Currently, the only way for a taxpayer to obtain a waiver of the 60-day requirement with respect to an amount distributed to a state unclaimed property fund is to apply to the Internal Revenue Service (IRS) for a favorable ruling, which is issued by the Tax Exempt and Government Entities Division (TE/GE). The user fee for a ruling is $10,000. The program outlined in this revenue procedure permits taxpayers to receive the benefits of a waiver without paying a user fee.

Revenue Procedure Number: 2020–46.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 160.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 160.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden Hours: 480 hours.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: September 2, 2021.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2021–19424 Filed 9–8–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0890]

Agency Information Collection Activity: FNMA Forms 1004, 1004C, 1025, 2055 and 1075

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 8, 2021.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov* Please refer to ''OMB Control No. 2900–0890'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0890'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 3731.

Title: FNMA Forms 1004, 1004C, 1025, 2055 and 1075.

OMB Control Number: 2900–0890.

Type of Review: Extension of a currently approved collection.

Abstract: This information collection package seeks approval of VA's requirement that appraisers utilize certain industry-standard forms in completing an appraisal. 38 U.S.C. 3731 authorizes the VA Secretary to establish a panel of appraisers, prescribe qualifications for such appraisers, and determine reasonable value of a property, construction, repairs or alterations based on an appraisal report provided by a panel appraiser for the purpose of guaranteeing a loan.

VA is requesting approval to authorize collection of these forms because accurate and thorough appraisal reporting is critical to the accuracy of underwriting for the mortgage process. Additionally, VA is looking to expand the list of authorized forms for use due to ongoing needs related to the pandemic. This collection of information provides a more thorough and complete appraisal of prospective VA-guaranteed properties ensuring that mortgages are acceptable for VA guarantee and thereby protect the interest of VA, taxpayers, and the Veterans Housing Benefit Program Fund. Policies and procedures for governing the VA appraisal program are set forth in Chapter 36, Title 38 of the CFR.

Affected Public: Individuals or Households.

Estimated Annual Burden: 10,833.

Estimated Average Burden per Respondent: 1 minute.

Frequency of Response: One time.

Estimated Number of Respondents: 650,000.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer, Alt. Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–19398 Filed 9–8–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS

Veterans' Advisory Committee on Education, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2., that the Veterans' Advisory Committee on Education (the Committee) will meet virtually using Microsoft Teams October 19, 2021–October 20, 2021 from 10:00 a.m. to 5:00 p.m., EST. The meeting sessions are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of education and training programs for Veterans, Service members, Reservists, and Dependents of Veterans, including programs under Chapters 30, 32, 33, 35, and 36 of title 38, and Chapter 1606 of title 10, United States Code.

The purpose of the meeting is for the Committee to hear reports from three subcommittees (Modernization, OJT/Apprenticeship and Distance Learning) and to discuss the Committee's draft recommendations. These recommendations will be refined based on this discussion and submitted to the Secretary.

Interested persons may attend virtually. The meeting will be conducted using Microsoft Teams. Please email *EDUSTAENG.VBAVACO@va.gov* for an invitation link prior to October 19, 2021 or dial-in by phone (for audio only) 1–872–701–0185 United States, Chicago (Toll), Conference ID: 574 843 116#.

Although no time will be allotted for receiving oral presentations from the public, individuals wishing to share information for the Committee to review, may submit written statements to Mr. Joseph Maltby, Designated Federal Official, Department of Veterans Affairs, by email at *EDUSTAENG.VBAVACO@va.gov*. Comments will be accepted until close of business on Monday, October 18, 2021. In the communication, the writers must identify themselves and state the organization or association they represent for inclusion in the official record. Any member of the public wishing to participate or seeking additional information should contact Joseph Maltby at *EDUSTAENG.VBAVACO@va.gov,* not later than October 18, 2021.

Dated: September 2, 2021.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2021–19427 Filed 9–8–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0783]

Agency Information Collection Activity: Nonprofit Research and Education Corporations (NPCs)—Annual Report, Remediation Plans & Assessment Questionnaires

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 8, 2021.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Janel Keyes, Office of Regulations, Appeals, and Policy (10BRAP), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Janel.Keyes@va.gov.* Please refer to ''OMB Control No. 2900–0783'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0783'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Nonprofit Research and Education Corporations (NPCs)—Annual Report, Remediation Plans & Assessment Questionnaires, VA Forms 10–10073, 10–10073A, 10–10073B, and 10–10073C.

OMB Control Number: 2900–0783.

Type of Review: Reinstatement of a previously approved collection.

Abstract: Title 38 U.S.C. Section 7366, Accountability and Oversight, states ''(b) each such corporation (NPC) shall submit to the Secretary (Department of Veterans Affairs (DVA)) an annual report providing a detailed statement of its operations, activities, and accomplishments during that year.'' The individual NPC annual reports are combined into one NPC Annual Report to Congress. VA oversight of NPCs includes reviews, audits, self-assessments, and remediation plans. This information collection is used for oversight of NPCs and includes the following:

a. NPC Annual Report Template, VA Form 10–10073.

b. NPC Audit Actions Items Remediation Plans, VA Form 10–10073A.

c. NPPO Internal Control Questionnaire, VA Form 10–10073B.

d. NPPO Operations Oversight Questionnaire, VA Form 10–10073C.

NPC Annual Report Template, VA Form 10–10073

Since 1988, when the enabling legislation for the NPCs was passed, annual reports have been obtained from each NPC and combined into an NPC Annual Report to Congress. Congress uses the combined NPC Annual Report to Congress to monitor the progress of

the overall NPC program it created. The NPC Annual Report to Congress is also used by top-level VA executives to evaluate the program and to recommend changes where needed. VHA's Nonprofit Oversight Board and the Nonprofit Program Office (NPPO) use both the combined NPC Annual Report to Congress and the individual NPC Annual Report Templates to monitor and oversee the NPCs. Trend analyses and other financial information are analyzed for each NPC and judgments made about each NPC's progress, financial viability, stewardship of assets, and accomplishments.

NPC Audit Actions Items Remediation Plans, VA Form 10–10073A

The NPC Audit Action Items Remediation Plans information collection is used to review the NPCs' remedies for audit deficiencies and recommendations. The major objective of the information collection is to help ensure proper corrective action. If any of the remediation plans submitted are inadequate, then the NPPO will make recommendations for sound, workable remedies.

NPPO Internal Control Questionnaire, VA Form 10–10073B

The NPPO Internal Control Questionnaire, or portions of it, will be used in conducting reviews, audits, and investigations of the NPCs. The major objective of the questionnaire is to uncover weaknesses and lapses in internal controls. The NPPO will then make recommendations for improved internal controls wherever there are weaknesses or lapses. The questionnaire also may be used as a voluntary self-assessment by the NPCs.

NPPO Operations Oversight Questionnaire, VA Form 10–10073C

The NPPO Operations Oversight Questionnaire, or portions of it, will be used in conducting operational reviews of the NPCs. The major objective of the questionnaire is to uncover operating problems and areas that need improvement. The NPPO will then make recommendations for operations improvements wherever problems or opportunities for improvement are found. The questionnaire also may be used as a voluntary self-assessment by the NPCs.

Affected Public: Individuals and households.

Estimated Annual Burden: 858 total hours.

a. NPC Annual Report Template—301 hours.

b. NPC Audit Actions Items Remediation Plans—84 hours.

c. NPPO Internal Control Questionnaire—344 hours.

d. NPPO Operations Oversight Questionnaire—129 hours.

Estimated Average Burden per Respondent: 660 total minutes.

a. NPC Annual Report Template—210 minutes.

b. NPC Audit Actions Items Remediation Plans—120 minutes.

c. NPPO Internal Control Questionnaire—240 minutes.

d. NPPO Operations Oversight Questionnaire—90 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 300 total.

a. NPC Annual Report Template—86.

b. NPC Audit Actions Items Remediation Plans—42.

c. NPPO Internal Control Questionnaire—86.

d. NPPO Operations Oversight Questionnaire—86.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–19441 Filed 9–8–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2., that the Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities will conduct a virtual meeting on September 28, 2021 from 11:00 a.m. to 1:00 p.m. Eastern Standard Time. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on matters of structural safety in the construction and remodeling of VA facilities and to recommend standards for use by VA in the construction and alteration of its facilities.

On September 28, the Committee will receive appropriate briefings and presentations on current seismic, natural hazards, and fire safety issues that are particularly relevant to facilities owned and leased by the Department. The Committee will also discuss appropriate structural and fire safety recommendations for inclusion in VA's construction standards.

No time will be allocated for receiving oral presentations from the public. However, the Committee will accept written comments. Comments should be emailed to Donald Myers, Director, Facilities Standards Service, Office of Construction & Facilities Management (003C2B), Department of Veterans Affairs, at *Donald.Myers@va.gov.* In the communication, writers must identify themselves and state the organization, association, or person(s) they represent. For any members of the public that wish to attend virtually, they may use the Microsoft Teams link or call in with the phone number and Phone Conference ID below:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_MzFiNWQ4YTUtNTZmMS00NjQ3LWFjY2UtNzJlNjQ1MWY5ZWVl%40thread.v2/0?context=%7b%22Tid%22%3a%22e95f1b23-abaf-45ee-821d-b7ab251ab3bf%22%2c%22Oid%22%3a%22d2eb6490-e84d-4737-b9ce-b5664e018fd6%22%7d, or to join by phone (audio only): +1 872–701–0185, Phone Conference ID: 927 435 816#.

Those seeking additional information or wishing to attend should contact Mr. Myers at the email address noted above or by phone at 202–632–5388.

Dated: September 3, 2021.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2021–19428 Filed 9–8–21; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 86 Thursday,

No. 172 September 9, 2021

Part II

The President

Notice of September 7, 2021—Continuation of the National Emergency With Respect to Foreign Interference in or Undermining Public Confidence in United States Elections

Federal Register
Vol. 86, No. 172
Thursday, September 9, 2021

Presidential Documents

Title 3—

The President

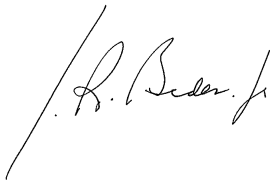
Notice of September 7, 2021

Continuation of the National Emergency With Respect to Foreign Interference in or Undermining Public Confidence in United States Elections

On September 12, 2018, by Executive Order 13848, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the threat of foreign interference in or undermining public confidence in United States elections.

Although there has been no evidence of a foreign power altering the outcomes or vote tabulation in any United States election, foreign powers have historically sought to exploit America's free and open political system. In recent years, the proliferation of digital devices and internet-based communications has created significant vulnerabilities and magnified the scope and intensity of the threat of foreign interference. The ability of persons located, in whole or in substantial part, outside the United States to interfere in or undermine public confidence in United States elections, including through the unauthorized accessing of election and campaign infrastructure or the covert distribution of propaganda and disinformation, continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on September 12, 2018, must continue in effect beyond September 12, 2021. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13848 with respect to the threat of foreign interference in or undermining public confidence in United States elections.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
September 7, 2021.

[FR Doc. 2021–19625
Filed 9–8–21; 11:15 am]
Billing code 3295–F1–P

Reader Aids

Federal Register

Vol. 86, No. 172

Thursday, September 9, 2021

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FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

48885–49228 1
49229–49460 2
49461–49902 3
49903–50212 7
50213–50432 8
50433–50602 9

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
10241 48885
10242 49887
10243 49891
10244 49893
10245 49895
10246 49897
10247 49899
10248 49901
10249 50433
10250 50437

Executive Orders:
14040 50439
14041 50443

Administrative Orders:
Memorandums:
Memorandum of August 27, 2001 49459
Notices:
Notice of September 7, 2021 50601

5 CFR

890 49461

6 CFR

Proposed Rules:
5 49490

7 CFR

275 49229
800 49466
1146 48887
1147 48887

Proposed Rules:
946 49930

9 CFR

Proposed Rules:
Ch. III 49491

10 CFR

Proposed Rules:
429 49140
430 ..... 49140, 49261
431 ..... 49140, 49266
707 49932

12 CFR

204 50213
1070 48900

Proposed Rules:
615 49496
1006 48918

13 CFR

121 50214
123 50214

14 CFR

39 ..... 48902, 49470, 49903, 49904, 49907, 49909, 49912, 49915, 50219, 50222, 50224, 50226, 50230, 50232, 50235, 50237, 50239, 50242, 50449, 50451
71 ..... 48905, 49917, 49918, 49919, 50244, 50245, 50247, 50248, 50250, 0453

Proposed Rules:
39 ..... 48919, 49937, 50289, 50291, 50484, 50485, 50487
71 ..... 48921, 49939, 50493

15 CFR

4 49920

21 CFR

73 49230
610 49922

Proposed Rules:
73 50495
172 50496
1308 49267

25 CFR

1187 50251

26 CFR

301 49923

Proposed Rules:
1 50295
53 50295
54 50295
301 50295

29 CFR

1977 49472

30 CFR

Proposed Rules:
56 50496
57 50496
77 50496

33 CFR

100 ..... 49234, 49236, 49476
165 ..... 48906, 49239, 49241, 49244, 49924, 50260, 50454

Proposed Rules:
100 ..... 49941, 49943
117 48923

34 CFR

600 49478

37 CFR

Proposed Rules:
223 49273

38 CFR

Proposed Rules:
3 50513

40 CFR

9 49246
52 ..... 48908, 49246, 49248, 49249, 49252, 49480, 49925, 50456, 50459
62 49482
281 50470
282 ..... 49253, 50470
300 50477
721 49246

Proposed Rules:

52 ..... 49100, 49278, 49497, 49500
60 50296
62 49501
63 50296
81 49100
281 50522
282 ..... 49283, 50522
300 50515

42 CFR

402 50263
403 50263
411 50263
412 50263
422 50263
423 50263
460 50263
483 50263
488 50263
493 50263

43 CFR

2 49927

46 CFR

Proposed Rules:

11 48925

47 CFR

25 49484

Proposed Rules:

25 48942
64 48952
73 48942
76 48942

48 CFR

570 48915

49 CFR

Proposed Rules:

531 49602
533 49602
536 49602
537 49602

50 CFR

17 50264
300 48916
622 50287
648 49929
679 ..... 48917, 49259, 49260

Proposed Rules:

17 ..... 48953, 49945, 49985, 49989
217 50304
648 ..... 48968, 50320
660 48969
697 49284

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List September 2, 2021

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