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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 AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

RIN 0584–AE75

Supplemental Nutrition Assistance Program: Requirement for Interstate Data Matching To Prevent Duplicate Issuances

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Interim final rule; delay of effective date.

SUMMARY: The Food and Nutrition Service is delaying the effective date for the interim final rule published in the **Federal Register** on October 3, 2022, Supplemental Nutrition Assistance Program: Requirement for Interstate Data Matching to Prevent Duplicate Issuances.

DATES:

Effective date: The effective date for the rule published October 3, 2022, at 87 FR 59633 is delayed until December 6, 2022.

Implementation date: The USDA (or Department) is implementing this nationwide NAC matching solution using a phased approach that will allow all State agencies to onboard over a period of 5 years. State agencies must comply with the provisions of this interim final rule no later than October 4, 2027. The implementation date has not changed.

FOR FURTHER INFORMATION CONTACT: Maribelle Balbes, Chief, State Administration Branch, Program Accountability and Administration Division, Supplemental Nutrition Assistance Program, Food and Nutrition Service, USDA, 1320 Braddock Place, 5th Floor, Alexandria, VA 22314, by phone at (703) 605–4271 or via email at *SM.FN.SNAPSAB@usda.gov.*

SUPPLEMENTARY INFORMATION: The Food and Nutrition Service published the interim final rule, Supplemental Nutrition Assistance Program: Requirement for Interstate Data Matching to Prevent Duplicate Issuances, in the **Federal Register** at 87 FR 59633 on October 3, 2022. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Management and Budget Office of Information and Regulatory Affairs has designated this as a major rule, as defined by 5 U.S.C. 804(2).

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the **Federal Register** or receipt of the rule by Congress, whichever is later (5 U.S.C. 801(a)(3)(A)). The rule was published on October 3, 2022, and Congress received the interim final rule on October 6, 2022. Therefore, the effective date is extended by four days to December 6, 2022, which is at least 60 days from Congress' receipt of the interim final rule.

For this reason, the Food and Nutrition Service is delaying the effective date of the interim final rule that published October 3, 2022, at 87 FR 59633 until December 6, 2022.

Cynthia Long,

Administrator, Food and Nutrition Service.

[FR Doc. 2022–24433 Filed 11–14–22; 8:45 am]

BILLING CODE 3410–30–P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter 1

[NRC–2021–0173]

Operational Leakage

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory issue summary; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Regulatory Issue Summary (RIS) 2022–02, ''Operational Leakage.'' This RIS clarifies the NRC staff's position on the NRC requirements for evaluation, control, and treatment of operational leakage in systems required to be operable by plant technical specifications (TS). This RIS is intended for all holders of operating licenses and combined licenses for nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel. This RIS emphasizes that operational leakage must be addressed in the same manner as leakage detected during an American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (BPV) Code, Section XI, pressure test. That is, when operational leakage is found in a system that is within the scope of ASME BPV Code, Section XI, and is required to be operable by plant TS, the component must be evaluated by the licensee for operability. Structural integrity determinations must be conducted in accordance with the applicable provisions of the original construction code, the ASME BPVC, Section XI, or otherwise addressed through authorized methods.

DATES: The RIS is available as of November 15, 2022.

ADDRESSES: Please refer to Docket ID NRC–2021–0173 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0173. 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.
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• This RIS is also available on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/gen-comm/reg-issues/* (select ''2022'' and then select ''2022–02'').

FOR FURTHER INFORMATION CONTACT: Jay Collins, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–4038, email: *Jay.Collins@nrc.gov*.

SUPPLEMENTARY INFORMATION: The NRC published a notice of opportunity for public comment on this RIS in the **Federal Register** on January 14, 2022 (87 FR 2361). The agency received comments from seven commenters. The staff considered all comments, which resulted in the addition of a paragraph to directly address the commentor's example of operational leakage from drains or instrument lines. The evaluation of these comments and the resulting changes to the RIS are discussed in a publicly available memorandum which is available in ADAMS under Accession No. ML22167A003.

RIS 2022–02, ''Operational Leakage'' is available in ADAMS under Accession No. ML22167A002.

As noted in the **Federal Register** on May 8, 2018 (83 FR 20858), this document is being published in the Rules section of the **Federal Register** to comply with publication requirements under 1 CFR chapter I.

Dated: November 8, 2022.

For the Nuclear Regulatory Commission.

Lisa M. Regner,

Chief, Generic Communications and Operating Experience Branch, Division of Reactor Oversight, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–24750 Filed 11–14–22; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2022–0760; Special Conditions No. 25–827–SC]

Special Conditions: Aptoz EHF; Non-Rechargeable Lithium Batteries and Battery System Installations

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

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for a supplemental type certificate (STC) to install non-rechargeable lithium batteries and battery systems on certain transport-category airplanes. The airplanes, as modified by Aptoz EHF (Aptoz), will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is non-rechargeable lithium batteries and battery system in emergency locator transmitters (ELTs). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Aptoz on November 15, 2022. Send comments on or before December 30, 2022.

ADDRESSES: Send comments identified by Docket No. FAA–2022–0760 using any of the following methods:

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

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

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

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

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

Except for Confidential Business Information as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will file in the docket all comments received concerning these special conditions. The FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed late if it is possible to do so without incurring delay. The FAA may change these special conditions based on comments received.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to Nazih Khaouly, Aircraft Systems Section, AIR–673, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3160; email *nazih.khaouly@faa.gov*. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these special conditions.

Docket: Background documents or comments received may be read at *https://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington,

DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, Aircraft Systems Section, AIR–673, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3160; email *nazih.khaouly@faa.gov*.

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA finds, pursuant to 14 CFR 11.38(b), that new comments are unlikely, and notice and comment prior to this publication are unnecessary. The FAA finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

Comments Invited

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

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

Background

On April 6, 2022, Aptoz applied for a supplemental type certificate to install non-rechargeable lithium batteries and battery systems in ELTs. Aptoz intends to apply this STC to multiple transport-category airplanes, and may periodically amend this STC to expand its applicability to include additional transport-category airplane makes and models.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Aptoz EHF must show that the airplanes, for which they make application to modify by FAA STC ST00030IB, as changed, continue to meet the applicable provisions of the regulations listed in each airplane's respective type certificate or the applicable regulations in effect on the date of application for the change except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the airplanes modified by STC no. ST00030IB must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

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

Novel or Unusual Design Features

The airplanes listed in the FAA STC ST00030IB approved model list (AML) will incorporate the following novel or unusual design feature:

Non-rechargeable lithium batteries and battery systems installed in ELTs.

Discussion

The FAA derived the current regulations governing installation of batteries in transport-category airplanes from Civil Air Regulations (CAR) 4b.625(d), as part of the recodification of CAR 4b, which established 14 CFR part 25 in February 1965. This recodification essentially reworded the CAR 4b battery requirements, which are currently in § 25.1353(b)(1) through (4). Non-rechargeable lithium batteries and battery systems are novel and unusual with respect to the state of technology considered when these requirements were codified. Non-rechargeable lithium batteries and battery systems introduce higher energy levels into airplane systems through new chemical compositions in various battery-cell sizes and construction. Interconnection of these cells in battery packs introduce failure modes that require unique design considerations, such as provisions for thermal management.

In January 2013, two independent events involving rechargeable lithium-ion batteries revealed unanticipated failure modes. A National Transportation Safety Board letter to the FAA, dated May 22, 2014, which is available at *https://www.ntsb.gov,* filename *A-14-032-036.pdf,* describes these events.

On July 12, 2013, an event involving a non-rechargeable lithium battery in an ELT installation demonstrated unanticipated failure modes. The United Kingdom's Air Accidents Investigation Branch Bulletin S5/2013 describes this event. These events, involving rechargeable and non-rechargeable lithium batteries, prompted the FAA to initiate a broad evaluation of these energy-storage technologies.

On April 22, 2016, the FAA published special conditions no. 25–612–SC in the **Federal Register** (81 FR 23573), applicable to Gulfstream Aerospace Corporation, for the Model GVI airplane. Those were the first special conditions the FAA issued for non-rechargeable lithium battery installations. In that document, the FAA explained its decision to make those special conditions effective on April 22, 2017, one year after publication in the **Federal Register**. In those special conditions, the FAA stated its intention to apply non-rechargeable lithium battery and battery system special conditions to design changes on other airplane makes and models applied for after this same date.

Special condition no. 1 of these special conditions requires that each individual cell within a non-rechargeable lithium battery and battery system be designed to maintain safe temperatures and pressures. Special condition no. 2 addresses these same issues but for the entire battery. Special condition no. 2 requires the battery be designed to prevent propagation of a thermal event, such as self-sustained, uncontrollable increases in temperature or pressure from one cell to adjacent cells.

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

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

Special condition no. 4 makes it clear that the flammable-fluid fire-protection requirements of § 25.863 apply to non-rechargeable lithium battery and battery system installations. Section 25.863 is applicable to areas of the airplane that could be exposed to flammable-fluid leakage from airplane systems. Non-rechargeable lithium batteries and

battery systems contain an electrolyte that is a flammable fluid.

Special condition no. 5 requires that each non-rechargeable lithium battery and battery system installation not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition.

While special condition no. 5 addresses corrosive fluids and gases, special condition no. 6 addresses heat. Special condition no. 6 requires that each non-rechargeable lithium battery and battery system installation have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat the battery installation can generate due to any failure of it or its individual cells. The means of meeting special conditions nos. 5 and 6 may be the same, but the requirements are independent and address different hazards.

These special conditions apply to all non-rechargeable lithium battery and battery system installations, in lieu of § 25.1353(b)(1) through (4) at amendment 25–123. Sections 25.1353(b)(1) through (4) at amendment 25–123 remain in effect for other battery installations.

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

Applicability

As discussed above, these special conditions are applicable to the airplane models listed on the AML of STC no. ST00030IB, available online at *rgl.faa.gov.* All models listed in the AML must be evaluated and determined to comply with these special conditions. Additionally, each new model added to the AML subsequently must also be evaluated and determined to comply with these special conditions.

Should Aptoz apply at a later date for a change to STC no. ST00030IB, to include any other model on the AML to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Should Aptoz apply at a later date for another STC to modify any other model included on the type certificates of the models on the STC no. ST00030IB AML, to incorporate the same novel or unusual design feature, these special conditions would also apply to that model as well. These special conditions are not applicable to those models for which applicable special conditions for rechargeable lithium batteries and battery systems have already been issued against the type certificate for that specific model.

Conclusion

This action only affects the installation of ELTs that contain non-rechargeable lithium batteries and battery systems for airplanes listed on the AML of STC no. ST00030IB. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the airplane modelslisted on the approved model list of supplemental type certificate no. ST00030IB, as modified by Aptoz.

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

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

2. Be designed to prevent the occurrence of self-sustaining, uncontrollable increases in temperature or pressure.

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

4. Meet the requirements of § 25.863.

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

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

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

8. Have a means for the flight crew or maintenance personnel to determine the battery charge state if the battery's function is required for safe operation of the airplane.

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

Issued in Kansas City, Missouri, on November 8, 2022.

Patrick R. Mullen,

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

[FR Doc. 2022–24773 Filed 11–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 102

[CBP Dec. 22–25]

RIN 1515–AE77

Rules of Origin for Goods Imported Into the United States

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule; technical corrections.

SUMMARY: This document sets forth technical corrections to U.S. Customs and Border Protection (CBP) regulations to reflect recent changes in the Harmonized Tariff Schedule of the United States. The affected provisions, which are based in part on specified changes in tariff classification, comprise a codified system used for determining: the country of origin for marking purposes for goods imported under the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA); determining the country of origin of imported goods for the purposes specified in paragraph 1 of Annex 311 of the North American Free Trade Agreement (NAFTA) for outstanding pending NAFTA claims; determining whether an imported good is a new or different article of commerce under the United States-Morocco Free Trade Agreement and the United States-Bahrain Free Trade Agreement; and for

determining the country of origin of textile and apparel products (other than those of Israel).

DATES: The final rule is effective on November 15, 2022.

FOR FURTHER INFORMATION CONTACT: Yuliya A. Gulis, Director, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of Trade, (202) 744–3442, *yuliya.a.gulis@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 102.20 of title 19 of the U.S. Customs and Border Protection (CBP) regulations (19 CFR 102.20) prescribes the tariff shift rules that are used to determine country of origin for certain purposes. CBP first promulgated these codified rules (referred to as ''the part 102 rules'') to fulfill the United States' commitment under Annex 311 of the North American Free Trade Agreement (NAFTA), which required the parties to establish rules for determining whether a good is a good of a NAFTA country. The NAFTA Implementation Act, Public Law 103–182, 107 Stat. 2057 (19 U.S.C. 3301 *et seq.*), was repealed by the United States-Mexico-Canada Agreement Implementation Act (USMCA), Public Law 116–113, 134 Stat. 11 (19 U.S.C. Chapter 29), as of July 1, 2020. On July 6, 2021, CBP published an interim final rule in the **Federal Register** (86 FR 35566) implementing certain portions of the USMCA, where CBP stated its decision to continue application of the current part 102 rules to determine the country of origin for marking purposes of imported goods under the USMCA. Thus, the part 102 rules remain in effect. Additionally, the part 102 rules are still applied for outstanding pending claims under NAFTA.

The part 102 rules are also used for several other trade agreements. For instance, as indicated in the scope provision for part 102 (§ 102.0), the rules set forth in §§ 102.1 through 102.21 also apply for purposes of determining whether an imported good is a new or different article of commerce under § 10.769 of the United States-Morocco Free Trade Agreement regulations and § 10.809 of the United States-Bahrain Free Trade Agreement regulations. Section 102.21 also provides the rules of origin for determination of country of origin of imported textile and apparel products for certain purposes, other than those that are products of Israel.

Need for Correction

Pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (codified at 19 U.S.C. 3005), the United States International Trade Commission (ITC) is required to keep the Harmonized Tariff Schedule of the United States (HTSUS) under continuous review and prepare investigations proposing modifications to the HTSUS to the President. In July 2015, the ITC issued ''Recommended Modifications in the Harmonized Tariff Schedule to Conform with Amendments to the Harmonized System Recommended by the World Customs Organization, and to Address Other Matters: Proposed Commission Recommendations,'' Inv. No. 1205–11, USITC Publication No. 4556. The modifications proposed in the report were effective on January 1, 2017, pursuant to Presidential Proclamation 9549. 81 FR 87401, 87406 (Dec. 2, 2016). In July 2016, the ITC issued ''Commission Recommendations to the President to Modify the Tariff Nomenclature in Chapters 3, 44, and 63 of the Harmonized Tariff Schedule,'' Inv. No. 1205–12, USITC Publication No. 4621. The modifications proposed in the report were effective on January 1, 2018, pursuant to Presidential Proclamation 9687. 82 FR 61413, 61417 (Dec. 27, 2017). In April 2021, the ITC issued, ''Recommended Modifications to the Harmonized Tariff Schedule, 2021,'' Inv. No. 1205–13, USITC Publication No. 5171. The modifications proposed in the report were effective on January 1, 2022, pursuant to Presidential Proclamation 10326. 86 FR 73593, 73597 (Dec. 28, 2021).

As a result of these modifications to the HTSUS, certain tariff provisions were added or removed, and certain goods were transferred, for tariff classification purposes, to different or newly-created tariff provisions. The changes to the HTSUS involved product coverage and/or numbering of certain headings and subheadings and were not intended to have any other substantive effect. Accordingly, this document makes technical corrections to §§ 102.20 and 102.21 in order for the regulations to conform the numbering in the tariff shift rules to the numbering in the current version of the HTSUS. This document also makes minor conforming changes to chapter notes 42, 64, 70, and 96, and adds a new chapter note 65. In addition, this document also corrects typographical errors that occurred in previous updates.

The following examples are offered to illustrate the need for technical corrections to §§ 102.20 and 102.21.

Example 1: Under current § 102.20(o), there is a tariff shift rule for subheading 8469.00, HTSUS. Under the 2017 amendments to the HTSUS, heading 8469, HTSUS, which covered ''Typewriters other than printers of heading 8443; word processing machines,'' was deleted. The goods previously classified under this provision are now classified under subheading 8472.90. As a result, the terms of the tariff shift rule for subheading 8469.00 are being revised to reflect the fact that heading 8469, HTSUS, was deleted, as well as to indicate the transfer of goods to subheading 8472.90. In other words, instead of referring to the since-deleted heading 8469, the new tariff shift rules refer to heading 8472 or subheading 8472.90, as appropriate. Lastly, the rule, revised as described above, is now incorporated into the rule for goods of subheading 8471.60–8472.90.

Example 2: Pursuant to the existing terms of § 102.20(f), the tariff shift rules for subheading 2910.10–2910.90, HTSUS, permit a tariff shift to ''dieldrin (ISO, INN) of subheading 2910.40 from any other subheading, except from subheading 2910.90.'' The second part of the tariff shift rule for subheading 2910.10–2910.90, HTSUS, permits a tariff shift ''to subheading 2910.90 from any other subheading, except from subheading 2910.40.'' Under the 2017 amendments to the HTSUS, new subheading 2910.50, HTSUS, was created to provide separately for endrin (ISO), which was previously provided for in subheading 2910.90, HTSUS. This new subheading was created to facilitate monitoring and control of products under the Stockholm Convention on Persistent Organic Pollutants. In order to maintain the original result of the tariff shift rules for subheading 2910.10–2910.90, HTSUS, the tariff shift rules in § 102.20(f) must be amended to reflect the transfer of endrin (ISO) previously classified in subheading 2910.90 to new subheading 2910.50, HTSUS, as follows: ''[a] change to dieldrin (ISO, INN) of subheading 2910.40 from any other subheading, except from subheading 2910.50 through 2910.90.'' Similarly, the second part of the tariff shift rule for subheading 2910.10–2910.90, HTSUS, must also be amended to reflect the 2017 amendment that resulted in a transfer of endrin (ISO) from subheading 2910.90 to the newly created subheading 2910.50, HTSUS. Additionally, the second tariff shift rule for subheadings 2910.10 through 2910.90 must be amended to provide for ''[a] change to subheading 2910.50 through 2910.90,'' with the addition of

the phrase ''outside that group'' following the clause ''from any other subheading.'' The first clause is expanded to include a change to subheadings 2910.50 through 2910.90 to reflect the transfer of endrin (ISO) to subheading 2910.50, HTSUS. The purpose of the additional language ''outside that group'' after the clause, ''from any other subheading,'' is to clarify that the tariff shift rule is not triggered if there is a change to a good of subheadings 2910.50 through 2910.90, HTSUS, from a good of subheadings 2910.50 through 2910.90, HTSUS.

Example 3: Pursuant to the existing terms of § 102.21(e)(1), the tariff shift rule for subheadings 4202.32.40, HTSUS, through 4202.32.95, HTSUS, permits a tariff shift to these subheadings ''from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.'' Pursuant to the 2016 amendments to the HTSUS, the eight-digit subheading 4202.32.95, HTSUS, which provided, in relevant part, for ''Articles of a kind normally carried in the pocket or in the handbag: With outer surface of sheeting of plastic or of textile materials: With outer surface of textile materials: Other: Other,'' was deleted. In its place, subheadings 4202.32.91 through 4202.32.99, HTSUS, were created to cover products that were previously classified in 4202.32.95, HTSUS. As subheading 4202.32.95, HTSUS, no longer exists in the HTSUS, § 102.21(e)(1) must be amended to reflect the applicable renumbering of the tariff shift rule. Specifically, § 102.21(e)(1) must be amended to indicate that the tariff shift rule for subheadings 4202.32.40–4202.32.95, HTSUS, has been renumbered to subheadings 4202.32.40–4202.32.99, HTSUS. The new rule provides for ''A change to subheading 4202.32.40 through 4202.32.99 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.''

Example 4: Pursuant to the existing terms of § 102.21(e)(1), the tariff shift rule for subheading 7019.19.28, HTSUS, allows, in relevant part, that ''[i]f the good is of staple fibers, a change to subheading 7019.19.28 from any other subheading, except from subheading 7019.19.30 through 7019.19.90, 7019.31.00 through 7019.39.50, and 7019.90, and provided that the change is the result of a spinning process.'' Pursuant to the 2022 amendments to the HTSUS, the six-digit subheading 7019.19.28, HTSUS, which provided for ''Glass fibers (including glass wool) and articles thereof (for example, yarn, woven fabrics): Silvers, rovings, yarn and chopped strands: Other: Yarns: Colored: Other,'' was deleted. In its place, subheading 7019.13.28, HTSUS, was created, which provides for ''Glass fibers (including glass wool) and articles thereof (for example, yarn, rovings, woven fabrics): Silvers, rovings, yarn and chopped strands and mats thereof: Other yarn, silvers: Yarns: Colored: Other,'' and covers products that were previously classified in 7019.19.28, HTSUS. As subheading 7019.19.28, HTSUS, no longer exists in the HTSUS, § 102.21(e)(1) must be amended to reflect the renumbering of the tariff shift rule. Similarly, amendments to § 102.21(e)(1) must be made to reflect the following: subheading 7019.19.90, HTSUS, was deleted and replaced with subheadings 7019.13.35, HTSUS, and 7019.19.91, HTSUS; subheading 7019.31.00, HTSUS, was deleted and replaced with subheadings 7019.14.00, HTSUS, and 7019.15.00, HTSUS; subheading 7019.32.00, HTSUS, was deleted and replaced with 7019.71.00, HTSUS; subheading 7019.39.10, HTSUS, was deleted and replaced with 7019.80.10, HTSUS; and subheading 7019.39.50, HTSUS, was deleted and replaced with 7019.80.90, HTSUS.

Inapplicability of Notice and Delayed Effective Date

The Administrative Procedure Act (APA) requirements in 5 U.S.C. 553 govern agency rulemaking procedures. Section 553(b) of the APA generally requires notice and public comment before issuance of a final rule. In addition, section 553(d) of the APA generally requires that a final rule have a thirty-day delayed effective date. The APA, however, provides exceptions from the prior notice and public comment requirement and the delayed effective date requirements, when an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest.

Pursuant to 5 U.S.C. 553(b)(B), CBP has determined for good cause that it would be unnecessary and contrary to the public interest to delay publication of this rule in final form pending an opportunity for public comment because the technical corrections set forth in this document merely conform the tariff shift rules in the regulations to the current HTSUS and will facilitate trade by ensuring that country of origin determinations made using the regulations are consistent with the HTSUS. In addition, pursuant to 5 U.S.C. 553(d)(3), CBP has determined that there is good cause for this final rule to become effective immediately upon publication for the same reasons.

Executive Orders 12866

These amendments do not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866. 58 FR 51735 (October 4, 1993).

Regulatory Flexibility Act

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his/her delegate) to approve regulations related to customs revenue functions. Pursuant to Treasury Directive 28–03, CBP retains authority to sign a document making non-substantive technical corrections to a previously issued regulation. For this reason, the CBP Commissioner is the proper official to sign this document.

Chris Magnus, the Commissioner of CBP, having reviewed and approved this document, has delegated the authority to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

List of Subjects in 19 CFR Part 102

Canada, Mexico, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the CBP Regulations

For the reasons set forth above, part 102 of title 19 of the Code of Federal Regulations (19 CFR part 102) is amended as set forth below:

PART 102—RULES OF ORIGIN

■ 1. The authority citation for part 102 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States, 1624, 3592, 4513.

■ 2. In § 102.20, the table is amended by:

■ a. Removing the entries for: ''0305.10'', ''0403.10'', and ''0407–0410'' under paragraph (a); ''1601–1605'', ''1704'', and ''2202.90'' under paragraph (d); ''2707.10–2707.99'' (two entries) under paragraph (e); ''2811.19'', ''2812.10–2813.90'', ''2844.40–2844.50'', ''2848'', ''2853'', ''2903.11–2903.39'',

''2903.81–2904.90'', ''2914.40–2914.70'', ''3002.10–3002.90'', ''3003.40'', ''3003.90'', ''3004.40'', ''3004.90'', ''3006.20–3006.60'', ''3103.10'', ''3204.19'', ''3402.11'', ''3402.12–3402.20'', ''3808.50'', ''3808.91'', and ''3824.71–3824.90'' under paragraph (f); ''6603.10'' under paragraph (k); ''6812.92–6812.93'', ''6812.99'', '' 6815.10–6815.99'', ''7019.31–7019.32'', ''7019.39'', ''7019.40–7019.59'', and ''7019.90'' under paragraph (l); ''8456.10–8456.90'', ''8469.00'', ''8517.70'', ''8519.50'', ''8519.92–8519.93'', ''8519.99'', ''8525.80'', ''8528.41'', ''8528.51'', ''8528.61'', ''8539.41–8539.49'', and ''8543.20–8543.30'' under paragraph (o); ''8801–8802'' and ''8803.10–8803.90'' under paragraph (p); ''9006.10–9006.69'' under paragraph (q); ''9401.90'', ''9403.90'', and ''9405.10–9405.60'' under paragraph (s); and ''9701.10–9701.90'' under paragraph (t);

■ b. Revising the entries for ''0307'' and ''0308'' under paragraph (a); ''1806.90'', ''1901.90'', ''1904.90'', and ''2106.90'' under paragraph (d); ''2707.10–2707.99'' under paragraph (e); ''2806.10–2806.20'', ''2852'', ''2910.10–2910.90'', ''2918.11–2918.22'', ''2920.11–2926.90'', ''2929.10–2930.90'', ''2933.11–2934.99'', ''2937–2941'', ''3001.10–3001.90'', ''3004.50'', ''3808.92'', ''3808.93'', ''3808.94'', ''3808.99'', ''3821'', ''3822'', and ''3825.90'' under paragraph (f); ''3901–3915'' under paragraph (g); ''Chapter 42 Note'' and ''4201'' under paragraph (h); ''4412'' under paragraph (i); ''Chapter 64 Note'' under paragraph (k); ''6812.80'', ''6812.99'', ''Chapter Note 70'' under paragraph (l); ''8103.20–8113.00'' under paragraph (n); ''8471.60–8472.90'', ''8479.10–8479.89'', '', ''8486.10–8486.40'', ''8486.90'', ''8517.11–8517.69'', ''8543.70'', and ''8548'' under paragraph (o); ''8708.40'' under paragraph (p); and ''9401.10–9401.80'', ''9402'', ''9403.10–9403.89'', ''9503'', and ''Chapter 96 Note'' under paragraph (s); and

■ c. Adding entries in numerical order for ''0309.10'', ''0309.90'', ''0403.20'', ''0407–0409'', ''0410.10'', and ''0410.90'' under paragraph (a); ''1601–1602.50'', ''1602.90'', ''1603–1605'', ''1704.10'', ''1704.90'', ''2202.91–2202.99'', ''2404.11'', ''2404.12'', ''2404.19'', ''2404.91'', and ''2404.92–2404.99'' under paragraph (d); ''2811.12–2811.19'', ''2812.11–2813.90'', ''2844.41–2844.44'', ''2844.50'', ''2853.10–2853.90'', ''2903.41–2903.69'', ''2903.82–2904.99'', ''2914.40–2914.61'', ''2914.62–2914.69'', ''2914.71–2914.79'', ''3002.12–3002.90'', ''3003.41–3003.49'', ''3003.60–3003.90'', ''3004.41–3004.49'', ''3004.60–3004.90'', ''3006.30–3006.60'', ''3006.93'', ''3103.11–3103.19'', ''3204.18–3204.19'', ''3402.31–3402.39'', ''3402.41–3402.50'', ''3808.52–3808.59'', ''3808.61–3808.91'', ''3826'', and ''3827.11–3827.90'' under paragraph (f); ''4441–4421'' under paragraph (i); ''Chapter 65 Note'' under paragraph (k);, ''6815.11–6815.19'', ''6815.20–6815.99'', ''7019.11–7019.13'', ''7019.14–7019.19'', ''7019.61'', ''7019.62'', ''7019.63–7019.66'', ''7019.69'', ''7019.71'', ''7019.72–7019.73'', ''7019.80'', and ''7019.90'' under paragraph (l); ''7419.20–7419.80'' under paragraph (n); ''8456.11–8456.90'', ''8485.10–8485.90'', ''8517.71–8517.79'', ''8524.11–8524.99'', ''8525.81–8525.89'', ''8528.42'', ''8528.52'', ''8528.62'', ''8539.41–8539.52'', ''8543.20–8543.40'', and ''8549'' under paragraph (o); ''8708.22'', ''8801–8806'', and ''8807.10–8807.90'' under paragraph (p); ''9006.30–9006.69'' under paragraph (q); ''9401.91–9401.99'', ''9403.91–9403.99'', ''9405.11–9405.69'', and ''9620.00'' under paragraph (s); and ''9702.21–9701.99'' under paragraph (t).

The revisions and additions read as follows:

§ 102.20 Specific rules by tariff classification.

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HTSUS	Tariff shift and/or other requirements
(a)	Section I: Chapter 1 through 5
*	* * * * * *
0307	A change to heading 0307, other than a change to smoked goods of heading 0307, from any other chapter; or A change to smoked goods of heading 0307 from other goods of chapter 3 or from any other chapter, except from chapter 16; or A change to any good of heading 0307 from a smoked good of heading 0307.
0308	A change to heading 0308, other than a change to smoked goods of heading 0308, from any other chapter; or A change to smoked goods of heading 0308 from any other good of chapter 3 or from any other chapter, except from chapter 16; or A change to any good of heading 0308 from a smoked good of heading 0308.
0309.10	A change to subheading 0309.10 from any other subheading.
0309.90	A change to subheading 0309.90, from any other chapter; or A change to edible meals and flours from within chapter 3; or A change to a good of subheading 0309.90 from a smoked good of heading 0306, 0307 or 0308.
*	* * * * * * *
0403.20	A change to subheading 0403.20 from any other heading.
*	* * * * * * *
0407–0409	A change to heading 0407 through 0409 from any other chapter.
0410.10	A change to subheading 0410.10 from any other chapter; or A change to edible meals and flours of subheading 0410.10 from any product other than edible meals and flours of Chapter 2.
0410.90	A change to subheading 0410.90 from any other chapter.
*	* * * * * * *
(d)	Section IV: Chapters 16 through 24
1601–1602.50	A change to heading 1601 through 1602.50 from any other chapter, except from smoked products of heading 0306 through 0308.
1602.90	A change to subheading 1602.90 from any other chapter, except from smoked products of heading 0306 through 0308; or A change to subheading 1602.90 from any other subheading, except from Chapter 4, Chapter 17, heading 1006, heading 2009, wild rice of subheading 1008.90, subheading 1901.90 or subheading 2202.91 through 2202.92; or A change to subheading 1602.90 from Chapter 4 or subheading 1901.90, provided that the good contains no more than 50 percent by weight of milk solids; or

HTSUS	Tariff shift and/or other requirements
	A change to subheading 1602.90 from Chapter 17, provided that the good contains less than 65 percent by dry weight of sugar; or A change to subheading 1602.90 from heading 2009 or subheading 2202.91 through 2202.92, provided that a single juice ingredient of foreign origin, or juice ingredients from a single foreign country, constitute in single strength form no more than 60 percent by volume of the good.
1603–1605	A change to heading 1603 through 1605 from any other chapter, except from smoked products of heading 0306 through 0308.
* * * * * * *	
1704.10	A change to heading 1704.10 from any other heading.
1704.90	A change to subheading 1704.90 from any other heading, except from subheading 0306.93 or goods containing more than 20% by weight of edible insects of subheading 1602.90.
* * * * * * *	
1806.90	A change to subheading 1806.90 from any other subheading, except from goods containing more than 20% by weight of edible insects of subheading 1602.90.
* * * * * * *	
1901.90	A change to subheading 1901.90 from any other heading, except from goods containing more than 20% by weight of edible insects of subheading 1602.90.
* * * * * * *	
1904.90	A change to subheading 1904.90 from any other heading, except from heading 1006, wild rice of subheading 1008.90, or goods containing more than 20% by weight of edible insects of subheading 1602.90.
* * * * * * *	
2106.90	A change to a good of subheading 2106.90, other than to compound alcoholic preparations, from any other subheading, except from Chapter 4, Chapter 17, heading 2009, subheading 2404.91, subheading 3006.93, subheading 1602.90, subheading 1901.90, subheading 2202.91 or subheading 2202.99; or A change to subheading 2106.90 from Chapter 4 or subheading 1901.90, provided that the good contains no more than 50 percent by weight of milk solids; or A change to subheading 2106.90 from Chapter 17, provided that the good contains less than 65 percent by dry weight of sugar; or A change to subheading 2106.90 from heading 2009, subheading 2202.91 or subheading 2202.99, provided that a single juice ingredient of foreign origin, or juice ingredients from a single foreign country, constitute in single strength form no more than 60 percent by volume of the good; or A change to compound alcoholic preparations of subheading 2106.90 from any other subheading, except from subheading 2208.20 through 2208.50.
* * * * * * *	
2202.91–2202.99	A change to subheading 2202.91 through 2202.99 from any other subheading, except from Chapter 4 or heading 1901, 2009, or 2106; or A change to subheading 2202.91 through 2202.99 from Chapter 4 or heading 1901, provided that the good contains no more than 50 percent by weight of milk solids; or A change to subheading 2202.91 through 2202.99 from heading 2009 or subheading 2106.90, provided that a single juice ingredient of foreign origin, or juice ingredients from a single foreign country, constitute in single strength form no more than 60 percent by volume of the good.
* * * * * * *	
2404.11	A change to subheading 2404.11 from any other subheading, except from heading 2403 and except from subheading 2404.19.
2404.12	A change to subheading 2404.12 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from subheading 3824.99.
2404.19	A change to subheading 2404.19 from any other subheading, except from heading 2403, subheading 2404.11, and subheading 3824.99.
2404.91	A change to subheading 2404.91 from any other subheading, except from subheading 2106.90, except from Chapter 4, Chapter 17, heading 2009, subheading 3006.93, subheading 1602.90, subheading 1901.90, subheading 2202.91 or subheading 2202.99; or A change to subheading 2404.91 from Chapter 4 or subheading 1901.90, provided that the good contains no more than 50 percent by weight of milk solids; or A change to subheading 2404.91 from Chapter 17, provided that the good contains less than 65 percent by dry weight of sugar; or A change to subheading 2404.91 from heading 2009, subheading 2202.91 or subheading 2202.90, provided that a single juice ingredient of foreign origin, or juice ingredients from a single foreign country, constitute in single strength form no more than 60 percent by volume of the good; except from subheading 2208.20 through 2208.50.
2404.92–2404.99	A change to subheading 2404.92 through 2404.99 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance, except from subheading 3824.99.
* * * * * * *	
(e)	Section V: Chapters 25 through 27
* * * * * * *	
2707.10–2707.99	A change to subheading 2707.10 through 2707.99 from any other heading; or

HTSUS	Tariff shift and/or other requirements
	A change to phenols of subheading 2707.99 from any other subheading or from any other good of subheading 2707.99, provided that the good resulting from such change is the product of a chemical reaction; or A change to any other good of subheading 2707.99 from phenols of subheading 2707.99 or from any other subheading, provided that the good resulting from such change is the product of a chemical reaction; or A change to subheading 2707.10 through 2707.99 from any other subheading, including any subheading within that group, provided that the good resulting from such change is the product of a chemical reaction.
* * * * * * *	
(f)	Section VI: Chapters 28 through 38
* * * * * * *	
2806.10–2806.20	A change to subheading 2806.10 through 2806.20 from any other subheading, including another subheading within that group.
* * * * * * *	
2811.12–2811.19	A change to subheading 2811.12 through 2811.19 from any other subheading, except from subheading 2811.12 or 2811.22.
* * * * * * *	
2812.11–2813.90	A change to subheading 2812.11 through 2813.90 from any other subheading, including another subheading within that group, except from subheading 2812.11 through 2812.19.
* * * * * * *	
2844.41–2844.44	A change to subheading 2844.41 through 2844.44 from any other subheading outside that group.
2844.50	A change to subheading 2844.50 from any other subheading.
* * * * * * *	
2852	A change to other metal oxides, hydroxides or peroxides of heading 2852 from any other good of heading 2852 or from any other heading, provided that the good is the product of a ''chemical reaction'', as defined in Note 1, except from subheading 2825.90; or A change to other fluorides of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2826.19; or A change to other chlorides of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2827.39; or A change to other bromides or to bromide oxides from any other good of heading 2852 or from any other heading, except from subheading 2827.59; or A change to iodides or to iodide oxides of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2827.60; or A change to other chlorates of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2829.19; or A change to other perchlorates, bromotes, perbromates, iodates or periodates of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2829.90; or A change to other sulphides or polysulphides, whether or not chemically defined, of heading 2852 from any other good of heading 2852 (except for sulphides or polysulphides of subheading 2852.90) or from any other heading, except from subheading 2830.90; or A change to other sulfates of heading 2852 from any other good of heading 2852 or from any other heading, except from heading 2520 or from subheading 2833.29; or A change to other nitrates of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2834.29; or A change to other phosphates from any other good of heading 2852 or from any other heading, except from subheading 2835.29; or A change to polyphosphates other than those of sodium triphosphate (sodium tripolyphosphate) of subheading 2852.90 from any other good of heading 2852 or from any other heading, except from subheading 2835.39; or A change to other cyanides or to cyanide oxides of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2837.19; or A change to complex cyanides of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2837.20; or A change to fulminates, cyanates or thiocyanates of heading 2852 from any other good of heading 2852 or from any other heading; or A change to any other good of subheading 2852.90 from fulminates, cyanates, and thiocyanates of subheading 2852.90 or from any other subheading, provided that the good classified in subheading 2852.90 is the product of a ''chemical reaction'' as defined in Note 1; or A change to other chromates, dichromates or peroxochromates of heading 2852 from any other good of heading 2852 or any other heading, except from heading 2610, or from subheading 2841.50; or A change to double or complex silicates, including aluminosilicates, of subheading 2852.90 from any other good of heading 2852 or from any other heading, except from subheading 2842.10; or A change to other salts of inorganic acids or to peroxoacids, other than azides, of heading 2852 from any other good of heading 2852 or from any other heading, provided that the good classified in heading 2852 is the product of a ''chemical reaction'' as defined in Note 1, except from subheading 2842.90; or A change to other silver compounds of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2843.29; or A change to phosphides, excluding ferrophosphorus, of subheading 2852.90 from any other good of heading 2852 or any other heading, except from subheading 2853.90; or

HTSUS	Tariff shift and/or other requirements
	A change to carbides of subheading 2852.90 from any other good of heading 2852 or any other heading, except from subheading 2849.90; or A change to hydrides, nitrides, azides, silicides and borides, other than compounds which are also carbides of heading 2849, of subheading 2852.90 from any other good of heading 2852 or any other heading, except from heading 2850; or A change to derivatives containing only sulpho groups, their salts and esters from any other good of heading 2852 or from any other heading, except from heading 2908; or A change to palmitic acid, stearic acid, their salts or their esters from any other good of heading 2852 or from any other heading, except from subheading 2915.70; or A change to oleic, linolenic or linolenic acids, their salts or their esters from any other good of heading 2852 or from any other heading, except from subheading 2916.15; or A change to benzoic acid, its salts or its esters from any other good of heading 2852 or from any other heading, except from subheading 3301.90 or subheading 2916.31; or A change to lactic acid, its salts or its esters from any other good of heading 2852 or from any other heading, except 2918.11; or A change to other organo-inorganic compounds of heading 2852 from any other good of heading 2852 or from any other heading, except from heading 2931; or A change to nucleic acids and their salts or other heterocyclic compounds of subheading 2852.90 from any other good of heading 2852 or any other heading, except from subheading 2934.92 through 2934.99; or A change to tanning extracts of vegetable origin or tannins and their salts, ethers, esters, and other derivatives of 2852.90 from any other good of heading 2852 or any other heading, except from subheading 3201.90; or A change to caseinate and other casein derivatives or casein glues of subheading 2852.90 from any other good of heading 2852 or any other heading, except from subheading 3501.90; or A change to albumins, albuminates, and other albumin derivatives of subheading 2852.90 from any other good of heading 2852 or any other heading, except from subheading 3502.90; or A change to peptones and their derivatives, other protein substances and their derivatives, not elsewhere specified or included, or hide powder of subheading 2852.90 from any other good of heading 2852 or any other heading, except from heading 3504; or A change to naphthenic acids, their water-insoluble salts, or their esters of subheading 2852.90 from any other good of heading 2852 or any other heading; or A change to prepared binders for foundry moulds or cores or chemical products and preparations of the chemical or allied industries of subheading 2852.90 from naphthenic acids, their water-insoluble salts, or their esters of subheading 2852.90 or any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 3827.11 through 3827.14 or 3827.31 through 3827.90; or A change to prepared binders for foundry moulds or cores or chemical products and preparations of the chemical or allied industries of subheading 2852.90 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound.
2853.10–2853.90	A change to subheading 2853.10 through 2853.90 from any other heading.
*	* * * * * * *
2903.41–2903.69	A change to subheading 2903.41 through 2903.69 from any subheading outside that group; or A change to any other good of subheading 2903.41 through 2903.69 from any other subheading, including another subheading within that group.
*	* * * * * * *
2903.82–2904.99	A change to aldrin (ISO), chlordane (ISO) or heptachlor (ISO) of subheading 2903.82 from any other subheading, except from subheading 2903.83 through 2903.89; or A change to any other good of subheading 2903.83 through 2903.89 from any other subheading outside that group, except from subheading 2903.82; or A change to subheading 2903.81 through 2904.99 from any other subheading within that group.
*	* * * * * * *
2910.10–2910.90	A change to dieldrin (ISO, INN) of subheading 2910.40 from any other subheading, except from subheading 2910.50 through 2910.90; or A change to subheading 2910.50 through 2910.90 from any other subheading outside that group, except from subheading 2910.40; or A change to any other good of subheading 2910.10 through 2910.90 from any other subheading, including another subheading within that group.
*	* * * * * * *
2914.40–2914.61	A change to subheading 2914.40 through 2914.61 from any other subheading, including another subheading within that group, except from subheading 3301.90.
2914.62–2914.69	A change to subheading 2914.62 through 2914.69 from any other subheading outside that group, except from subheading 3301.90.
2914.71–2914.79	A change to subheading 2914.71 through 2914.79 from any other subheading outside that group, except from subheading 3301.90.
*	* * * * * * *
2918.11–2918.22	A change to subheading 2918.18 from any other subheading, except from subheading 2918.17 or 2918.19; or A change to any other good of subheading 2918.17 or 2918.19 from any other subheading outside that group, except from subheading 2918.18; or

HTSUS	Tariff shift and/or other requirements
	A change to subheading 2918.11 through 2918.22 from any other subheading, including another subheading within that group.
*	* * * * * * *
2920.11–2926.90	A change to subheading 2920.11 through 2920.19 from any subheading outside that group; or A change to diethylamine and its salts of subheading 2921.12 through 2921.19 from any other good of subheading 2921.19 through 2921.19 or any other subheading; or A change to any other good of subheading 2921.12 through 2921.19 from diethylamine and its salts of subheading 2921.12 through 2921.19 or from any other subheading; or A change to anisidines, dianisidines, phenetidines, and their salts of subheading 2922.29 from any other good of subheading 2922.29 or any other subheading; or A change to any other good of subheading 2922.29 from anisidines, dianisidines, phenetidines, and their salts of subheading 2922.29 or from any other subheading; or A change to subheading 2924.12 from any other subheading, except from subheading 2924.19; or A change to subheading 2924.19 from any other subheading, except from subheading 2924.12; or A change to subheading 2925.21 through 2925.29 from any subheading outside that group; or A change to any other good of subheading 2920.11 through 2926.90 from any other subheading, including another subheading within that group.
*	* * * * * * *
2929.10–2930.90	A change to subheading 2930.80 from any other subheading, except from subheading 2930.10 through 2930.90; or A change to dithiocarbonates (xanthates) of subheading 2930.90 from any other good of subheading 2930.10 through 2930.90 or from any other subheading; A change to any other good of subheading 2930.10 through 2930.90 from dithiocarbonates (xanthates) of subheading 2930.90 or from any other subheading, except from subheading 2930.80; or A change to any other good of subheading 2929.10 through 2930.90 from any other subheading, including another subheading within that group.
*	* * * * * * *
2933.11–2934.99	A change to subheading 2933.11 through 2934.99 from any other subheading, including another subheading within that group, except for a change to subheading 2933.29 from heterocyclic compounds with nitrogen hetero-atom(s) only of subheading 3002.12 through 3002.15, subheading 3822.11 through 3822.12 or subheading 3822.19 and except for a change to subheading 2934.99 from nucleic acids and their salts or other heterocyclic compounds of subheading 2852.90 or subheading 3002.12 through 3002.15, subheading 3822.11 through 3822.12 or subheading 3822.19.
*	* * * * * * *
2937–2941	A change to heading 2937 through 2941 from any other heading, including another heading within that group, except a change to concentrates of poppy straw of subheading 2939.11 from poppy straw extract of subheading 1302.19 and except for a change to subheading 2937.90 from other hormones, prostagladins, thromboxanes and leukotrienes, natural or reproduced by synthesis, derivatives and structural analogues thereof, including chain modified polypeptides, used primarily as hormones of subheading 3002.13 through 3002.15.
*	* * * * * * *
3001.10–3001.90	A change to subheading 3001.20 through 3001.90 from any other subheading, including another subheading within that group, except a change from subheading 3006.92.
*	* * * * * * *
3002.12–3002.90	A change to subheading 3002.12 through 3002.15 from any other subheading outside that group, except a change from subheading 3006.92, subheading 3822.11 through 3822.12 or subheading 3822.19; A change to subheading 3002.20 through 3002.90 from any other subheading, except a change from subheading 3006.92; or A change to imines and their derivatives, and salts thereof, other than chlordimeform (ISO) of subheading 3002.12 through 3002.15, subheading 3822.11 through 3822.12 or subheading 3822.19 from any other subheading outside that group, except subheading 2925.21 through 2925.29; A change to compounds containing an unfused imidazole ring (whether or not hydrogenated) in the structure of subheading 3002.12 through 3002.15, subheading 3822.11 through 3822.12 or subheading 3822.19 from any other subheading outside that group, except from subheading 2933.29; or A change to nucleic acids and their salts or other heterocyclic compounds (other than those classified in subheading 2934.10 through 2934.91) of subheading 3002.12 through 3002.15, subheading 3822.11 through 3822.12 or subheading 3822.19 from any other subheading outside that group, except from subheading 2934.92 through 2934.99; or A change to hormones, prostaglandins, thromboxanes and leukotrienes, natural or reproduced by synthesis or derivatives, and structural analogues thereof, including chain modified polypeptides, used primarily as hormones (other than those classified in subheading 2937.11 through 2937.50) of subheading 3002.12 through 3002.15, subheading 3822.11 through 3822.12 or subheading 3822.19 from any other heading, except from heading 2937; or A change to other polyethers of subheading 3002.12 through 3002.15, subheading 3822.11 through 3822.12 or subheading 3822.19 from any other heading, except from heading 3907, provided that the domestic polymer content is no less than 40 percent by weight of the total polymer count.
*	* * * * * * *
3003.41–3003.49	A change to subheading 3003.41 through 3003.49 from any other subheading outside that group, except from heading 1211, subheading 1302.11, 1302.14, 1302.19, 1302.20, 1302.39, or 3006.92, or alkaloids or derivatives thereof classified in Chapter 29.

HTSUS	Tariff shift and/or other requirements
3003.60–3003.90	A change to subheading 3003.60 through 3003.90 from any other subheading outside that group, provided that the domestic content of the therapeutic or prophylactic component is no less than 40 percent by weight of the total therapeutic or prophylactic content, or except from subheading 3006.92.
*	* * * * * * *
3004.41–3004.49	A change to subheading 3004.41 through 3004.49 from any other subheading outside that group, except from heading 1211, subheading 1302.11, 1302.14, 1302.19, 1302.20, 1302.39, 3003.40, or 3006.92, or alkaloids or derivatives thereof classified in Chapter 29.
3004.50	A change to subheading 3004.50 from any other subheading, except from subheading 3003.60 through 3003.90, subheading 3006.92 or vitamins classified in Chapter 29 or products classified in heading 2936.
3004.60–3004.90	A change to subheading 3004.60 through 3004.90 from any other subheading outside that group, except from subheading 3003.60 through 3003.90 or 3006.92, and provided that the domestic content of the therapeutic or prophylactic component is no less than 40 percent by weight of the total therapeutic or prophylactic content.
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3006.30–3006.60	A change to subheading 3006.30 through 3006.60 from any other subheading, including another subheading within that group, except from subheading 3006.92, 3822.13 or 3825.30.
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3006.93	A change to subheading 3006.93 from any other subheading, except from subheading 3003.90 or 3006.92, and provided that the domestic content of the therapeutic or prophylactic component is no less than 40 percent by weight of the total therapeutic or prophylactic content; or A change to a good of subheading 3006.93, from any other subheading, except from Chapter 4, Chapter 17, heading 2009, subheading 1901.90, subheading 2202.91 or subheading 2202.99; or A change to subheading 3006.93 from Chapter 17, provided that the good contains less than 65 percent by dry weight of sugar.
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3103.11–3103.19	A change to subheading 3103.11 through 3103.19 from any other subheading outside that group.
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3204.18–3204.19	A change to subheading 3204.18 through 3204.19 from any other subheading outside that group, except from subheading 3204.11 through 3204.17.
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3402.31–3402.39	A change to subheading 3402.31 through 3402.39 from any other subheading outside that group, except from mixed alkylbenzenes of heading 3817.
3402.41–3402.50	A change to subheading 3402.41 through 3402.50 from any other subheading, including another subheading within that group.
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3808.52–3808.59	A change to insecticides from any other subheading, except from vegetable saps or extracts of pyrethrum or of the roots of plants containing rotenone of subheading 1302.19 or from subheading 3808.61 through 3808.91 or from any insecticide classified in Chapter 28 or 29; or A change to fungicides from any other subheading, except from fungicides classified in Chapter 28 or 29 or from subheading 3808.92; or A change to herbicides, anti-sprouting products and plant-growth regulators from any other subheading, except from herbicides, anti-sprouting products and plant-growth regulators classified in Chapter 28 or 29 or from subheading 3808.93; or A change to a mixture of herbicides, anti-sprouting products and plant-growth regulators from any other subheading, provided that the mixture is made from two or more active ingredients and a domestic active ingredient constitutes no less than 40 percent by weight of the total active ingredients; or A change to disinfectants from any other subheading, except from subheading 3808.94; or A change to any other good of subheading 3808.52 through 3808.59 from any other good of subheading 3808.52 through 3808.59 or from any other subheading, except from rodenticides and other pesticides classified in Chapter 28 or 29 or from subheading 3808.99; or A change to a mixture of subheading 3808.52 through 3808.59 from any other subheading outside that group, provided that the mixture is made from two or more active ingredients and a domestic active ingredient constitutes no less than 40 percent by weight of the total active ingredients, except from subheading 3808.99.
3808.61–3808.91	A change to subheading 3808.61 through 3808.91 from any other subheading outside that group, except from vegetable saps or extracts of pyrethrum or of the roots of plants containing rotenone of subheading 1302.19 or from any insecticide classified in Chapter 28 or 29 or subheading 3808.52 through 3808.59.
3808.92	A change to subheading 3808.92 from any other subheading, except from fungicides classified in Chapter 28 or 29, or subheading 3808.52 through 3808.59.
3808.93	A change to subheading 3808.93 from any other subheading, except from herbicides, anti-sprouting products or plant-growth regulators classified in Chapter 28 or 29 or subheading 3808.52 through 3808.59; or A change to a mixture of subheading 3808.93 from any other subheading, provided that the mixture is made from two or more active ingredients and a domestic active ingredient constitutes no less than 40 percent by weight of the total active ingredients.
3808.94	A change to subheading 3808.94 from any other subheading, except from disinfectants of subheading 3808.52 through 3808.59.
3808.99	A change to subheading 3808.99 from any other subheading, except from rodenticides or other pesticides classified in Chapter 28 or 29 or subheading 3808.52 through 3909.59; or

HTSUS	Tariff shift and/or other requirements
	A change to a mixture of subheading 3808.99 from any other subheading, provided that the mixture is made from two or more active ingredients and a domestic active ingredient constitutes no less than 40 percent by weight of the total active ingredients, except from rodenticides or other pesticides classified in Chapter 28 or 29 or subheading 3808.52 through 3808.59.
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3821	A change to heading 3821 from any other heading.
3822	A change to heading 3822 from any other heading, except from subheading 3002.12 through 3002.15, 3502.90, heading 3504, subheading 3822.11 through 3822.12, or subheading 3822.19.
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3825.90	A change to subheading 3825.90 from any other subheading, except from subheading 3824.84 through 3824.99, and provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound.
3826	A change to biodiesel and mixtures, not containing or containing less than 70 percent by weight of petroleum oils or oils obtained from bituminous materials of subheading 3826.00 from naphthenic acids, their water-insoluble salts, or their esters of subheading 3824.99 or any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 3827.11 through 3827.14 or 3827.31 through 3827.90; or A change to biodiesel and mixtures, not containing or containing less than 70 percent by weight of petroleum oils or oils obtained from bituminous materials of subheading 3826.00 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound.
3827.11–3827.90.	A change to subheading 3827.11 from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 3827.11 or from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound; or A change to other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included of subheading 3827.11 from any other good of subheading 3827.11 or from any other subheading, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 2852.90, 3827.12 through 3827.14, 3827.31 through 3827.90, 3824.84 through 3824.99, or 3826.00. A change to subheading 3827.20 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3827.12 through 3827.14, or 3827.31 through 3827.90; or A change to other mixtures of halogenated hydrocarbons of subheading 3827.12 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 2852.90, 3827.11, 3827.31 through 3827.90, 3824.84 through 3824.99, or 3826.00; or A change to other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3827.12 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3827.20, or 3827.31 through 3827.90; or A change to other mixtures of halogenated hydrocarbons of subheading 3827.31 through 3827.39 from any other subheading outside that group, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 2852.90, 3827.11 through 3827.14, 3827.40 through 3827.90, or 3826.00, and except from subheading 3824.84 through 3824.99; or A change to other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3827.12 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3827.13 through 3827.20, or 3827.31 through 3827.90; or A change to other mixtures of halogenated hydrocarbons of subheading 3827.31 through 3827.39 from any other subheading outside that group, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 2852.90, 3827.11 through 3827.14, 3827.31 through 3827.90, or 3826.00, and except from subheading 3824.90; or A change to other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3827.31 through 3827.39 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3827.12 through 3827.20 and 3827.40 through 3827.90; or

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	A change to subheading 3827.13 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 2852.90, 3827.11 through 3827.12, 3827.14, 3827.31 through 3827.39, 3827.40 through 3827.90, 3824.84 through 3824.99, or 3826.00; or A change to subheading 3827.14 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 2852.90, 3827.11 through 3827.13, 3827.31 through 3827.90, 3824.94 through 3824.99, or 3826.00; or A change to subheading 3827.40 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 2852.90, 3827.11 through 3827.14, 3827.31 through 3827.39, 3827.51 through 3827.90, 3824.84 through 3824.99, or 3826.00; or A change to subheading 3827.51 through 3827.69 from any other subheading outside that group, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3827.12 through 3827.40 or 3827.90; or A change to mixtures of halogenated hydrocarbons of subheading 3827.90 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included of subheading 2852.90, 3827.11 through 3827.14, 3827.31 through 3827.69 or 3826.00, and except from subheading 3824.84 through 3824.90; or A change to other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3827.90 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3827.12 through 3827.69; A change to naphthenic acids, their water-insoluble salts or their esters of subheading 3824.99 from any other good of subheading 3824.84 through 3824.99 or from any other subheading; or A change to any other good of subheading 3824.84 through 3824.99 from naphthenic acids, their water-insoluble salts or their esters of subheading 3824.99 or from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 3827.11 through 3827.14, or 3827.31 through 3824.90; or A change to any other good of subheading 3824.81 through 3824.99 from any other subheading, including another subheading within that group, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound; or A change to any other good of subheading 3827.11 through 3827.90 from any other subheading, including another subheading within that group, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound.
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(g)	Section VII: Chapter 39 through 40
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3901–3915	A change to heading 3901 through 3915 from any other heading, including another heading within that group, except a change to 3907 from other polyethers of subheading 3002.12 through 3002.15, subheading 3822.11 through 3822.12 or subheading 3822.19, provided that the domestic polymer content is no less than 40 percent by weight of the total polymer content.
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(h)	Section VIII: Chapters 41 through 43
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Chapter 42 Note: The country of origin of goods classified in subheadings 4202.12.40 through 4202.12.89, 4202.22.40 through 4202.22.80, 4202.32.40 through 4202.32.99, 4202.92.05, 4202.92.15 through 4202.92.30, and 4202.92.60 through 4202.92.97 shall be determined under the provisions of § 102.21.	
4201	A change to heading 4201 from any other heading.
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(i)	Section IX: Chapters 44 through 46
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4412	A change to heading 4412 from any other heading, except from plywood of subheading 4418.73 through 4418.79; or A change to surface-covered plywood of heading 4412 from any other plywood that is not surface covered or is surface-covered only with a clear or transparent material which does not obscure the grain, texture, or markings of the face ply.
4441–4421	A change to plywood of subheading 4418.73 through 4418.79 from any other good of heading 4418 or from any other heading, except from heading 4412; or

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	A change to any other good of subheading 4418.73 through 4418.79 from plywood of subheading 4418.73 through 4418.79 or from any other heading; or A change to any other good of heading 4413 through 4421 from any other heading, including another heading within that group.
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(k)	Section XII: Chapters 64 through 67
Chapter 64 Note: For purposes of this chapter, the term ''formed uppers'' means uppers, with closed bottoms, which have been shaped by lasting, molding, or otherwise but not by simply closing at the bottom. The country of origin of goods classified in subheadings 6405.20.60, 6406.10.77, 6406.10.90, and 6406.90.15 will be determined under the provisions of § 102.21.	
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Chapter 65 Note: The country of origin of goods classified in subheading 6505.00, other than hairnets, will be determined under the provisions of § 102.21.	
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(l)	Section XIII: Chapters 68 through 70
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6812.80	A change to clothing, clothing accessories, footwear or headgear of subheading 6812.80 or from any other good of subheading 6812.80 or from any other subheading, except from subheading 6812.91; or A change to paper, millboard or felt of subheading 6812.80 from any other subheading or from any other good of subheading 6812.80, except from compressed asbestos fiber jointing of subheading 6812.80 or from subheading 6812.99; or A change to compressed asbestos fiber jointing, in sheets or rolls, of subheading 6812.80 from any other subheading or from any other good of subheading 6812.80, except from paper, millboard or felt of subheading 6812.80 or from subheading 6812.99; or A change to other fabricated asbestos fibers, mixtures with a basis of asbestos and magnesium carbonate, or to articles of such mixtures or of asbestos, whether or not reinforced, other than goods of heading 6811 or 6813 from any other heading; or A change to yarn or thread of subheading 6812.80 from any other subheading including from any other good of subheading 6812.80; or A change to cords or string, whether or not plaited, of subheading 6812.80 from any other subheading or from any other good of subheading 6812.80, except from yarn or thread of subheading 6812.80; or A change to woven or knitted fabric of subheading 6812.80 from any other subheading including from any other good of subheading 6812.80.
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6812.99	A change to yarn or thread of subheading 6812.99 from any other subheading including from any other good of subheading 6812.99; or A change to cords or string, whether or not plaited of subheading 6812.99 from any other subheading or from any other good of subheading 6812.99, except from yarn or thread of subheading 6812.99; or A change to woven or knitted fabric of subheading 6812.99 from any other subheading including from any other good of subheading 6812.99; or A change to paper, millboard, felt, or compressed asbestos fiber jointing, in sheets or rolls, of subheading 6812.99 from any other heading or from any subheading, except from subheading 6812.80 and 6812.99.
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6815.11–6815.19	A change to subheading 6815.11 through 6815.19 from any other subheading outside that group.
6815.20–6815.99	A change to subheading 6815.20 through 6815.99 from any other subheading.
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Chapter 70 Note: The country of origin of goods classified in subheadings 7019.13.15 and 7019.13.28 shall be determined under the provisions of § 102.21.	
7019.11–7019.13	A change to subheading 7019.11 through 7019.13 from any other heading.
7019.14–7019.19	A change to subheading 7019.14 through 7019.19 from any other subheading outside that group, except subheading 7019.71.
7019.61	A change to subheading 7019.61 from any other subheading, except subheading 7019.72 through 7019.73.
7019.62	A change to subheading 7019.62 from any other subheading, except subheading 7019.69 or subheading 7019.72 through 7019.90.
7019.63–7019.66	A change to subheading 7019.63 through 7019.66 from any other subheading outside that group, except subheading 7019.61, 7019.62, 7019.69, 7019.72 through 7019.73, 7019.80, and 7019.90.
7019.69	A change to subheading 7019.69 from any other subheading, except subheading 7019.62 or subheading 7019.72 through 7019.90.
7019.71	A change to subheading 7019.71 from any other subheading, except subheading 7019.14 through 7019.19.
7019.72–7019.73	A change to subheading 7019.72 through 7019.73 from any other subheading outside that group, except subheading 7019.61 through 7019.69, subheading 7019.80 and subheading 7019.90.
7019.80	A change to glass wool and articles of glass wool of subheading 7019.80 from any other heading; or A change to subheading 7019.80 from any other subheading, except subheading 7019.61, 7019.62, 7019.63, 7019.64, 7019.65, 7019.66, 7019.69, 7019.72, 7019.73, and 7019.90.
7019.90	A change to subheading 7019.90 from any other heading; or A change to subheading 7019.90 from any other subheading, except from glass wool and articles of glass wool of subheading 7019.80 or subheading 7019.61, 7019.62, 7019.63, 7019.64, 7019.65, 7019.66, 7019.69, 7019.72, and 7019.73.

HTSUS	Tariff shift and/or other requirements
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(n)	Section XV: Chapters 72 through 83
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7419.20–7419.80	A change to cloth, grill or netting of copper wire or to expanded metal of copper of subheading 7419.80 from any other good of subheading 7419.80 or from any other subheading; or A change to any other good of subheading 7419.80 from cloth, grill or netting of copper wire or expanded metal of copper of subheading 7419.80; or A change to copper springs of subheading 7419.80 from any other good of subheading 7419.80 or from any other subheading; or A change to any other good of subheading 7419.80 from copper springs of subheading 7419.80; or A change to any other good of subheading 7419.20 through 7419.80 from any other subheading, including another subheading within that group.
* * * * * * *	
8103.20–8113.00	A change to germanium of subheading 8112.92 through 8112.99 from any other good of subheading 8112.31 through 8112.49, 8112.92 through 8112.99 or from any other subheading; or A change to vanadium of subheading 8112.92 through 8112.99 from any other good of subheading 8112.31 through 8112.49, 8112.92 through 8112.99 or from any other subheading; or A change to any other good of subheading 8112.92 through 8112.99 from germanium or vanadium of subheading 8112.92 through 8112.99 or from any other subheading; or A change to any other good of subheading 8112.31 through 8112.49 from germanium or vanadium of subheading 8112.92 through 8112.99 or from any other subheading; or A change to any of the following goods classified in subheading 8103.20 through 8113.00, including from materials also classified in subheading 8103.20 through 8113.00: Matte; unwrought; powder except from flakes; flakes except from powder; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; wire except from rod; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip; tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes; cables/stranded wire/plaited bands; or A change to any other good of subheading 8103.20 through 8113.00 from any other subheading, including another subheading within that group.
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(o)	Section XVI: Chapters 84 through 85
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8456.11–8456.90	A change to subheading 8456.11 through 8456.90 from any other heading, other than a change to water-jet cutting machines of subheading 8456.50, except from machine-tools for dry-etching patterns on semiconductor materials of subheading 8486.20; or A change to water-jet cutting machines of subheading 8456.50 from any other good of subheading 8456.40 or from any other subheading, except from subheading 8479.89 or from subheading 8486.10 through 8486.40.
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8471.60–8472.90	A change to addressing machines or address plate embossing machines of subheading 8472.90 from any other good of subheading 8472.90, provided that the change is not the result of simple assembly; or A change to any other good of subheading 8472.90 from addressing machines and address plate embossing machines of subheading 8472.90, provided that the change is not the result of simple assembly; or A change to subheading 8471.60 through 8472.90 from any other subheading outside that group, except from subheading 8504.40 or from heading 8473; or A change to subheading 8471.60 through 8472.90 from any other subheading within that group or from subheading 8504.90 or from heading 8473, provided that the change is not the result of simple assembly; or A change to word-processing machines of subheading 8472.90 from any other good of heading 8472 or from any other subheading, except from automatic typewriters of heading 8472; or A change to automatic typewriters of subheading 8472.90 from any other good of heading 8472 or from any other subheading, except from word-processing machines of heading 8472; or A change to other electric typewriters of subheading 8472.90 from any other good of heading 8472 or from any other subheading, except from other non-electric typewriters of heading 8472; or A change to other non-electric typewriters of subheading 8472.90 from any other good of heading 8472 or from any other subheading, except from other electric typewriters of heading 8472.
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8479.10–8479.89	A change to subheading 8479.10 through 8479.89, other than a change to passenger boarding bridges of subheading 8479.71 or 8479.79, from any other subheading, including another subheading within that group, except from subheading 8486.10 through 8486.40 and except for a change to 8479.89 from water-jet cutting machines of 8456.50; or A change to passenger boarding bridges of subheading 8479.71 or 8479.79 from any other subheading.
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8485.10–8485.90	A change to subheading 8485.10 from any other subheading except from subheading 8486.10 through 8486.40 and from water-jet cutting machines of subheading 8456.90; A change to subheading 8485.20 from any other subheading; A change to subheading 8485.30 from any other subheading except from subheading 8475.21 through 8475.29, from 8486.10 through 8486.40, from water-jet cutting machines of subheading 8456.90, and from heading 8501, where such change from heading 8501 is the result of simple assembly;

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	A change to subheading 8485.80 from any other subheading except from subheading 8486.10 through 8486.40 and from water-jet cutting machines of subheading 8456.90; and A change to subheading 8485.90 from any other subheading, except from parts of water-jet cutting machines of heading 8466 and except from heading 8501 when resulting from a simple assembly.
8486.10–8486.40	A change to other machine-tools for working any material by removal of material, by electro-chemical, electron beam, ionic-beam or plasma arc process of subheading 8486.10 from any other good of subheading 8486.10 or from any other subheading, except from other machine-tools for working any material by removal of material, by electro-chemical, electron beam, ionic-beam or plasma arc process of subheading 8486.40, or from subheading 8456.50 to 8456.90; or A change to sawing machines of subheading 8486.10 from any other good of subheading 8486.10 or from any other subheading, except from subheading 8464.10; or A change to steam or sand blasting machines and similar jet projecting machines of subheading 8486.20 from any other good of subheading 8486.20 or from any other subheading, except from steam or sand blasting machines and similar jet projecting machines of subheading 8424.30 or 8486.40; or A change to ion implanters designed for doping semiconductor materials of subheading 8486.20 from any other good of subheading 8486.20 or from any other subheading, except from ion implanters designed for doping semiconductor materials of subheading 8543.10; or A change to other machine-tools for dry-etching patterns on semiconductor materials of subheading 8486.20 from any other good of subheading 8486.20 or from any other subheading, except from heading 8456; or A change to direct write-on-wafer apparatus of subheading 8486.20 from any other good of subheading 8486.20 or from any other subheading, except from step or repeat aligners or other apparatus for the projection or drawing of circuit patterns on sensitized semiconductor materials of subheading 8486.20 or from subheading 9010.50; or A change to step aligners of subheading 8486.20 from any other good of subheading 8486.20 or from any other subheading, except from direct write-on-wafer apparatus, repeat aligners, or other apparatus for the projection or drawing of circuit patterns on sensitized semiconductor materials of subheading 8486.20 or from subheading 9010.50; or A change to repeat aligners of subheading 8486.20 from any other good of subheading 8486.20 or from any other subheading, except from direct write-on-wafer apparatus, step aligners, or other apparatus for the projection or drawing of circuit patterns on sensitized semiconductor materials of subheading 8486.20 or from subheading 9010.50; or A change to other apparatus for the projection or drawing of circuit patterns on sensitized semiconductor materials of subheading 8486.20 from any other good of subheading 8486.20 or from any other subheading, except from direct write-on-wafer apparatus, step or repeat aligners of subheading 8486.20 or from subheading 9010.50; or A change to centrifuges of subheading 8486.10 through 8486.20 from any other good of subheading 8486.10 through 8486.20 or from any other subheading, except from subheading 8421.19; or A change to machine-tools operated by laser or other light or photon beam process of subheading 8486.10 through 8486.20 from any other good of subheading 8486.10 through 8486.20 or from any other subheading, except from subheading 8456.11 to 8456.12; or A change to grinding or polishing machines of subheading 8486.10 through 8486.20 from any other good of subheading 8486.10 through 8486.20 or from any other subheading, except from subheading 8464.20; or A change to other electrical machines or apparatus, having individual functions, of subheading 8486.10 through 8486.20 from any other good of subheading 8486.10 through 8486.20 or from any other subheading, except from other electrical machines or apparatus of subheading 8486.10 through 8486.20, 8486.90, 8543.70, 8542.31 through 8542.39, and except from proximity cards or tags of subheading 8523.52; or A change to other furnaces or ovens of subheading 8486.10 through 8486.20 from any other good of subheading 8486.10 through 8486.20 or from any other subheading, except from subheading 8514.30; or A change to other machine-tools for working stone, ceramics or like mineral materials or for cold working glass of subheading 8486.10 through 8486.30 from any other good of subheading 8486.10 through 8486.30 or from any other subheading, except from other machine-tools for working stone, ceramics or like mineral materials or for cold working glass of subheading 8486.10 through 8486.30, or from subheading 8464.90; or A change to other mechanical appliances for projecting, dispersing or spraying liquids or powders of subheading 8486.10 through 8486.30 from any other good of subheading 8486.10 through 8486.30 or from any other subheading, except from subheading 8424.89; or A change to steam or sand blasting machines or similar jet projecting machines of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from steam or sand blasting machines and similar jet projecting machines of subheading 8424.30 or 8486.20; or A change to pneumatic elevators or conveyors of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8428.20; or A change to other belt type continuous-action elevators or conveyors for goods or materials of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8428.33; or A change to other continuous-action elevators or conveyors for goods or materials of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8428.39; or A change to other lifting, handling, loading or unloading machinery of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8428.90; or A change to other machine-tools for working any material by removal of material, by electro-chemical, electron beam, ionic-beam or plasma arc process of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from other machine-tools for working any material by removal of material, by electro-chemical, electron beam, ionic-beam or plasma arc process of subheading 8486.10, or from subheading 8456.40, 8456.50 or 8456.90; or A change to numerically controlled bending, folding, straightening or flattening machines of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8462.21; or A change to other bending, folding, straightening or flattening machines of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8462.29; or A change to other machines for working hard materials of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8465.99; or

HTSUS	Tariff shift and/or other requirements
	A change to injection-molding machines of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading except from subheading 8477.10; or A change to vacuum molding machines or other thermoforming machines of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8477.40; or A change to other machinery for molding or otherwise forming of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8477.59; or A change to parts of welding machines or of electric machines and apparatus for hot spraying of metals or cermets of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8515.90; or A change to pattern generating apparatus designed to produce masks or reticles from photoresist coated substrates of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 9017.20; or A change to die attach apparatus, tape automated bonders or wire bonders for assembly of semiconductors of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8515.11 through 8515.80; or A change to deflash machines for cleaning and removing contaminants from the metal leads of semiconductor packages prior to the electroplating process (deflash by chemical bath) of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8465.99; or A change to other machines or mechanical appliances of subheading 8486.10 through 8486.40 from any other good of subheading 8486.10 through 8486.40 or from any other subheading, except from other machines or mechanical appliances of subheading 8486.10 through 8486.40, 8479.89, 8508.11 through 8508.19 or 8508.60.
* * * * * * *	
8486.90	A change to parts or accessories of drawing, marking-out or mathematical calculating instruments or to instruments for measuring length, for use in the hand, of subheading 8486.90 from any other good of subheading 8486.90 or from any other subheading, except from heading 9017; or A change to parts or accessories of apparatus for the projection or drawing of circuit patterns on sensitized semiconductor materials or of other apparatus or equipment for photographic laboratories or negatoscopes of subheading 8486.90 from any other good of subheading 8486.90 or from any other subheading, except from heading 9010; or A change to parts of electrical machines or apparatus, having individual functions, of subheading 8486.90 from any other good of subheading 8486.90 or from any other subheading, except from heading 8543; or A change to parts of machinery for working rubber or plastics or for the manufacture of products from these materials of subheading 8486.90 from any other good of subheading 8486.90 or from any other subheading, except from other parts of machinery for working rubber or plastics or for the manufacture of products from these materials of subheading 8486.90, or from subheading 8477.90, and except from heading 8501 when resulting from a simple assembly; or A change to tool holders or to self-opening dieheads of subheading 8486.90 from any other good of subheading 8486.90 or from any other subheading, except from subheading 8466.10 through 8466.94, work holders, dividing heads or other special attachments of subheading 8486.90, and except from heading 8501 when resulting from simple assembly; or A change to work holders of subheading 8486.90 from any other good of subheading 8486.90, except from tool holders, dividing heads or other special attachments of subheading 8486.90, or from any other subheading, except from subheading 8466.10 through 8466.94, and except from heading 8501 when resulting from simple assembly; or A change to dividing heads or to other special attachments for machine-tools of subheading 8486.90 from any other good of subheading 8486.90, except from tool holders or work holders of subheading 8486.90, or from any other subheading, except from subheading 8466.10 through 8466.94, and except from heading 8501 when resulting from simple assembly; or A change to parts or accessories for machine-tools for working stone, ceramics, concrete, asbestos-cement or like minerals or for cold working glass of subheading 8486.90 from any other good of subheading 8486.90, except from parts or accessories of: • Machine-tools for working any material by the removal of material, by laser or other light or photon beam, ultrasonic, electro-discharge, electro-chemical, electron beam, ionic-beam or plasma arc processes, or • Machine-tools for drilling, boring, milling, threading or tapping by removing metal, or for deburring, sharpening, grinding, honing, lapping, polishing or otherwise finishing metal or cermets by means of grinding stones, abrasives or polishing products, or • Machine-tools for planing, shaping, slotting, broaching, gear cutting, gear grinding or gear finishing, sawing, cutting-off, or for working by removing metal or cermets, or • Machine-tools for working metal by bending, folding, straightening, flattening sheathing, punching or notching (including presses), or • Machine-tools for working metal or cermets, without removing material, or • Machine-tools for working wood, cork, bone, hard rubber, hard plastics or similar hard materials (including machines for nailing, stapling, gluing or otherwise assembling), or • Machine-tools for working metal by forging, hammering or die forging (including presses), or • Machining centers, unit construction machines (single station) or multi-station transfer machines for working metal, or • Lathes (including turning centers), for removing metal, or • Presses for metal or working metal carbides, of subheading 8486.90, or a change from any other subheading, except from subheading 8466.10 through 8466.94, and except from heading 8501 when resulting from simple assembly; or A change to parts or accessories of machine-tools (including machines for nailing, stapling, gluing or otherwise assembling) for working wood, cork, bone, hard rubber, hard plastics or similar hard materials of subheading 8486.90 from any other good of subheading 8486.90, except from parts or accessories of: • Machine-tools for working any material by the removal of material, by laser or other light or photon beam, ultrasonic, electro-discharge, electro-chemical, electron beam, ionic-beam or plasma arc processes, or • Machine-tools for drilling, boring, milling, threading or tapping by removing metal, or

HTSUS	Tariff shift and/or other requirements
	• Machine-tools for deburring, sharpening, grinding, honing, lapping, polishing or otherwise finishing metal or cermets by means of grinding stones, abrasives or polishing products, or • Machine-tools for planing, shaping, slotting, broaching, gear cutting, gear grinding or gear finishing, sawing, cutting-off, or for working by removing metal or cermets, or • Machine-tools for working metal by forging, hammering or die forging (including presses), or • Machine-tools for working metal by bending, folding, straightening, flattening sheathing, punching or notching (including presses), or • Machine-tools for working metal or cermets, without removing material, or • Machine-tools for working stone, ceramics, concrete, asbestos-cement or like minerals or for cold working glass, or • Machining centers, unit construction machines (single station) or multi-station transfer machines for working metal, or • Lathes (including turning centers), for removing metal, or of presses for working metal or metal carbides, of subheading 8486.90, or a change from any other subheading, except from subheading 8466.10 through 8466.94, and except from heading 8501 when resulting from simple assembly; or A change to parts or accessories of machine-tools for working any material by the removal of material, by laser or other light or photon beam, ultrasonic, electro-discharge, electro-chemical, electron beam, ionic-beam or plasma arc processes, or for drilling, boring, milling, threading or tapping by removing metal, or for deburring, sharpening, grinding, honing, lapping, polishing or otherwise finishing metal or cermets by means of grinding stones, abrasives or polishing products, or for planing, shaping, slotting, broaching, gear cutting, gear grinding or gear finishing, sawing, cutting-off, or for working by removing metal or cermets, or to parts and accessories of machining centers, unit construction machines (single station) or multi-station transfer machines for working metal, or of lathes (including turning centers), for removing metal, of subheading 8486.90 from any other good of subheading 8486.90 except from parts or accessories of: • Machine-tools for working metal by forging, hammering or die forging, or • Machine-tools for working metal by bending, folding, straightening, flattening sheathing, punching or notching (including presses), or • Machine-tools for working metal or cermets, without removing material, or • Machine-tools for working stone, ceramics, concrete, asbestos-cement or like minerals or for cold working glass, or for working wood, cork, bone, hard rubber, hard plastics or similar hard materials (including machines for nailing, stapling, gluing or otherwise assembling), or • Presses for working metal or metal carbides, of subheading 8486.90, or a change from any other subheading, except from subheading 8466.10 through 8466.94, and except from heading 8501 when resulting from simple assembly; or A change to parts or accessories of machine-tools (including presses) for working metal by forging, hammering or die forging, or for working metal by bending, folding, straightening, flattening, sheathing, punching or notching (including presses), or for working metal or cermets, without removing material or to parts or accessories of presses for working metal carbide of subheading 8486.90 from any other good of subheading 8486.90, except from parts or accessories of: • Machine-tools for working any material by the removal of material, by laser or other light or photon beam, ultrasonic, electro-discharge, electro-chemical, electron beam, ionic-beam or plasma arc processes, or • Machine-tools for drilling, boring, milling, threading or tapping by removing metal, or • Machine-tools for deburring, sharpening, grinding, honing, lapping, polishing or otherwise finishing metal or cermets by means of grinding stones, abrasives or polishing products, or • Machine-tools for planing, shaping, slotting, broaching, gear cutting, gear grinding or gear finishing, sawing, cutting-off, or • Machine-tools for working by removing metal or cermets, or • Machine-tools for working stone, ceramics, concrete, asbestos-cement or like minerals or for cold working glass, or • Machine-tools for working wood, cork, bone, hard rubber, hard plastics or similar hard materials (including machines for nailing, stapling, gluing or otherwise assembling), or • Machining centers, unit construction machines (single station) or multi-station transfer machines for working metal, or • Lathes (including turning centers), for removing metal, of subheading 8486.90, or a change from any other subheading, except from subheading 8466.10 through 8466.94, and except from heading 8501 when resulting from simple assembly; or A change to parts suitable for use solely or principally with lifting, handling, loading or unloading machinery from any other good of subheading 8486.90 or from any other subheading, except from subheading 8431.39 and except from heading 8501 when resulting from simple assembly.
* * * * * * *	
8517.11–8517.69	A change to subheading 8517.13 through 8517.14 from any other subheading, except from other transceivers, other transmission apparatus or other transmission apparatus incorporating reception apparatus for radiotelephony or radiotelegraphy of subheading 8517.61 through 8517.69, or 8525.50 through 8525.60; or A change to other transmission apparatus for radiotelephony or radiotelegraphy or to other transmission apparatus incorporating reception apparatus for radiotelephony or radiotelegraphy of subheading 8517.61 through 8517.69 from any other good of subheading 8517.61 through 8517.69 or from any other subheading, except from subheading 8517.13 through 8517.14, or 8525.50 through 8525.60; or A change to other units of automatic data processing machines of subheading 8517.62 through 8517.69 from any other good of subheading 8517.62 through 8517.69 or from any other subheading, except from subheading 8504.90 or from heading 8473 or subheading 8517.71 or 8517.79 when the change is the result of simple assembly; or A change to reception apparatus for radiotelephony or radiotelegraphy of subheading 8517.69 from any other good of subheading 8517.69 or from any other subheading, except from subheading 8527.99, or A change to any other good of subheading 8517.11 through 8517.69 from any other subheading outside that group, except from facsimile machines or teleprinters of subheading 8443.31 through 8443.32, and except from subheading 8443.99 or 8517.71 through 8517.79 when that change is the result of simple assembly.

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8517.71–8517.79	A change to parts or accessories of the machines of heading 8471 not incorporating a cathode ray tube from any other good of heading subheading 8517.71 or 8517.79 or from any other subheading, except from heading 8414, 8501, 8504, 8534, 8541, or 8542 when resulting from a simple assembly, and except from heading 8473 or subheading 8443.99; or A change to antennas or antenna reflectors of a kind suitable for use with apparatus for radiotelephony or radiotelegraphy or to other parts suitable for use solely or principally with apparatus for radiotelephony or radiotelegraphy from any other good of subheading 8517.71 and 8517.79 or from any other subheading, except from heading 8529; or A change to any other good of subheading 8517.71 through 8517.79 from parts or accessories of the machines of heading 8471 not incorporating a cathode ray tube, or from antennas or antenna reflectors of a kind suitable for use with apparatus for radiotelephony or radiotelegraphy, or from other parts suitable for use solely or principally with the apparatus for radiotelephony or radiotelegraphy of subheading 8517.71 through 8517.79, or from any other heading.
*	* * * * * * *
8524.11–8524.99	A change to subheading 8524.11 from any other subheading; A change to subheading 8524.12 through 8524.19 from any other heading; A change to subheading 8524.91 from any other subheading; A change from subheading 8524.92 through 8524.99 from any other heading.
*	* * * * * * *
8525.81–8525.89	A change to subheading 8525.81 through 8525.89 from any other subheading or from any other good of subheading 8525.81 through 8525.89, except a change to video camera recorders from television cameras.
*	* * * * * * *
8528.42	A change to display units from any other subheading, except from subheading 8471.60 or 8504.40, or from heading 8473 when the change is the result of a simple assembly.
*	* * * * * * *
8528.52	A change to display units from any other subheading, except from subheading 8471.60 or 8504.40, or from heading 8473 when the change is the result of a simple assembly.
*	* * * * * * *
8528.62	A change to display units from any other subheading, except from subheading 8471.60 or 8504.40, or from heading 8473 when the change is the result of a simple assembly.
*	* * * * * * *
8539.41–8539.52	A change to subheading 8539.41 through 8539.52 from any other subheading outside that group.
*	* * * * * * *
8543.20–8543.40	A change to subheading 8543.20 through 8543.40 from any other subheading, including another subheading within that group.
8543.70	A change to subheading 8543.70 from any other subheading, except from LED modules of subheading 8539.51 and LED lamps of subheading 8539.52, except from proximity cards or tags of subheading 8523.52 and except from other machines or apparatus of subheading 8486.10 through 8486.20.
*	* * * * * * *
8548	A change to heading 8548 from any other heading, except from heading 8549.
8549	A change to heading 8549 from any other heading, except from heading 8548.
*	* * * * * * *
(p)	Section XVII: Chapters 86 through 89
*	* * * * * * *
8708.22	A change to subheading 8708.22 from any other heading.
*	* * * * * * *
8708.40	A change to parts for power trains of subheading 8708.40 from any other good of subheading 8708.40 or from any other subheading, except from parts or accessories of the goods of subheading 8708.50, 8708.80 through 8708.92, or 8708.94 through 8708.99; or A change to any other good of subheading 8708.40 from parts for power trains of subheading 8708.40, except when the change is pursuant to General Rule of Interpretation 2(a), or from any other subheading, except from parts or accessories of the goods of subheading 8708.50, 8708.80 through 8708.92, or 8708.94 through 8708.99, when the change is pursuant to General Rule of Interpretation 2(a).
*	* * * * * * *
8801–8806	A change to heading 8801 through 8806 from any other heading outside that group, except from heading 8807 when that change is pursuant to General Rule of Interpretation 2(a).
8807.10–8807.90	A change to subheading 8807.10 through 8807.90 from any other subheading, including another subheading within that group.
*	* * * * * * *
(q)	Section XVIII: Chapters through 92

HTSUS	Tariff shift and/or other requirements
*	* * * * * * *
9006.30–9006.69	A change to cameras of a kind used for recording documents on microfilm, microfiche or other microforms of subheading 9006.53 through 9006.59 from any other good of subheading 9006.53 through 9006.59 or from any other subheading; or A change to any other good of subheading 9006.53 through 9006.59 from cameras of a kind used for recording documents on microfilm, microfiche or other microforms of subheading 9006.53 through 9006.59 or from any other subheading; or A change to flashbulbs, flashcubes or the like of subheading 9006.69 from any other good of subheading 9006.69 or from any other subheading; or A change to any other good of subheading 9006.30 through 9006.69 from any other subheading, including another subheading within that group.
*	* * * * * * *
(s)	Section XX: Chapters 94 through 96
*	* * * * * * *
9401.10–9401.80	A change to subheading 9401.52 through 9401.59 from any subheading outside that group, except from subheading 9401.10 through 9401.80, subheading 9403.10 through 9403.89, and except from subheading 9401.91 through 9401.99 or 9403.91 through 9403.99 when that change is pursuant to General Rule of Interpretation 2(a); or A change to subheading 9401.10 through 9401.80 from any other subheading outside that group, except from subheading 9403.10 through 9403.89, and except from subheading 9401.91 through 9401.99 or 9403.91 through 9403.99, when that change is pursuant to General Rule of Interpretation 2(a).
9401.91–9401.99	A change to subheading 9401.91 through 9401.99 from any other heading, except from subheading 9403.91 through 9403.99.
9402	A change to heading 9402 from any other heading, except from heading 9401.10 through 9401.80 or subheading 9403.10 through 9403.89, and except from subheading 9401.91 through 9401.99 or 9403.91 through 9403.99, when that change is pursuant to General Rule of Interpretation 2(a).
9403.10–9403.89	A change to subheading 9403.10 through 9403.89 from any other subheading outside that group, except from subheading 9401.10 through 9403.89, and except from subheading 9401.91 through 9401.99 or 9403.91 through 9403.99, when that change is pursuant to General Rule of Interpretation 2(a).
9403.91–9403.99	A change to subheading 9403.91 through 9403.99 from any other heading, except from subheading 9401.91 through 9401.99.
*	* * * * * * *
9405.11–9405.69	A change to subheading 9405.11 through 9405.69 from any other subheading outside that group, except from subheading 9405.91 through 9405.99 when that change is pursuant to General Rule of Interpretation 2(a).
*	* * * * * * *
9503	A change to wheeled toys designed to be ridden by children or to dolls' carriages or dolls' strollers, parts or accessories thereof from any other chapter, except from heading 8714 when that change is pursuant to General Rule of Interpretation 2(a); or A change to dolls, whether or not dressed, from any other subheading or from any other good of heading 9503, except from skins for stuffed dolls of heading 9503; or A change to parts or accessories of dolls representing only human beings from any other heading or from any other good of heading 9503, except from toys representing animals or non-human creatures of heading 9503; or A change to electric trains, including tracks, signals and other accessories or parts thereof from any other good of heading 9503 or from any other subheading; or A change to reduced-size ("scale") model assembly kits, (excluding electric trains) or to parts or accessories thereof, from any other good of heading 9503 or from any other subheading; or A change to other construction sets and constructional toys or to parts or accessories thereof from any other good of heading 9503 or from any other subheading; or A change to toys representing animals or non-human creatures or to parts or accessories thereof from wheeled toys designed to be ridden by children, dolls' carriages, or dolls representing only human beings of heading 9503 or from any other heading; or A change to toys representing animals or non-human creatures from parts or accessories of toys representing animals or non-human creatures of heading 9503; or A change to parts or accessories of toys representing animals or non-human creatures from wheeled toys designed to be ridden by children, dolls' carriages, or dolls' strollers of heading 9503 or from any other heading, except from heading 6111 or 6209; or A change to toy musical instruments and apparatus from any other good of heading 9503 or from any other subheading; or A change to puzzles from any other good of heading 9503 or from any other subheading; or A change to other toys, put up in sets or outfits, or to other toys and models, incorporating a motor, or to other toys from any other chapter.
*	* * * * * * *

Chapter 96 Note: The country of origin of goods classified in subheading 9612.10.9010 will be determined under the provisions of § 102.21. The country of origin of goods classified in subheadings 9619.00.21 through 9619.00.79, HTSUS, will be determined under the provisions of § 102.21.

HTSUS	Tariff shift and/or other requirements
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9620.00	A change to subheading 9620.00 from any other heading or subheading, except from heading 9001 or 9002 and except from heading 8414, 8501, 8504, 8534, 8541, or 8542 when resulting from a simple assembly.
* * * * * * *	
(t)	Section XXI: Chapter 97.
9701.21–9701.99	A change to subheading 9701.21 through 9701.99 from any other subheading, including another subheading within that group.
* * * * * * *	

■ 3. In § 102.21:
■ a. Paragraph (b)(5) is amended by revising the list of tariff numbers;
■ b. Paragraph (c)(3)(ii) is revised;
■ c. Add a heading to the table following paragraph (e)(1);
■ d. Newly designated table 1 to paragraph (e)(1) is amended by:
■ i. Removing the entries for: ''4202.12.40–4204.12.80'', ''4202.22.40–4202.22.80'', ''4202.32.40–4202.32.95'', ''4202.92.15–4202.92.30'', ''4202.92.60–4202.92.90'', ''6201–6208'', ''6201–6208'', ''6209.20.5040'', ''6210–6212'', ''7019.19.15'', ''7019.19.28'', and ''7019.40–7019.59''; and
■ ii. Adding in numerical order entries for: ''4202.12.40–4202.12.89'', ''4202.22.40–4202.22.89'', ''4202.32.40–4202.32.99'', ''4202.92.15–4202.92.33'', and ''4202.92.60–4202.92.97'';
■ iii. Revising the entry for ''6201–6208''; and
■ iv. Adding in numerical order entries for ''6210–6211'', ''6212'', ''6501'', ''7019.13.15'', ''7019.13.28'', ''7019.61–7019.90'', and ''9619.00.31–9619.00.33''; and
■ e. Paragraph (e)(2) introductory text is revised.

The revisions and additions read as follows:

§ 102.21 Textile and apparel products.

* * * * *

(b) * * *

(5) * * *

3005.90
3921.12.15
3921.13.15
3921.90.2550
4202.12.40–89
4202.22.40–89
4202.32.40–99
4202.92.04–08
4202.92.15–33
4202.92.60–97
6405.20.60
6406.10.77
6406.10.90
6406.90.15
6501
6502
6504
6505.00 (except for hair-nets of subheading 6505.00)
6601.10–99
7019.13.15
7019.13.28
7019.61–90
8708.21
8804
9113.90.40
9404.90
9612.10.9010
9619.00.21–79

* * * * *

(c) * * *

(3) * * *

(ii) Except for fabrics of chapter 59 and goods of headings 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6307.10, 6307.90, 9404.90, and 9619.00.31–33 if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

* * * * *

(e) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (e)(1)

HTSUS	Tariff shift and/or other requirements
* * * * * * *	
4202.12.40–4202.12.89	A change to subheading 4202.12.40 through 4202.12.89 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.22.40–4202.22.89	A change to subheading 4202.22.40 through 4202.22.89 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.32.40–4202.32.99	A change to subheading 4202.32.40 through 4202.32.99 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
* * * * * * *	
4202.92.15–4202.92.33	A change to subheading 4202.92.15 through 4202.92.33 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.92.60–4202.92.97	A change to subheading 4202.92.60 through 4202.92.97 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
* * * * * * *	
6201–6208	(1) If the good consists of two or more component parts, a change to an assembled good of heading 6201 through 6208 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to heading 6201 through 6208 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.

TABLE 1 TO PARAGRAPH (e)(1)—Continued

HTSUS	Tariff shift and/or other requirements
*	* * * * * * *
6210–6211	(1) If the good consists of two or more component parts, a change to an assembled good of heading 6210 through 6211 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to heading 6210 through 6211 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6006, and 6217, subheading 6307.90, and subheading 9619.00.61 through 9619.00.79, and provided that the change is the result of a fabric-making process.
6212	(1) If the good is not knit to shape and consists of two or more component parts, a change to an assembled good of heading 6212 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good is not knit to shape and does not consist of two or more component parts, a change to heading 6212 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6006, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process. (3) If the good is knit to shape, a change to heading 6212 from any other heading, provided that the knit to shape components are knit in a single country, territory, or insular possession.
*	* * * * * * *
6501	(1) If the good consists of two or more components, a change to heading 6501 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to heading 6501 from any other heading, except from heading 5602, and provided that the change is the result of a fabric-making process.
*	* * * * * * *
7019.13.15	(1) If the good is of filaments, a change to subheading 7019.13.15 from any other heading, provided that the change is the result of an extrusion process. (2) If the good is of staple fibers, a change to subheading 7019.13.15 from any other subheading, except from subheading 7019.13.35, 7019.19.30 through 7019.19.91, 7019.14.00 through 7019.15.00, 7019.80.90, 7019.71.00, 7019.80.10, and 7019.90, and provided that the change is the result of a spinning process.
7019.13.28	(1) If the good is of filaments, a change to subheading 7019.13.28 from any other heading, provided that the change is the result of an extrusion process. (2) If the good is of staple fibers, a change to subheading 7019.13.28 from any other subheading, except from subheading 7019.13.35, 7019.19.30 through 7019.19.91, 7019.14.00 through 7019.15.00, 7019.80.90, 7019.71.00, 7019.80.10, and 7019.90, and provided that the change is the result of a spinning process.
7019.61–7019.90	A change to subheading 7019.61 through 7019.90 from any other subheading, provided that the change is the result of a fabric-making process.
*	* * * * * * *
9619.00.31–9619.00.33	The country of origin of a good classifiable in subheading 9619.00.31 through 9619.00.33 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

(2) For goods of HTSUS headings 6213 and 6214 and HTSUS subheadings 6117.10, 6302.22, 6302.29, 6302.53, 6302.59, 6302.93, 6302.99, 6303.92, 6303.99, 6304.19, 6304.93, 6304.99, 9404.90.85 and 9404.90.95, except for goods classified under those headings or subheadings as of cotton or of wool or consisting of fiber blends containing 16 percent or more by weight of cotton:

* * * * *

Robert F. Altneu,

Director, Regulations & Disclosure Law Division Regulations & Rulings, Office of Trade U.S. Customs and Border Protection.

[FR Doc. 2022–23329 Filed 11–14–22; 8:45 am]

BILLING CODE 9111–14–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1400

RIN 3076–AA21

Rescission of the Code of Professional Conduct for Labor Mediators

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Final rule; rescission of regulation.

SUMMARY: On April 6, 1966, the Federal Mediation and Conciliation Service (FMCS) published a final rule adopting a Code of Professional Conduct for Labor Mediators. After careful review, FMCS finds that this rule is no longer suitable for publication. Therefore, this final rule rescinds the appendix regarding the Code of Professional Conduct for Labor Mediators.

DATES: This final rule is effective November 15, 2022.

FOR FURTHER INFORMATION CONTACT: Anna Davis, Deputy General Counsel, Office of General Counsel, Federal Mediation and Conciliation Service, 250 E St. SW, Washington, DC 20427; Office/Fax/Mobile 202–606–3737; *adavis@fmcs.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

In 1964, a Code of Professional Conduct for Labor Mediators was drafted by a Federal-State Liaison Committee and approved by the Federal Mediation and Conciliation Service (FMCS) and the Association of Labor Mediation Agencies. On April 6, 1966,

at 31 FR 5423, the FMCS published a final rule entitled ''Appendix to Part 1400—Code of Professional Conduct for Labor Mediators,'' which contained the complete narrative of the Code.

After consideration and review, FMCS has concluded that this nearly sixty-year-old Code adopted by the FMCS no longer reflects the agency's values, scope of services provided by FMCS mediators, or best practices for conflict management and resolution services. Moreover, it addresses employee conduct which is purely an internal agency matter. Therefore, FMCS is issuing this final rule, which rescinds the rule on the Appendix to Part 1400—Code of Professional Conduct for Labor Mediators.

II. Final Rule

FMCS has determined that this rule is suitable for final rulemaking. The revisions to FMCS' policies and requirements surrounding mediators are purely internal matters of agency management, as well as the agency's procedure, and practice. Accordingly, FMCS is not required to engage in a notice and comment process to issue this rule under the Administrative Procedures Act, See U.S.C. 553(a)(2), 553(b)(A). Furthermore, because this rule is procedural rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule not be effective until at least 30 days after publication in the **Federal Register** is inapplicable. FMCS also finds good cause to provide an immediate effective date for this rule because it imposes no obligations on parties outside the federal government and therefore no advance notice is required to enable employers or other private parties to come into compliance.

List of Subjects in 29 CFR Part 1400

Administrative practice and procedure, Labor management relations.

For the reasons discussed in the preamble, and under the authority of 29 U.S.C. 172 and the Taft-Hartley Act of 1947, FMCS amends 29 CFR part 1400 as follows:

PART 1400—STANDARDS OF CONDUCT, RESPONSIBILITIES, AND DISCIPLINE

■ 1. The authority citation for part 1400 continues to read as follows:

Authority: E.O. 11222, 30 FR 6469, 3 CFR, 1965 Supp.; 5 CFR 735.104.

Appendix to Part 1400 [Removed]

■ 2. Remove the appendix to part 1400.

Dated: November 3, 2022.

Anna Davis,

Deputy General Counsel.

[FR Doc. 2022–24407 Filed 11–14–22; 8:45 am]

BILLING CODE 6732–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0933]

RIN 1625–AA00

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

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates: 27°48′55.07″ N, 97°13′15.94″ W; 27°48′54.99″ N, 97°13′6.74″ W; 27°48′44.46″ N, 97°13′6.86″ W; 27°48′44.54″ N, 97°13′16.06″ W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by pipelines that will be removed from the floor of the Corpus Christi Shipping Channel. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

DATES: This rule is effective from 9 a.m. through 3 p.m. on November 15, 2022. This rule will be subject to enforcement from 9 a.m. through 3 p.m.

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

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone immediately to protect personnel, vessels, and the marine environment from potential hazards created by pipeline removal operations and lack sufficient time to provide a reasonable comment period and then to consider those comments before issuing the rule.

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

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with pipeline removal operations occurring from 9 a.m. through 3 p.m. on November 15, 2022, will be a safety concern for anyone within the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°48′55.07″ N, 97°13′15.94″ W; 27°48′54.99″ N, 97°13′6.74″ W; 27°48′44.46″ N, 97°13′6.86″ W; 27°48′44.54″ N, 97°13′16.06″ W. The purpose of this rule is to ensure safety of vessels and persons on these navigable waters in the safety zone while pipelines are removed from the floor of the Corpus Christi Shipping Channel.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 9 a.m. through 3 p.m. on November 15, 2022, and will be subject to enforcement from 9 a.m. to 3 p.m. The safety zone will encompass all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°48′55.07″ N, 97°13′15.94″ W; 27°48′54.99″ N, 97°13′6.74″ W; 27°48′44.46″ N,

97°13′6.86″ W; 27°48′44.54″ N, 97°13′16.06″ W. The pipeline will be removed along the floor of the Corpus Christi Shipping Channel. No vessel or person is permitted to enter the temporary safety zone during the effective period without obtaining permission from the COTP or a designated representative, who may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450. The Coast Guard will issue Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. The temporary safety zone will be enforced for a short period of only 6 hours each day. The rule does not completely restrict the traffic within a waterway and allows mariners to request permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, and Environmental Planning, COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary safety zone for navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates: 27°48′55.07″ N, 97°13′15.94″ W; 27°48′54.99″ N, 97°13′6.74″ W; 27°48′44.46″ N, 97°13′6.86″ W; 27°48′44.54″ N, 97°13′16.06″ W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by pipeline that will be removed from the floor of the Corpus Christi Shipping Channel. It is categorically excluded from further review under paragraph L60(c) Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 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.T08–0933 to read as follows:

§ 165.T08 0933 Safety Zone; Corpus Christi Shipping Channel, Corpus Christi, TX.

(a) *Location.* The following area is a safety zone: all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates: 27°48′55.07″ N, 97°13′15.94″ W; 27°48′54.99″ N, 97°13′6.74″ W; 27°48′44.46″ N, 97°13′6.86″ W; 27°48′44.54″ N, 97°13′16.06″ W.

(b) *Effective period.* This section is effective from 9 a.m. through 3 p.m. on November 15, 2022. This section is subject to enforcement from 9 a.m. to 3 p.m.

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

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

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

Dated: November 9, 2022.

J.B. Gunning,

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

[FR Doc. 2022–24953 Filed 11–10–22; 4:15 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AR70

Vietnam Era Definition, Medal of Honor Special Pension for Surviving Spouses, and Dependency and Indemnity Compensation (DIC) Remarriage Age

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its adjudication regulations by revising the definition of the Vietnam era, extending the payment of Medal of Honor special pension to an eligible surviving spouse, and extending eligibility for dependency and indemnity compensation (DIC) to surviving spouses who remarry after age 55. These amendments incorporate legislative updates enacted by the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020. Amendments to regulations regarding the definition of Vietnam era and the retention of eligibility to DIC benefits following the remarriage of a surviving spouse after a certain age bring federal regulations into conformance with the statutory changes. Similarly, the Medal of Honor special pension regulatory amendments extend eligibility for that benefit to a surviving spouse of a Medal of Honor recipient as required by law.

DATES:

Effective date: This rule is effective November 15, 2022.

Applicability date: The provisions of this final rule shall apply to all applications for benefits pending before VA or a Federal appellate court on or after January 5, 2021, unless otherwise noted.

FOR FURTHER INFORMATION CONTACT: Eric Baltimore, Program Analyst, Pension and Fiduciary Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–632–8863 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020, Public Law 116–315, 134 Stat. 4967 (herein referred to as ''the Act''), was enacted on January 5, 2021. Sections 2001, 2003, and 2009 of the Act amended sections 101(29)(A), 1562(a), 1562(d), 1562(f)(1), 103(d)(5), and 103(d)(2)(B) of title 38, U.S.C. To incorporate these amendments, VA amends its regulations governing the definition of the Vietnam era, Medal of Honor special pension benefits for surviving spouses, and the remarriage age for surviving spouses eligible to receive DIC benefits.

Definition of Vietnam Era

Section 2001 of the Act amended 38 U.S.C. 101(29)(A) by revising the definition of Vietnam era to ''[t]he period beginning November 1, 1955, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period.'' VA amends 38 CFR 3.2 to incorporate this change.

VA administers several benefit programs, including Veterans and Survivors Pension, in which benefits are payable to veterans and their survivors based, in part, on whether the veteran served during a period of war, including the Vietnam era. See 38 U.S.C. 101(11) (defining period of war). For example, eligibility for pension benefits requires that the veteran served in the active military, naval, air, or space service—(1) for ninety days or more during a period of war; (2) during a period of war and was discharged or released from such service for a service-connected disability; (3) for a period of ninety consecutive days or more and such period began or ended during a period of war; or (4) for an aggregate of ninety days or more in two or more separate periods of service during more than one period of war. *See* 38 U.S.C. 1521(j). The definition of the Vietnam era also impacts numerous other VA benefits tied to service during a period of war, to include disability compensation under Chapter 11, and DIC under Chapter 13.

Previously, the Vietnam era was defined as ''[t]he period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period.'' 38 U.S.C. 101(29) (2020). Under the amended definition of the Vietnam era, which now begins on November 1, 1955, additional veterans who served in the Republic of Vietnam and their eligible survivors now qualify for the above-mentioned benefits.

VA amends 38 CFR 3.2 to incorporate the new statutory definition of Vietnam era. Because the Act did not amend the definition of Vietnam era in 38 U.S.C. 1831(3), that definition remains unchanged for purposes of administering benefits under Chapter 18 of Title 38, United States Code. Accordingly, VA is not amending the definition of Vietnam veteran in 38 CFR 3.814 and 3.815.

Medal of Honor Special Pension for Surviving Spouses

Section 2003 of the Act amended 38 U.S.C. 1562 to expand entitlement for Medal of Honor special pension (MOHP) to eligible surviving spouses. If a veteran dies while eligible for MOHP or if a veteran is posthumously awarded a Medal of Honor for distinguished military service by the Secretary of the military branch in which the veteran served, then the veteran's eligible surviving spouse is now entitled to receive the MOHP benefit. VA amends 38 CFR 3.802 to incorporate this change.

Prior to the Act, MOHP was only awarded to veterans or servicemembers whose name had been entered on the Army, Navy, Air Force, and/or Coast Guard Medal of Honor Rolls, with minor revisions since its original establishment on September 2, 1958. *See* Public Law 85–857, 72 Stat. 1140. The Act extended eligibility for MOHP to surviving spouses of veterans whose name has been recorded on a Medal of Honor Roll of the Army, Navy, Air Force, and/or Coast Guard, either while the veteran was living or posthumously. A surviving spouse, for MOHP purposes, must satisfy the definition of surviving spouse in 38 U.S.C. 101(3), implemented by 38 CFR 3.50 through 3.60, including the requirement that the individual was married to a Medal of Honor recipient at the time of the veteran's death. In addition, the surviving spouse must meet the special section 1562 requirement that the marriage lasted for one year or more prior to the veteran's death, or for any period of time if a child was born of the marriage or was born to the surviving spouse and veteran before the marriage. See 38 U.S.C. 1562(a)(2)(B). VA amends 38 CFR 3.802(c) to incorporate the statutory eligibility criteria.

VA also amends § 3.55 to incorporate amendments to 38 U.S.C. 103(d), regarding exceptions to the remarriage bar in section 101(3). See Act, section 2003(b)(2)(B); 38 CFR 3.50(b)(2). The amendment to section 103(d) provides that, in addition to any other applicable exceptions, the surviving spouse is not barred from entitlement to MOHP due to (a) remarriage terminated by death or divorce unless the Secretary determines that the divorce was secured through fraud or collusion; (b) remarriage after age 57; or (c) living with another person and holding himself or herself out openly to the public as that person's spouse since the death of the veteran and after September 19, 1962, if such behavior has ceased. See 38 U.S.C. 103(d)(2)(A),(B), (d)(3), and (d)(5)(E). VA adds § 3.55(a)(11) to reflect these changes.

The Act also provides that MOHP benefits shall not be paid to a surviving spouse who is in receipt of benefits under 38 U.S.C. 1311 (DIC benefits for service-connected death) or 1318 (benefits for survivors of certain veterans rated totally disabled at time of death). See Act, section 2003(b)(1)(B) (adding 38 U.S.C. 1562(a)(2)(C)). This exclusion is based on actual receipt of MOHP benefits, not on eligibility. In addition, section 1562(g) provides that a person entitled to MOHP may elect not to receive it. As a result, VA will allow a surviving spouse to make an election between MOHP and DIC benefits if eligible for both, as reflected in the amendment to 38 CFR 3.802(c)(3) and the addition of 38 CFR 3.702(g). Additionally, the Act amends section 1562(d) to provide that a surviving spouse shall receive no more than one MOHP, even if they were married to more than one person who has been awarded a Medal of Honor. See Act, section 2003(b)(2)(A)(i) (amending 38 U.S.C. 1562(d)). VA amends 38 CFR 3.802(b) to incorporate this limitation.

Section 2003(b)(3) of the Act precludes MOHP payments to a surviving spouse for time periods prior to January 5, 2021, the date of enactment. See 38 U.S.C. 1562, note. This limitation applies without qualification to ''payment of pension'' under section 1562 to a surviving spouse. *Id.* Accordingly, the limitation applies to lump sum payments under section 1562(f) in the case of a posthumous entry of the veteran on a Medal of Honor Roll, because section 1562(f) payments are ''special pension'' payments per section 1562(f)(2). This limitation is reflected in 38 CFR 3.802(c)(4) and (d)(2).

VA revises 38 CFR 3.802(a) to reflect that the Coast Guard official who certifies a veteran's acceptance on the Coast Guard Medal of Honor Role is ''the Secretary of the Department in which the Coast Guard is operating,'' rather than the Secretary of the Department of Transportation. This technical amendment aligns the language of the regulation with the statute governing military Honor Role certifications, 10 U.S.C. 1134a. Section 1134a(a) references the ''Secretary of the Department in which the Coast Guard is operating,'' in accordance with the realignment of the Coast Guard in The Homeland Security Act of 2002 (Pub. L. 107–296, section 888, 116 Stat. 2135), and the current language was incorporated into section 1134a in 2013. See Public Law 113–66, section 563,127 Stat. 767.

VA also revises 38 CFR 3.802(b) to conform the language specifying the beginning date of MOHP payments to the current language of 38 U.S.C. 1562(a)(1). The beginning date of MOHP payments in the regulation is changed from the date VA received the application to ''the date on which the person's name is entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor Roll.'' This change aligns the regulation with the amendments to 38 U.S.C. 1562(a)(1), effective December 26, 2013, made by the National Defense Authorization Act for Fiscal Year 2014 (Pub. L. 113–66, section 563(b)(1)(D), 127 Stat. 767), which has been implemented to date through internal VA adjudication guidance. This regulation change is applicable with respect to a Medal of Honor awarded on or after December 26, 2013 (the enactment date of Pub. L. 113–66), to parallel the applicability date of the statutory change. See Public Law 113–66, section 553(d).

In sum, in order to align the regulation for adjudicating claims with amended 38 U.S.C. 1562, VA amends 38 CFR 3.802 and 3.55 to incorporate MOHP eligibility for surviving spouses under the parameters established by the Act. The changes include adding a definition of an eligible surviving spouse for MOHP purposes, provisions concerning payment and eligibility dates, and other amendments to conform regulatory text with current legislative text.

DIC Remarriage Age Change

Section 2009 of the Act amended 38 U.S.C. 103 to expand surviving spouse eligibility for DIC benefits, where the surviving spouse has remarried following the death of the veteran. Whereas prior to the amendment, remarriage after the age of 57 was not a bar to DIC benefits, the amendment lowers that age to 55. VA amends 38 CFR 3.55 to implement the statutory change.

DIC benefits are generally payable to a surviving spouse, child, or parent of a veteran whose death was service-connected and occurred on or after January 1, 1957, or before January 1, 1957, if the survivor elects to receive DIC in lieu of Death Compensation. This benefit may also be payable due to a veteran's death which occurred following a continuously rated totally disabling condition for the period required by 38 U.S.C.1318. DIC benefits are paid to an eligible surviving spouse defined by 38 CFR 3.50 as an individual who lived with the veteran continuously from the date of marriage to the date of the veteran's death and

has not remarried since the death of the veteran, except in certain circumstances as provided in 38 CFR 3.55. If an individual ceases to be a surviving spouse due to remarriage, DIC is generally discontinued effective the last date of the month prior to the remarriage. 38 U.S.C. 5112(b)(1). However, Congress created an exception to this rule in 2003, providing that remarriage after age 57 does not bar receipt of DIC to otherwise eligible surviving spouses. Public Law 108–183, section 101 (Veterans Benefits Act of 2003). The Act lowers this age to 55, effective January 5, 2021.

The Act's expansion of DIC liberalizes the benefit criteria. A liberalizing VA law generally gives rise to a new benefit claim for those impacted by the change. *Routen* v. *West,* 142 F.3d 1434 (Fed. Cir. 1998); *Spencer* v. *Brown,* 17 F.3d 368, 372 (Fed. Cir. 1994) (''[t]he applicant's later claim, asserting rights which did not exist at the time of the prior claim, is necessarily a different claim''). A claimant previously denied DIC based on remarriage may, if the statutory amendment impacts eligibility, file a new application for the benefit without the need to supply new and relevant evidence. *Ortiz* v. *McDonough,* 6 F.4th 1267, 1270–71 (Fed. Cir. 2021). For example, a claimant denied DIC prior to the Act based on remarriage between the ages of 55 and 57 generally may, after January 5, 2021, file a new claim. The effective date of an award based on the Act's change in DIC eligibility criteria is governed by special provisions applicable to changes in law. *Id.* at 1270–71. Under 38 U.S.C. 5110(g) and 38 CFR 3.114, the effective date depends on a number of factors, but generally may not be earlier than January 5, 2021, the effective date of the Act.

The exception for remarriage after age 55 applies regardless of when the remarriage occurred, whether before, on, or after January 5, 2021. The Act does not limit the exception to remarriages occurring after the Act's effective date of January 5, 2021. Similarly, the amendments to 38 CFR 3.55 do not contain such a limitation. We note that the Act contrasts in this regard with the Veterans Benefits Act of 2003, which first established the age-related remarriage exception for DIC benefits. Public Law 108–183. There, Congress specified that claimants whose remarriage qualified for the new statutory exception, but occurred before that law was enacted, had one year to file a new claim in order to benefit from the rule. Public Law 108–183, section 101(e). The Act contains no filing limitation. Thus, for DIC applications filed after January 5, 2021, the filing limitation contained in the Veterans Benefits Act of 2003 is not relevant. Even if that limitation previously barred a claimant from DIC, it would not bar a new application for DIC benefits filed after January 5, 2021. Nothing in the Act, however, creates the basis for a claim of clear and unmistakable error in a VA claim that was finally adjudicated prior to January 5, 2021. *See, e.g. George* v. *McDonough,* 142 S. Ct. 1953 (2022).

In order to align the regulation for adjudicating claims with amended 38 U.S.C. 103, VA amends 38 CFR 3.55 to explicitly provide that an eligible surviving spouse that remarries after age 55 (irrespective if said marriage took place before, on, or after January 5, 2021), is not barred from entitlement to DIC benefits.

Administrative Procedure Act

The Secretary of Veterans Affairs has found that there is good cause to publish this rule without opportunity for public comment under the provisions of 5 U.S.C. 553(b)(B), allowing an exception where an agency finds that notice and comment is ''impractical, unnecessary, or contrary to the public interest.'' The Act liberalizes specific VA benefits under specific mandatory parameters, as outlined above, and is self-implementing. This rule simply conforms VA's regulations to incorporate the new statutory standards, without creation of rules beyond the plain language of the statute or the exercise of substantive policy discretion. To date, the new standards are incorporated only in internal agency adjudication guidance. Thus, while VA recognizes generally that the public has an interest in the opportunity to comment, in this case notice and comment rulemaking is unnecessary and would delay conformance of VA regulations to the clear terms of the amended statutes.

The Secretary has also found that a 30-day delayed effective date is not required under 5 U.S.C. 553(d), which excepts ''(1) a substantive rule which 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.'' Because this rule liberalizes VA benefits in accordance with statutory changes that are already in effect, the Secretary finds that a delayed effective date is not required pursuant to section 553(d)(1) and (3).

For the foregoing reasons, the Secretary of Veterans Affairs is issuing this rule as a final rule with an immediate effective date.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Paperwork Reduction Act

Although this final rule contains collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), there are no provisions associated with this rulemaking constituting any new collection of information or any revisions to the existing collection of information. The collection of information for 38 CFR 3.55 is currently approved by the Office of Management and Budget (OMB) and has been assigned OMB control 2900–0495.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, is not applicable to this rulemaking because notice of proposed rulemaking is not required. 5 U.S.C. 601(2), 603(a), 604(a).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Assistance Listing

The Assistance Listing numbers and titles for the programs affected by this document are: 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children;

64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on November 3, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, VA amends 38 CFR part 3 as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.2 by revising paragraph (f) to read as follows:

§ 3.2 Periods of war.

* * * * *

(f) *Vietnam era.* The period beginning on November 1, 1955, and ending on May 7, 1975, inclusive, in the case of a veteran who served in the Republic of Vietnam during that period. The period beginning on August 5, 1964, and ending on May 7, 1975, inclusive, in all other cases.

(Authority: 38 U.S.C. 101(29))

* * * * *

■ 3. Amend § 3.55 by:
■ a. Removing the heading from paragraph (a)(9);
■ b. Adding paragraph (a)(9)(iii);
■ c. Revising paragraph (a)(10); and
■ d. Adding paragraph (a)(11).

The revision and additions read as follows:

§ 3.55 Reinstatement of benefits eligibility based upon terminated marital relationships.

(a) * * *

(9) * * *

(iii) The remarriage of a surviving spouse after the age of 55 (at any time) shall not bar the furnishing of benefits under 38 U.S.C. chapter 13 to such person as the surviving spouse of the veteran.

(10)(i) On or after January 1, 2004, the remarriage of a surviving spouse after the age of 57 shall not bar the furnishing of benefits relating to medical care for survivors and dependents under 38 U.S.C. 1781, educational assistance under 38 U.S.C. chapter 35, or housing loans under 38 U.S.C. chapter 37, subject to the limitation in paragraph (a)(10)(ii) of this section.

(ii) A surviving spouse who remarried after the age of 57, but before December 16, 2003, may be eligible for medical care for survivors and dependents under 38 U.S.C. 1781, educational assistance under 38 U.S.C. chapter 35, or housing loans under 38 U.S.C. chapter 37 pursuant to paragraph (a)(10)(i) of this section only if the application for such benefits was received by VA before December 16, 2004.

(Authority: 38 U.S.C. 103)

(11) A surviving spouse will not be barred from benefits relating to Medal of Honor special pension under 38 U.S.C. 1562(a)(2) due to:

(i) Remarriage after the age of 57;

(ii) Remarriage terminated by death or divorce, unless the Secretary determines that the divorce or annulment was secured through fraud or collusion; or

(iii) Having lived with another person and held himself or herself out openly to the public as the spouse of such other person since the death of the veteran and after September 19, 1962, if he or she ceases living with such other person and holding himself or herself out openly to the public as the other person's spouse.

(Authority: 38 U.S.C. 103(d)(2) and 38 U.S.C. 103(d)(3))

* * * * *

■ 4. Amend § 3.702 by revising paragraph (d)(1) and adding paragraph (g) to read as follows:

§ 3.702 Dependency and indemnity compensation.

* * * * *

(d) * * *

(1) Except as noted in paragraphs (d)(2) and (g) of this section, an election to receive dependency and indemnity compensation is final and the claimant may not thereafter reelect death pension or compensation in that case. An election is final when the payee (or the payee's fiduciary) has negotiated one check for this benefit or when the payee dies after filing an election but prior to negotiation of a check.

* * * * *

(g) *Medal of Honor pension.* A surviving spouse who qualifies for dependency and indemnity compensation under 38 U.S.C. 1311 or 1318 may, by notifying the Secretary in writing, elect to receive instead Medal of Honor pension, if entitled to such pension. See also § 3.802(c)(2) and (3).

(Authority: 38 U.S.C. 1562(a)(2)(C))

* * * * *

■ 5. Revise § 3.802 to read as follows:

§ 3.802 Medal of Honor.

(a) The Secretary of the Department of the Army, the Department of the Navy, the Department of the Air Force, or the Department in which the Coast Guard is operating will determine the eligibility of applicants to be entered on the Medal of Honor Roll and will deliver to the Secretary of the Department of Veterans Affairs a copy of each certificate issued in which the right of the person named in the certificate to the special pension is set forth. The special pension will be authorized on the basis of such certification. A surviving spouse may be eligible for special pension in accordance with paragraph (c) of this section.

(Authority: 10 U.S.C. 1134a; 38 U.S.C. 1562)

(b) An award of special pension at the monthly rate specified in 38 U.S.C. 1562 will be made beginning as of the date on which the person's name is entered on the Army, Navy, Air Force, and/or Coast Guard Medal of Honor Roll. The special pension will be paid in addition to all other payments under laws of the United States. However, a person awarded more than one Medal of Honor, or a person married to more than one person who has been awarded a Medal of Honor, may not receive more than one special pension. A person who is entitled to special pension under paragraph (a) of this section may elect not to receive special pension by notifying the Secretary of such election in writing.

(Authority: 38 U.S.C. 1562)

(c) Except as provided in paragraphs (c)(1) and (2) of this section, the Secretary shall pay special pension under this section to the surviving

spouse (as defined in § 3.50(b)) of a person whose name has been entered on the Army, Navy, Air Force, and/or Coast Guard Medal of Honor Roll and a copy of whose certificate has been delivered to the Secretary under 10 U.S.C. 1134a(d).

(1) No special pension shall be paid to a surviving spouse of a person under this section unless such surviving spouse was married to such person—

(i) For one year or more prior to the veteran's death; or

(ii) For any period of time if a child was born of the marriage, or was born to them before the marriage.

(2) No special pension shall be paid to a surviving spouse of a person under this section if such surviving spouse is receiving dependency and indemnity compensation under 38 U.S.C. 1311 or 1318.

(3) A surviving spouse who qualifies for Medal of Honor pension may, by notifying the Secretary in writing, elect to receive instead dependency and indemnity compensation under 38 U.S.C. 1311 or 1318, if entitled to such compensation. See also § 3.702(g).

(4) Special pension, including any lump sum payment under paragraph (d) of this section, may only be paid to a surviving spouse for months beginning after January 5, 2021.

(Authority: 38 U.S.C. 1562 and note)

(d)(1) VA will pay to each veteran or service member who is receiving or who in the future receives Medal of Honor pension a retroactive lump sum special pension payment equal to the total amount of Medal of Honor pension that person would have received during the period beginning the first day of the month after the date of the event for which the veteran earned the Medal of Honor and ending on the last day of the month preceding the month in which pension was awarded under paragraphs (b) and (c) of this section.

(2) VA will calculate the veteran's or service member's lump sum payment using the monthly Medal of Honor pension rates in effect from the first day of the month after the date of the event for which the veteran or service member earned the Medal of Honor, to the last day of the month preceding the month in which the individual was initially awarded the Medal of Honor pension under paragraph (b) of this section. VA will not make a retroactive lump sum payment under this paragraph (d)(2) before October 1, 2003.

(Authority: 38 U.S.C. 1562(f))

(e) In the case of a posthumous entry on a qualifying Medal of Honor Roll, VA will pay to each surviving spouse who is receiving or who in the future receives Medal of Honor pension under paragraph (c) of this section a retroactive lump sum payment using the monthly Medal of Honor pension rates in effect from the first day of the month after the date of the event for which the veteran or service-member earned the Medal of Honor, to the last day of the month preceding the month in which the surviving spouse was initially awarded the Medal of Honor pension. VA will not make a retroactive posthumous lump sum payment under this paragraph (e) for periods before February 1, 2021.

(Authority: 38 U.S.C. 1562(f) and 1562 note)

[FR Doc. 2022–24416 Filed 11–14–22; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2022–0295; FRL–10162–03–R5]

Air Plan Approval; Michigan; Revisions to Part 1 and 2 Rules; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the receipt of an adverse comment, the Environmental Protection Agency (EPA) is withdrawing the September 27, 2022, direct final rule approving revisions to Michigan Air Pollution Control Rules Part 1 Definitions, and Part 2 Air Use Approval for inclusion in the Michigan State Implementation Plan (SIP) and the removal of rules from the SIP that are part of Michigan's title V Renewable Operating Permit program, and rules that have been moved to other sections of the Michigan Administrative Code and approved into the Michigan SIP. EPA will address the comment in a subsequent final action based upon the proposed action also published on September 27, 2022. EPA will not institute a second comment period on this action.

DATES: As of November 15, 2022, EPA withdraws the direct final rule published at 87 FR 58453 on September 27, 2022.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, Environmental Engineer, Air Permits Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0671, *Blathras.constantine@epa.gov.* The EPA Region 5 office 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.

SUPPLEMENTARY INFORMATION: On September 27, 2022, the EPA published a direct final rule (87 FR 58453). The State of Michigan submitted this revision as a modification to the SIP on March 22, 2022. In the direct final rule, EPA stated that if adverse comments were submitted by October 27, 2022, the rule would be withdrawn and not take effect. On October 27, 2022, EPA received a comment. EPA believes this comment is adverse and, therefore, EPA is withdrawing the direct final rule. EPA will address the comment in a subsequent final action based upon the proposed action also published on September 27, 2022 (87 FR 58471). EPA will not institute a second comment period on this action.

List of Subjects in 40 CFR Part 52

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

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

Dated: November 4, 2022.

Debra Shore,

Regional Administrator, Region 5.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ Accordingly, the amendment to 40 CFR 52.1170 published in the **Federal Register** on September 27, 2022 (87 FR 58453) is withdrawn as of November 15, 2022.

[FR Doc. 2022–24688 Filed 11–14–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R01–OAR–2021–0790; FRL–9265–02–R1]

Outer Continental Shelf Air Regulations; Consistency Update for Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is updating a portion of the Outer Continental Shelf (OCS) Air

Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by the Clean Air Act. The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which Massachusetts is the designated COA. The Commonwealth of Massachusetts' requirements discussed in this document will be incorporated by reference into the Code of Federal Regulations and listed in the appendix to the Federal OCS air regulations.

DATES: This rule is effective on December 15, 2022. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of December 15, 2022.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2021–0790. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* 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 at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: CareyAnne Howlett, Air and Radiation Division, U.S. Environmental Protection Agency, EPA Region 1, U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA 02109, (617) 918–1702, *Howlett.careyanne@epa.gov.*

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

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I. Background and Purpose

On September 4, 1992, the EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain Federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Clean Air Act (CAA). The regulations at 40 CFR part 55 apply to all OCS sources offshore of the states except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the CAA requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that the EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

On November 23, 2021 (86 FR 66509), the EPA published a notice of proposed rulemaking (NPRM) proposing to incorporate various Massachusetts air pollution control requirements into 40 CFR part 55. Pursuant to 40 CFR 55.12, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent (NOI) under 40 CFR 55.4; or (3) when a state or local agency submits a rule to the EPA to be considered for incorporation by reference in 40 CFR part 55. EPA's NPRM was initiated in response to the submittal of an NOI on September 9, 2021 by Sunrise Wind, LLC. However, EPA also received an NOI on November 5, 2021 from Revolution Wind, LLC, an NOI on January 28, 2022 from New England Wind, LLC, and an NOI on May 31, 2022 from Mayflower Wind Energy, LLC. In accordance with 40 CFR 55.5, Massachusetts is the designated COA for each of these projects.

Upon receipt of the subsequent NOI's from Revolution Wind, LLC, New England Wind, LLC, and Mayflower Wind Energy, LLC, EPA conducted a consistency review in accordance with regulations at 40 CFR 55.12. Since EPA's November 23, 2021 NPRM, Massachusetts revised the regulations at 310 CMR 7.00 (Statutory Authority; Legend; Preamble; Definitions) and 310 CMR 7.40 (Low Emission Vehicle Program), effective December 30, 2021.[2] EPA previously determined that the regulations at 310 CMR 7.40 (Low Emission Vehicle Program) were not applicable to OCS sources and did not propose to incorporate this section of 310 CMR 7.00 into part 55 as part of the November 23, 2021 NPRM. Although EPA's NPRM proposed to incorporate by reference the definitions located at 310 CMR 7.00 (Statutory Authority; Legend; Preamble; Definitions), Massachusetts Department of Environmental Protection's (MassDEP's) most recent revisions to 310 CMR 7.00 (Statutory Authority; Legend; Preamble; Definitions) were related to the amendments to the regulations at 310 CMR 7.40 (Low Emission Vehicle Program). EPA has reviewed the recent amendments to the Massachusetts regulations at 310 CMR 7.00 (Statutory Authority; Legend; Preamble; Definitions) and determined that these changes are non-substantive revisions as they relate to OCS sources, and that it is not necessary to propose an additional consistency update at this time. Therefore, this final action will incorporate by reference the Massachusetts regulations at 310 CMR 7.00 that were effective March 5, 2021 as proposed in the NPRM. In addition, this final action will satisfy EPA's obligation under § 55.12 to conduct a consistency review for the subsequent NOI's received from Revolution Wind, LLC, New England Wind, LLC, Mayflower Wind Energy, LLC.

The EPA reviewed the rules for inclusion in 40 CFR part 55 to ensure that they are rationally related to the attainment or maintenance of Federal or state ambient air quality standards and compliance with part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are potentially applicable to OCS sources. *See* 40 CFR 55.1. The EPA has also evaluated the rules to ensure they are not arbitrary or capricious. *See* 40 CFR 55.12(e). In addition, the EPA has excluded administrative or procedural rules,[3] and requirements that regulate

[1] The reader may refer to the notice of proposed rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792), for further background and information on the OCS regulations.

[2] The revised regulations to 310 CMR 7.00 and 310 CMR 7.40 are available online at *https://www.mass.gov/regulations/310-CMR-700-air-pollution-control#recently-promulgated-amendments.*

[3] Each COA which has been delegated the authority to implement and enforce part 55 will use its administrative and procedural rules as onshore. However, in those instances where the EPA has not delegated authority to implement and enforce part 55, the EPA will use its own administrative and

Continued

toxics which are not related to the attainment and maintenance of Federal and state ambient air quality standards.

Section 328(a) of the CAA requires that the EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. This limits the EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents the EPA from making substantive changes to the requirements it incorporates. As a result, the EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of the EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Consistency updates may result in the inclusion of state or local rules or regulations into 40 CFR part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by the EPA for inclusion in the SIP.

The specific requirements of the consistency update and the rationale for EPA's proposed action are explained in the November 23, 2021 NPRM. No comments were received on the NPRM.

II. Final Action

The EPA is taking final action to incorporate the rules potentially applicable to OCS sources for which the Commonwealth of Massachusetts will be the COA. The rules that the EPA is taking final action to incorporate are applicable provisions of: (1) 310 CMR 4.00: Timely Action Schedule and Fee Provisions; (2) 310 CMR 6.00: Ambient Air Quality Standards for the Commonwealth of Massachusetts; and (3) 310 CMR 7.00: Air Pollution Control, as amended through March 5, 2021. The rules that EPA is taking final action to incorporate will replace the rules previously incorporated into 40 CFR part 55 for Massachusetts. This action will have no effect on the provisions of 310 CMR 8.00 that were not subject to changes by Massachusetts and were also previously incorporated by reference into part 55 through EPA's November 13, 2018 rulemaking. *See* 83 FR 56259; November 13, 2018.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of ''Commonwealth of Massachusetts Requirements Applicable to OCS Sources,'' dated March 5, 2021, which provides the text of the MassDEP air rules in effect as of March 5, 2021 that would apply to OCS source. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore air pollution control requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. *See* 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, the EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the CAA. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy direction by the EPA. 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);
- 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 Clean Air Act; 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), 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, nor does it impose substantial direct compliance costs on tribal governments or preempt tribal law.

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 January 17, 2023. 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).)

procedural requirements to implement the substantive requirements. *See* 40 CFR 55.14(c)(4).

This action does not impose any new information collection burden under the Paperwork Reduction Act. *See* 44 U.S.C 3501. The Office of Management and Budget (OMB) has previously approved the information collection activities contained in the existing regulation at 40 CFR part 55 and, by extension, this update to part 55, and has assigned OMB control number 2060–0249.[4] This action does not impose a new information burden under the Paperwork Reduction Act because this action only updates the state rules that are incorporated by reference into 40 CFR part 55, appendix A.

List of Subjects in 40 CFR Part 55

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

Dated: November 4, 2022.

David Cash,

Regional Administrator, EPA Region 1.

Part 55 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

■ 1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising paragraph (e)(11)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(11) * * *

(i) * * *

(A) Commonwealth of Massachusetts Requirements Applicable to OCS Sources, March 5, 2021.

* * * * *

■ 3. Appendix A to part 55 is amended by revising paragraph (a)(1) under the heading ''Massachusetts'' to read as follows:

[4] OMB's approval of the information collection requirement (ICR) can be viewed at *www.reginfo.gov.*

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

Massachusetts

(a) * * *

(1) The following Commonwealth of Massachusetts requirements are applicable to OCS Sources, March 5, 2021, Commonwealth of Massachusetts—Department of Environmental Protection.

The following sections of 310 CMR 4.00, 310 CMR 6.00, 310 CMR 7.00 and 310 CMR 8.00:

310 CMR 4.00: Timely Action Schedule and Fee Provisions

Section 4.01: Purpose, Authority and General Provisions (Effective 5/1/2020)
Section 4.02: Definitions (Effective 5/1/2020)
Section 4.03: Annual Compliance Assurance Fee (Effective 5/1/2020)
Section 4.04: Permit Application Schedules and Fee (Effective 5/1/2020)
Section 4.10: Appendix: Schedules for Timely Action and Permit Application Fees (Effective 5/1/2020)
310 CMR 6.00: Ambient Air Quality Standards for the Commonwealth of Massachusetts
Section 6.01: Definitions (Effective 6/14/2019)
Section 6.02: Scope (Effective 6/14/2019)
Section 6.03: Reference Conditions (Effective 6/14/2019)
Section 6.04: Standards (Effective 6/14/2019)

310 CMR 7.00: Air Pollution Control

Section 7.00: Statutory Authority; Legend; Preamble; Definitions (Effective 3/5/2021)
Section 7.01: General Regulations to Prevent Air Pollution (Effective 3/5/2021)
Section 7.02: U Plan Approval and Emission Limitations (Effective 3/5/2021)
Section 7.03: U Plan Approval Exemptions: Construction Requirements (Effective 3/5/2021)
Section 7.04: U Fossil Fuel Utilization Facilities (Effective 3/5/2021)
Section 7.05: U Fuels All Districts (Effective 3/5/2021)
Section 7.06: U Visible Emissions (Effective 3/5/2021)
Section 7.07: U Open Burning (Effective 3/5/2021)
Section 7.08: U Incinerators (Effective 3/5/2021)
Section 7.09: U Dust, Odor, Construction and Demolition (Effective 3/5/2021)
Section 7.11: U Transportation Media (Effective 3/5/2021)
Section 7.12: U Source Registration (Effective 3/5/2021)
Section 7.13: U Stack Testing (Effective 3/5/2021)
Section 7.14: U Monitoring Devices and Reports (Effective 3/5/2021)
Section 7.18: U Volatile and Halogenated Organic Compounds (Effective 3/5/2021)
Section 7.19: U Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NO_X) (Effective 3/5/2021)
Section 7.24: U Organic Material Storage and Distribution (Effective 3/5/2021)
Section 7.25: U Best Available Controls for Consumer and Commercial Products (Effective 3/5/2021)
Section 7.26: Industry Performance Standards (Effective 3/5/2021)
Section 7.60: U Severability (Effective 3/5/2021)
7.70: Massachusetts CO Budget Trading Program (Effective 3/5/2021)
7.71: Reporting of Greenhouse Gas Emissions (Effective 3/5/2021)
7.72: Reducing Sulfur Hexafluoride Emissions from Gas-insulated Switchgear (Effective 3/5/2021)
Section 7.00: Appendix A (Effective 3/5/2021)
Section 7.00: Appendix B (Effective 3/5/2021)
Section 7.00: Appendix C (Effective 3/5/2021)

310 CMR 8.00: The Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies

Section 8.01: Introduction (Effective 3/9/2018)
Section 8.02: Definitions (Effective 3/9/2018)
Section 8.03: Air Pollution Episode Criteria (Effective 3/9/2018)
Section 8.04: Air Pollution Episode Potential Advisories (Effective 3/9/2018)
Section 8.05: Declaration of Air Pollution Episodes and Incidents (Effective 3/9/2018)
Section 8.06: Termination of Air Pollution Episodes and Incident Emergencies (Effective 3/9/2018)
Section 8.07: Emission Reductions Strategies (Effective 3/9/2018)
Section 8.08: Emission Reduction Plans (Effective 3/9/2018)
Section 8.15: Air Pollution Incident Emergency (Effective 3/9/2018)
Section 8.30: Severability (Effective 3/9/2018)

* * * * *

[FR Doc. 2022–24661 Filed 11–14–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 365, 387 and 390

[Docket No. FMCSA–2020–0188]

Applicability of the Registration, Financial Responsibility, and Safety Regulations to Motor Carriers of Passengers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Interpretive rule.

SUMMARY: This interpretive rule adds appendices to the Federal Motor Carrier Safety Regulations (FMCSRs) to explain existing statutes and regulations FMCSA administers related to: the applicability of the FMCSRs, including the financial

responsibility regulations, to motor carriers of passengers operating in interstate commerce, including limitations on such applicability based on characteristics of the vehicle operated or the scope of operations conducted; and the applicability of commercial operating authority registration based on the Agency's jurisdiction over motor carriers of passengers, regardless of vehicle characteristics, when operating for-hire in interstate commerce. Under certain conditions, motor carriers performing intrastate movements of passengers may still be operating in interstate commerce and, unless otherwise exempt, are subject to applicable FMCSA statutory and regulatory requirements. FMCSA wants motor carriers of passengers and the public to be aware of the applicable regulations and requirements.

DATES: This interpretive rule is effective November 15, 2022. Comments on this interpretive rule must be received on or before January 17, 2023.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2016–0352 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov/docket/FMCSA-2016-0352/document*. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., 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.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Chandler, Team Leader, Passenger Carrier Safety Division, (202) 366–5763, *peter.chandler@dot.gov*. FMCSA office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this interpretive rule (FMCSA–2020–0188), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2020-0188/document,* click on this interpretive rule, click ''Comment,'' and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 United States Code (U.S.C.) 552), CBI is exempt from public disclosure. If your comments responsive to the interpretive rule contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the interpretive rule, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the interpretive rule. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2020-0188/document* and choose the document to review. To view comments, click this interpretive rule, then 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., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy

In accordance with 49 U.S.C. 31315(b), 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 *https://www.transportation.gov/privacy,* the comments are searchable by the name of the submitter.

II. Abbreviations

APA Administrative Procedure Act
CDL Commercial Driver's License
CMV Commercial Motor Vehicle
CMVSA Commercial Motor Vehicle Safety Act of 1986
DOT Department of Transportation
E.O. Executive Order
FHWA Federal Highway Administration
FMCSA Federal Motor Carrier Safety Administration
FR Federal Register
FMCSRs Federal Motor Carrier Safety Regulations

GVW Gross Vehicle Weight
GVWR Gross Vehicle Weight Rating
ICC Interstate Commerce Commission
ICCTA ICC Termination Act of 1995
IRS Internal Revenue Service
MCSA Motor Carrier Safety Act of 1984
MCSIA Motor Carrier Safety Improvement Act of 1999
OMB Office of Management and Budget
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code

III. Background

FMCSA employs this interpretive rule to explain the statutes and regulations the Agency administers and provide guidance on how they apply to specific sets of facts. An interpretive rule does not alter the meaning of a regulation.

Under section 5203(a)(2)(A) and (d) of the Fixing America's Surface Transportation Act (Pub. L. 114–94, 129 Stat. 1312, 1535, Dec. 4, 2015), documents that provide an interpretation of a regulation must be published on a publicly accessible internet website of the Department on the date of issuance. Accordingly, FMCSA will post this interpretive rule to the FMCSA Guidance Portal at *https://www.fmcsa.dot.gov/guidance* and to the Agency's website. It will be reviewed by the Agency no later than 5 years after it is posted. (See sections 5203(a)(3) and (c)). The Agency will consider at that time whether the guidance should be withdrawn, reissued for another period up to 5 years, or incorporated into the FMCSRs.

IV. Legal Basis

This interpretive rule explains certain provisions of 49 CFR parts 365, 387, and 390. The statutory basis for those parts is listed in the authority citation at the end of the table of contents of each part. The Agency's statutory authority was also discussed in each separate rule codified in those parts and will not be repeated in detail here. Under the Administrative Procedure Act (APA), proposed rules generally must be published in the **Federal Register** for notice and comment, and final rules may be made effective not less than 30 days after publication (5 U.S.C. 553(b) and (d)). Neither of those requirements, however, applies to interpretive rules (5 U.S.C. 553(b)(A) and (d)(2)). Although this interpretive rule is effective upon publication, FMCSA will accept public comments on the issues addressed herein and, where appropriate, adjust the guidance in response to comments.

In general, FMCSA's authority is based on the Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, Aug. 9, 1935), as amended (the 1935 Act) (codified in 49 U.S.C. 31502); the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, Oct. 30, 1984), as amended (MCSA) (codified in 49 U.S.C. chapter 311); the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570, Title XII, 100 Stat. 3207–170, Oct. 27, 1986), as amended (CMVSA) (codified in 49 U.S.C. chapter 313); and the ICC Termination Act of 1995, (Pub. L. 104–88, 109 Stat. 803, Dec. 29, 1995) (ICCTA) (codified in 49 U.S.C. chapters 131–149).

With the 1935 Act, the Federal government began to regulate the operational safety of for-hire carriers of property and passengers and private carriers of property but not of passengers. The 1935 Act, as amended, provides that, the Secretary of Transportation may prescribe requirements for the qualifications and maximum hours of service of *motor carriers* and *motor private carriers* and for the safety of operation and standards of equipment of such carriers (49 U.S.C. 31502(b)). Under the 1935 Act, as amended, a *motor carrier* is someone ''providing motor vehicle transportation for compensation'' (49 U.S.C. 13102(14)) and a *motor private carrier* is someone other than a *motor carrier* transporting property by motor vehicle under the conditions spelled out in 49 U.S.C. 13102(15). Under those conditions, the transportation must be in interstate commerce; the transporter must be the owner, lessee, or bailee of the property being transported; and the property must be transported for sale, lease, rent, or bailment or to further a commercial enterprise.

The MCSA restated Federal safety jurisdiction in terms of *commercial motor vehicles* (CMVs) operating in interstate commerce but did not repeal the 1935 Act. The MCSA, as amended, defines a *commercial motor vehicle* in 49 U.S.C. 31132(1) as a self-propelled or towed vehicle used on highways in interstate commerce to transport passengers or property, if the vehicle meets one or more of the following 4 criteria, *i.e.,* (1) has a gross vehicle weight rating (GVWR) or gross vehicle weight (GVW) of at least 10,001 pounds, whichever is greater; (2) is designed or used to transport more than 8 passengers (including the driver) for compensation; (3) is designed or used to transport more than 15 passengers (including the driver) but is not used to transport passengers for compensation; or (4) is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under the placarding regulations prescribed under section 5103. This definition expanded Federal jurisdiction for the first time to include private motor carriers of passengers.

The MCSA defines *interstate commerce* in 49 U.S.C. 31132(4) as ''trade, traffic, or transportation'' in the United States between one State (1) and a place outside that State (or outside the United States); or (2) and a different place in the same State when the transportation passed through another State (or a place outside the United States). Therefore, an entity operating a CMV in interstate commerce, unless otherwise exempt, is subject to FMCSA's safety regulations and oversight.

The CMVSA created the commercial driver's license (CDL) program. However, the definition of the term *commercial motor vehicle* in the CMVSA is significantly different from the definition of *commercial motor vehicle* in the MCSA. The CMVSA's extensive definition of *commercial motor vehicle* in 49 U.S.C. 31301(4) is a motor vehicle used in commerce to transport passengers or property if the vehicle meets one or more of the following 3 criteria, *i.e.,* (1) has a GVWR or GVW of at least 26,001 pounds, whichever is greater; [1] (2) is designed to transport at least 16 passengers (including the driver); or (3) is used to transport material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103. However, a vehicle transporting material found to be hazardous may not be classified as a *commercial motor vehicle* if it meets all of the following criteria: (A) the vehicle's weight is less than the 26,001-pound GVW/GVWR jurisdictional threshold; (B) the vehicle is transporting material listed as hazardous under 42 U.S.C. 9656(a) and is not otherwise regulated by the Secretary or is transporting a consumer commodity or limited quantity of hazardous material, as defined in 49 CFR 171.8; and (C) the Secretary does not deny the application of this exception to the vehicle or class of motor vehicles in the interest of safety.

In addition to the higher weight threshold (26,001 pounds compared to the MCSA's 10,001 pounds), the CMVSA applies to such vehicles operated in commerce, not just in interstate commerce. It defines *commerce* more expansively in 49 U.S.C. 31301(2) as ''trade, traffic, and transportation'' (1) in the jurisdiction of the United States between a place in a State and a place outside that State (or

[1] The Secretary of Transportation is authorized to lower the jurisdictional threshold of a *commercial motor vehicle* to 10,001 pounds by regulation, but has not done so.

outside the United States), *i.e.,* interstate commerce, or (2) in the United States that affects trade, traffic, and transportation in interstate commerce, *i.e.,* intrastate commerce. FMCSA's CDL regulations, which were issued under the authority in the CMVSA, and the associated drug and alcohol testing regulations, therefore, apply to drivers operating CMVs in intrastate as well as interstate commerce.

The ICCTA transferred much of the authority over the commercial aspects of motor carrier operations from the former Interstate Commerce Commission (ICC) to FMCSA. The ICCTA includes a provision, codified at 49 U.S.C. 13902(a)(1), that allows the Secretary of Transportation to register a person to provide transportation in interstate commerce as a *motor carrier,* using self-propelled vehicles that it owns, rents, or leases, only if the Secretary determines that the person is willing and able to comply with the requirements of 49 U.S.C. 13902(a)(1)(A The term *motor carrier* means a person providing ''motor vehicle transportation for compensation'' (49 U.S.C. 13102(14). The ICCTA also included various exemptions from the Secretary's jurisdiction, which have been minimally modified by subsequent legislation, now codified in 49 U.S.C. 13506. FMCSA uses the term *operating authority registration* to refer to the commercial registration in section 13902, replacing the ICC's term *operating authority*.

FMCSA has been delegated the authority to carry out the functions and exercise the authority vested in the Secretary of Transportation by the 1935 Act (49 CFR 1.87(i)), the MCSA (49 CFR1.87(f)), the CMVSA (49 CFR 1.87(e)(1)), and the ICCTA (49 CFR 1.87(a)).

V. Discussion

The FMCSRs comprise parts 350 through 399 of title 49, Code of Federal Regulations (CFR). These regulations set minimum safety standards for motor carriers, vehicles, and drivers operating in interstate commerce (and, in certain cases, in intrastate commerce). The areas covered include motor carrier registration, financial responsibility requirements, driver qualifications, licensing, hours of driving and on duty time, vehicle safety equipment, operating condition, inspection, and maintenance. The Agency's authority to set minimum safety standards is based on several different sections of 49 U.S.C. Congress has enacted statutory exemptions for certain categories of vehicles or operations, and FMCSA has promulgated a number of regulatory exceptions.

The Agency's primary safety jurisdiction is dependent on operation of a CMV in interstate commerce. The operative definition of CMV in the MCSA, is codified at 49 U.S.C. 31132(1) and adopted into regulation at §§ 390.5T and 390.5. A second CMV definition, based on the CMVSA and codified at 49 U.S.C. 31301(4) and 49 CFR 383.5, governs the CDL program and the corresponding drug and alcohol testing requirements (49 CFR parts 383 and 382, respectively), which apply to CMV operations both in interstate and intrastate commerce. Finally, those portions of the FMCSRs based on Part B of Subtitle IV of Title 49, U.S.C., *i.e.,* 49 U.S.C. chapters 131–149, and frequently referred to as the ''commercial regulations,'' are applicable to (among others) for-hire interstate transportation of passengers in any vehicle, no matter the weight, weight rating, or passenger capacity (49 U.S.C. 13102(14), 13902, and 49 CFR part 365). The level of insurance required to operate as a for-hire passenger carrier is governed by the number of passengers the vehicle is designed to transport, but certain financial responsibility filing requirements are dependent on whether the carrier is subject to the Agency's jurisdiction conferred in 49 U.S.C. 13501 (49 CFR part 387, subpart B).

Most exemptions from FMCSA's commercial authority are codified in 49 U.S.C. 13506. The exemptions and exceptions involving FMCSA's safety regulations are codified primarily in 49 CFR 390.3 and 390.3T. FMCSA adds a new appendix A to part 365, a new appendix A to part 387, and a new appendix A to part 390 to assist motor carriers and employers in better understanding which regulations apply to their specific operations.[2] FMCSA will conduct outreach to motor carriers and their associations that are affected by this interpretive rule to confirm clear communication about applicable FMCSA requirements. FMCSA will also provide an information resource about applicable FMCSA requirements. FMCSA will publish this interpretive rule in FMCSA's regulatory guidance portal at *www.fmcsa.dot.gov/guidance*.

[2] Appendix A to part 365 and appendix A to part 390 refer to an August 21, 2001 letter from FMCSA's Acting Deputy Administrator to the Department of Labor. That letter is included in the docket for this rulemaking.

VI. Section-by-Section Analysis

A. Appendix A to Part 365—Applicability of the Registration, Financial Responsibility, and Safety Regulations to Motor Carriers of Passengers

FMCSA adds new appendix A to part 365 titled ''Applicability of the Registration, Financial Responsibility, and Safety Regulations to Motor Carriers of Passengers.'' This appendix provides a reference to appendix A to part 390.

B. Appendix A to Part 387—Applicability of the Registration, Financial Responsibility, and Safety Regulations to Motor Carriers of Passengers

FMCSA adds new appendix A to part 387 titled ''Applicability of the Registration, Financial Responsibility, and Safety Regulations to Motor Carriers of Passengers.'' This appendix provides a reference to appendix A to part 390.

C. Appendix A to Part 390—Applicability of the Registration, Financial Responsibility, and Safety Regulations to Motor Carriers of Passengers

FMCSA adds new appendix A to part 390 titled ''Applicability of the Registration, Financial Responsibility, and Safety Regulations to Motor Carriers of Passengers.'' This appendix explains existing statutes and regulations FMCSA administers related to: the applicability of the FMCSRs, including the financial responsibility regulations, to motor carriers of passengers operating in interstate commerce, including limitations on such applicability based on characteristics of the vehicle operated or the scope of operations conducted; and the applicability of commercial operating authority registration based on the Agency's jurisdiction over motor carriers of passengers, regardless of vehicle characteristics, when operating for-hire in interstate commerce.

VII. Regulatory Analyses

A. Regulatory Flexibility Act (Small Entities)

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), FMCSA is not required to complete a regulatory flexibility analysis because, as discussed earlier in the Legal Basis section, this action is not subject to notice and public comment under section 553(b) of the APA.

B. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub.

L. 104–121, 110 Stat. 857), FMCSA wants to assist small entities in understanding this interpretive rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the interpretive rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman (Office of the National Ombudsman, see *https://www.sba.gov/about-sba/oversight-advocacy/office-national-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 FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

C. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their discretionary regulatory actions. 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 $178 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2021 levels) or more in any 1 year. Though this interpretive rule would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the Agency discusses the effects of this interpretive rule elsewhere in this preamble.

D. Paperwork Reduction Act

This interpretive rule contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''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.'' FMCSA has determined that this interpretive rule will not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this interpretive rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

F. Privacy

The Consolidated Appropriations Act, 2005 (Pub. L. 108–447, 118 Stat. 2809, 3268, Dec. 8, 2004 (5 U.S.C. 552a note)), requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. Because this interpretive rule does not require the collection of personally identifiable information, the Agency is not required to conduct a privacy impact assessment.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002 (Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921, Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology will collect, maintain, or disseminate information as a result of this interpretive rule. Accordingly, FMCSA has not conducted a privacy impact assessment.

G. E.O. 13175 (Indian Tribal Governments)

This interpretive rule does not have Tribal implications under E.O. 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.

H. National Environmental Policy Act of 1969

FMCSA analyzed this interpretive rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680), Appendix 2, paragraph 6u. The content in this rule is covered by the categorical exclusions in paragraph 6.u.(1) (A motor carrier, property broker, freight forwarder, or its agents, employees, or any other person subject to the jurisdiction of the FMCSA, has failed to comply with the provisions or requirements of applicable statutes and the corresponding regulations) and in paragraph 6.u.(2) (To issue an appropriate order to compel compliance with the statute or regulation, assess a civil penalty, or both if such violations are found). In addition, this rule does not have any effect on the quality of the environment.

List of Subjects

49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Maritime carriers, Mexico, Motor carriers, Moving of household goods.

49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Accordingly, FMCSA amends 49 CFR chapter 3, parts 365, 387, and 390 as follows:

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

■ 1. The authority citation for part 365 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 13101, 13301, 13901–13906, 13908, 14708, 31133, 31138, and 31144; 49 CFR 1.87.

■ 2. Add appendix A to part 365 to read as follows:

Appendix A to Part 365—Applicability of the Registration, Financial Responsibility, and Safety Regulations to Motor Carriers of Passengers

For additional guidance on the application of financial responsibility regulations to motor carriers of passengers, refer to appendix A to part 390 of this subchapter.

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

■ 3. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 13908, 14701, 31138, 31139; sec. 204(a), Pub. L. 104–88, 109 Stat. 803, 941; and 49 CFR 1.87.

■ 4. Add appendix A to part 387 to read as follows:

Appendix A to Part 387—Applicability of the Registration, Financial Responsibility, and Safety Regulations to Motor Carriers of Passengers

For additional guidance on the application of financial responsibility regulations to motor carriers of passengers, refer to appendix A to part 390 of this subchapter.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 5. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; secs. 212 and 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744), 113 Stat. 1748, 1773; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113–125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1558, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87.

■ 6. Add appendix A to part 390 to read as follows:

Appendix A to Part 390—Applicability of the Registration, Financial Responsibility, and Safety Regulations to Motor Carriers of Passengers

I. FMCSA's Jurisdiction

The Federal Motor Carrier Safety Regulations (FMCSRs) comprise parts 350 through 399 of title 49, Code of Federal Regulations (CFR). These regulations set minimum safety standards for motor carriers, vehicles, and drivers operating in interstate commerce. The areas covered include motor carrier registration, financial responsibility requirements, driver qualifications, licensing, hours of driving and on duty time, vehicle safety equipment, operating condition, inspection, and maintenance. In some areas, Congress has enacted exemptions for certain categories of vehicles or operations. Accordingly, the Agency does not exercise regulatory authority over some operators who meet the definition of a *motor carrier, vehicle,* or *driver* operating in interstate commerce.

The jurisdictional thresholds of the statutes FMCSA administers and the corresponding regulations are not uniform. First, for most of the FMCSRs, the Agency's jurisdiction is based upon the definition of *commercial motor vehicle* (CMV) in the Motor Carrier Safety Act of 1984 (MCSA), codified at 49 U.S.C. 31132(1) and §§ 390.5T and 390.5. Under that definition, a passenger vehicle is a *commercial motor vehicle* if it is designed or used to transport 9 or more passengers for compensation or 16 or more passengers regardless of compensation status. Larger passenger vehicles also qualify as CMVs irrespective of their passenger capacity if they have a gross vehicle weight (GVW) or gross vehicle weight rating (GVWR) (whichever is greater) of 10,001 pounds or more. The Agency's safety jurisdiction, however, does not include passenger-carrying vehicles that meet all of the following criteria: (1) designed and used to transport 8 or fewer passengers, (2) have a GVWR and GVW of 10,000 pounds or less, and (3) are not transporting hazardous materials in a quantity that requires placarding. If a passenger-carrying vehicle exceeds even one of these three thresholds, however, FMCSA has safety jurisdiction over the vehicle.

A second CMV definition, based on the statutory definition in the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) codified at 49 U.S.C. 31301(4), governs the commercial driver's license (CDL) program and the corresponding drug and alcohol testing requirements (49 CFR parts 383 and 382, respectively), which apply to CMV operations both in interstate and intrastate commerce. For the purposes of determining which passenger carrier operations require a CDL, the jurisdiction conferring *commercial motor vehicle* definition in parts 383 and 382 includes any motor vehicle that has a GVWR or GVW of 26,001 pounds or more and is used to transport passengers, regardless of the number of passengers that the vehicle is designed to or actually does transport. This *commercial motor vehicle* definition also includes any vehicle designed or used to transport 16 or more passengers, including the driver, and any vehicle used to transport certain hazardous materials.

Third, with some exceptions, those portions of the FMCSRs based on Title 49, Subtitle IV, Part B, and frequently referred to as the ''commercial regulations,'' are applicable (among others) to for-hire interstate transportation of passengers in any vehicle, no matter the GVW, GVWR, or passenger capacity (49 U.S.C. 13102(14), 13902 and 49 CFR part 365). The level of insurance required to operate as a for-hire passenger carrier is governed by the number of passengers the vehicle is designed to transport (49 CFR part 387, subpart B). The required level of insurance is $1.5 million if the carrier's largest vehicle has a seating capacity of 15 or fewer passengers or $5 million if the largest vehicle has a seating capacity of 16 passengers or more. (49 CFR 387.33T). These are also the levels of insurance for which evidence is required to be maintained on file with FMCSA for a passenger carrier to obtain and retain for-hire operating authority registration under 49 U.S.C. 13902. There is an exception to some Federal insurance/financial responsibility requirements for passenger carriers that receive certain grants from the Federal Transit Administration. (49 U.S.C. 31138(e)(4)).

To determine the extent to which specific FMCSRs apply to an operation, it is first necessary to evaluate whether the operations are within the scope of any of the definitions outlined above. If the operations are within FMCSA's jurisdiction, then it is necessary to determine whether any specific regulatory or statutory exemptions apply to the operation.

II. Jurisdictional Limitations and Exemptions

There are specific statutory exemptions and regulatory exceptions applicable to part or all of FMCSA's jurisdiction. Most exemptions from FMCSA's commercial authority are codified in 49 U.S.C. 13506. Some of these exemptions applicable to passenger carrier operations are discussed in detail in below. The exemptions or exceptions from FMCSA's safety regulations are codified primarily in 49 CFR 390.3 and 390.3T. Specific examples of applicability questions FMCSA frequently receives are presented in question and answer format. The Agency's analytical framework is straightforward: (1) does the operation generally fall within FMCSA's jurisdiction, and, (2) if so, does any statutory or regulatory exemption or exception limit the applicability of the FMCSRs?

Transportation of Passengers to and From Airports and Other Points of Interstate Departure/Arrival

In 1938, Congress amended section 203(b) of the Motor Carrier Act of 1935 (1935 Act) to exempt from the requirement to obtain operating authority registration ''the transportation of persons or property by motor vehicle when incidental to transportation by aircraft'' (Civil Aeronautics Act of 1938, Sec. 1107(j), Chap. 601, 52 Stat. 973, 1029, June 23, 1938). Section 203(b)(7a) of the 1935 Act is now codified at 49 U.S.C. 13506(a)(8)(A) and implemented by 49 CFR 372.117(a).

In 1964, the Interstate Commerce Commission (ICC) reaffirmed its longstanding position that the exemption for incidental-to-air transportation did not require passengers to hold a through ticket when it addressed the following question:

. . . whether the transportation of airline passengers by motor vehicle which is incidental to transportation by air must be confined to situations in which the air and motor movements are provided pursuant to some common arrangement for through passage, that is, on a through ticket or at the request and at the expense of the air carrier. In dealing with the transportation of property . . . we have found that a bona fide terminal area pickup and delivery service must entail through air-motor billing. A similar condition has never been considered essential where the transportation of passengers is concerned, and our reexamination of this aspect of the overall problem convinces us that no change is warranted in this regard. . . . Nor do we think that a requirement applicable to the

transportation of freight must necessarily be appropriate to the transportation of passengers (95 M.C.C. at 535).

FMCSA agrees with the Commission's position that through-ticketing is not required for the exemption from commercial operating authority registration for transportation incidental to air travel in 49 U.S.C. 13506(a)(8)(A) to apply. However, prearranged motor vehicle transportation, secured by an advance guarantee demonstrating an obligation by the passenger to take the service, and by the motor carrier to provide the service immediately prior or subsequent to aircraft transportation across State lines, is part of a continuous movement in interstate commerce. This understanding is the most consistent means for determining the passenger's fixed and persisting intent to continue in interstate transportation to a final destination absent a through ticket, or bill of lading one would have when shipping property. Motor carriers performing intrastate movements of interstate air passengers thus do not need operating authority registration if they operate only within the radius specified as ''incidental to transportation by aircraft'' in § 372.117(a), but they are nevertheless operating in interstate commerce and are subject to the FMCSRs unless they are otherwise exempt.

The parties who commented on the ICC's passenger rulemaking in the 1960s reported that ''in virtually no case is it the practice of the airlines to issue . . . through tickets'' (95 M.C.C. 532). That has not changed. Package deals combining ground and air transportation may be offered by travel agents or online ticketing services, but airlines themselves only rarely offer such arrangements. FMCSA sees no reason to change the ICC's common-sense conclusion that motor carriers offering transportation of passengers to or from an airport are eligible for the exemption in current 49 U.S.C. 13506(a)(8)(A) even though the passengers are not traveling on a single ticket that includes both ground and aircraft transportation.

As discussed below, however, 49 U.S.C. 13506(a)(8)(A) does not confer an exemption from applicable safety regulations. Prearranged motor vehicle transportation, secured by an advance guarantee demonstrating an obligation by the passenger to take the service and the motor carrier to provide the service, immediately prior or subsequent to aircraft transportation across State lines is part of a continuous movement in interstate commerce, as demonstrated by the passenger's fixed and persisting intent. Motor carriers performing intrastate movements of interstate air passengers by CMV thus do not need operating authority registration if they operate only within the radius specified as ''incidental to transportation by aircraft'' in § 372.117(a), but if the transportation is prearranged, they are nevertheless operating in interstate commerce and are subject to the Federal safety regulations unless they are otherwise exempt.

Prearrangement of Passenger Transportation

The Federal courts have long held that ''[t]he characterization of transportation between two points within a single state as interstate or intrastate depends on the essential character of the shipment involved . . .'' The crucial factor in determining the essential character of a shipment is 'the shipper's fixed and persisting intent at the time of shipment.' '' *Central Freight Lines* v. *Interstate Commerce Commission,* 899 F.2d 413, 419 (5th Cir. 1990) (citing, among other cases, *Baltimore & O.S.W.R. Co.* v. *Settle,* 260 U.S. 166, 170–71 (1922)); see also *Southerland* v. *St. Croix Taxicab Ass'n,* 315 F.2d 364 (3rd Cir. 1963) (holding that intrastate transportation of passengers in the Virgin Islands pursuant to prearranged packages covering both lodging and travel was interstate commerce). The key inquiry is whether, before or at the time the trip begins, the shipper has manifested his/her intent to ship something in interstate commerce. In the case of passenger transportation, the ''shipper'' is the passenger, and the fixed intent to travel in interstate commerce is best demonstrated by pre-arranging the interstate air (or water or rail) transportation and the intrastate ground transportation by CMV at more or less the same time, and substantially before the interstate trip begins.

For example, reserving a seat via the internet, with an advanced guarantee obligating the passenger to take the service and the motor carrier to provide the service, in a limousine for transportation to or from an airport about the same time of booking an interstate flight that will occur multiple weeks in the future would demonstrate a fixed and persisting intent to travel in interstate commerce, placing the limousine segment of the trip in the stream of interstate commerce. On the other hand, deciding on the day of a trip to take a taxicab to or from the airport before or after the flight would not involve prearrangement and would not amount to interstate commerce. In any case, evidence of a traveler's intent is normally based on documentation, not assumptions.

The same kind of analysis applies to passengers boarding or disembarking from a cruise ship. Prior arrangement of CMV ground transportation—for example via tour bus from a port of call to some inland destination—made in conjunction with cruise-ship reservations would demonstrate the fixed intent of the passenger to travel by motor vehicle as part of an interstate or international trip. In some cases, cruise lines may even sell through-tickets that cover both maritime and land transportation which clearly demonstrate both prearrangement and the fixed intent of the travelers to use multiple modes of transportation on an interstate or international trip.

In 1963, the Third Circuit held that intrastate transportation of passengers in the Virgin Islands pursuant to prearranged packages covering both lodging and travel was interstate commerce (*Southerland* v. *St. Croix Taxicab Ass'n,* 315 F.2d 364 (3rd Cir. 1963)). Federal court decisions have increasingly expanded this line of analysis and found ground transportation to be in the stream of interstate commerce where, even in the absence of packaged travel arrangements, the traveler separately booked the air and ground portions of a trip. See *Abel* v. *Southern Shuttle Services, Inc.,* 631 F.3d 1210 (11th Cir. 2011); *Executive Town & Country Services* v. *City of Atlanta,* 789 F.2d 1523 (11th Cir. 1986); *Charter Limousine, Inc.* v. *Dade County Board of County Commissioners,* 678 F.2d 586 (5th Cir. 1982); *East West Resort Transportation, LLC,* v. *Binz,* 494 F.Supp.2d 1197 (D. Col. 2007).

FMCSA has been asked if its commercial and safety jurisdiction over a motor carrier of passengers requires some threshold ratio of interstate to intrastate trips. Many motor carriers have a mixture of interstate and intrastate passenger transportation operations. To answer this question, we look back to a case interpreting the Fair Labor Standards Act of 1938. In this case, only 3 to 4 percent of a carrier's trips were interstate in nature, and the Supreme Court held that, under the 1935 Act, the ICC had authority to impose its hours of service rules on all of the company's drivers because they were randomly assigned to handle interstate trips, even though 2 out of about 40 drivers had not made a single interstate trip during the 21 months at issue in that case (*Morris* v. *McComb,* 332 U.S. 422 (1947)). The Court said ''[w]e hold that the Commission has the *power* to establish qualifications and maximum hours of service, pursuant to the provisions of § 204 of the Motor Carrier Act [of 1935], for the entire classification of petitioner's drivers and 'mechanics' and it is the existence of that power (rather than the precise terms of the requirements actually established by the Commission in the exercise of that power) that Congress has made the test as to whether or not [the overtime requirement of] § 7 of the Fair Labor Standards Act is applicable to these employees.'' Ibid. at 434.

FMCSA's authority over interstate operations under the MCSA is in most ways even broader than the ICC's authority under the 1935 Act because it includes fewer statutory exemptions and is equally or more focused on highway safety. The Agency may, therefore, require compliance with the FMCSRs by passenger carriers with interstate operations no more extensive than those previously described in *Morris* v. *McComb,* providing those operations are undertaken with CMVs, as defined in §§ 390.5T and 390.5.

A related question is whether relatively infrequent operations in interstate commerce make a motor carrier permanently subject to FMCSA jurisdiction. For an answer, we again look at the 1935 Act and to Federal Highway Administration (FHWA) precedent. The FHWA, FMCSA's predecessor agency, said in a 1981 notice of interpretation that ''[e]vidence of driving in interstate commerce or being subject to being used in interstate commerce should be accepted as proof that the driver is subject to [the hours-of-service requirements in 49 U.S.C. 31502(b)] for a 4-month period from the date of the proof'' 46 FR 37902, 37903 (July 23, 1981).

FHWA replaced the 4-month rule with a 14/15-day ''rule'' in 1999. (More information about this matter can be found in Question 24 under regulatory guidance for § 390.3 on the FMCSA website, *https://www.fmcsa.dot.gov/regulations/49-cfr-ss-3903t-general-applicability-question-24.*) However, the Agency's Acting Deputy

Administrator explained in a letter of August 21, 2001, to the Department of Labor that ''[t]he 14/15-day rule is a prudential limitation on the use of FMCSA authority, not an interpretation of FMCSA jurisdiction.'' The letter also noted that ''[b]ecause most of the case law interpreting the provisions of the [1935 Act] has been generated by Fair Labor Standards Act litigation, the courts have dealt only with agency authority to enforce the hours of service limits. The [1935 Act], however, authorizes regulations addressing a wider variety of safety problems, and we believe that the jurisdictional principles set forth by the courts would apply to them as well, *e.g.,* to the medical qualifications of drivers.''

FMCSA takes this occasion to reaffirm the view expressed in the Acting Deputy Administrator's 2001 letter that the Agency has jurisdiction over motor carriers, vehicles, and drivers for a 4-month period after a trip in interstate commerce. However, records must be retained for whatever period is required by the FMCSRs, even if that period exceeds 4 months.

Later in this interpretive rule, FMCSA explains the applicability of existing statutes and regulations in a question and answer format to clarify the conditions under which highway transportation of passengers by CMV within a single State would constitute interstate commerce if the passengers are beginning a trip to, or completing a trip from, a point outside the State by another mode of transportation (*e.g.,* aircraft, railroad, or vessel). It is FMCSA's legal position for purposes of enforcement jurisdiction and motor carrier registration requirements, that, if a passenger plans a trip involving more than one mode of transportation that begins and ends in different States or a place outside the United States and has prearranged the CMV portion of the trip, as demonstrated by an advance guarantee for the service, all transportation during the trip is in interstate commerce, because the passenger prearranged the transportation with persistent intent of continuous interstate movement throughout the trip. Additional prearranged side trips or excursions made before the trip begins or while traveling in interstate commerce are included as part of the flow of interstate commerce. However, if the passenger has made no arrangement for transportation and upon arriving at an airport, port, or railway station, makes arrangements for transportation, that later-arranged transportation is not a continuation of the trip and is not in interstate commerce. Prearrangement in multimodal transportation of a passenger is an important consideration in determining interstate commerce because it can establish the passenger's intent about travel and provide a clear linkage of continual transportation segments. When one such segment is interstate in nature, all linked transportation segments are in the stream of interstate commerce.

''*For Compensation*'' *and* ''*For-Hire*''

FMCSA's safety jurisdiction, except in the CDL regulations, is circumscribed by the definition of *commercial motor vehicle* in 49 U.S.C. 31132(1). Under section 31132(1), a *commercial motor vehicle* is defined, in part, as a vehicle used to transport passengers or property in interstate commerce that when transporting passengers has either been designed or is actually used to transport more than 8 passengers and payment is received. The statute also includes in the commercial motor vehicle definition any passenger carrying vehicle designed or actually used to transport more than 15 passengers regardless of whether compensation is received. In each definition, the total number of passengers always includes the driver. (49 U.S.C. 31132(1)(B)–(C)). Furthermore, a motor carrier registering for commercial operating authority under 49 U.S.C. 13902 is governed by the definition of *motor carrier* in 49 U.S.C. 13102(14), *i.e.,* a person providing motor vehicle transportation for compensation.

The FMCSRs incorporate ''compensation'' into the definition of *for-hire motor carrier,* which the rules treat as ''a person engaged in the transportation of goods or passengers for compensation'' (§§ 390.5T and 390.5). In a notice of interpretation published on May 7, 1993, FHWA provided an expansive interpretation of ''compensation,'' stating that compensation includes both direct and indirect payment. In addition, FHWA said certain nonbusiness organizations, including churches and charities, operate as for-hire passenger carriers when they engage in chartered operations, charging a fee (58 FR 27328, 27329). The notice clarified that certain businesses, including hotels and car rental agencies operating shuttle bus services, and outdoor recreation operations such as whitewater rafting outfits and scuba diving schools transporting patrons to or from a recreation site, constitute for-hire motor carriage of passengers. ''Compensation'' as used in the context of a business enterprise includes both direct and indirect payment for the transportation service provided. It need not mean ''for profit.''

This policy was repeated in slightly different form in regulatory guidance published on November 17, 1993 (58 FR 60734, 60745) and April 4, 1997 (62 FR 16370, 16407). (More information about this matter can be found in Question 10 under regulatory guidance for § 390.5 on the FMCSA website, *https://www.fmcsa.dot.gov/regulations/does-fmcsa-define-hire-transportation-passengers-same-former-icc-did-0.*) This position was also reiterated in a final rule on private motor carriers of passengers (59 FR 8748, Feb. 23, 1994), which adopted certain exceptions for ''private motor carriers of passengers (business)'' (now codified at 49 CFR 391.69) and ''private motor carriers of passengers (nonbusiness)'' (49 CFR 391.68).

''Compensation,'' as used in the definition of *for-hire motor carrier* in §§ 390.5T and 390.5, includes both direct and indirect payments. Companies providing intercity motorcoach service are directly compensated, while hotels, car rental companies, parking facilities, and other businesses that offer shuttle bus service are indirectly compensated because they add the cost of that service to their room rates, car rental rates, etc. By statute, most taxicab service is not subject to the requirement to obtain commercial operating authority registration (49 U.S.C. 13506(a)(2)) or to maintain minimum levels of financial responsibility (49 U.S.C. 31138(e)(2), § 387.27(b)(2)). In addition, most taxis are not subject to the FMCSRs because their designed passenger capacity is below nine and their GVW is too low to make them CMVs under §§ 390.5T and 390.5.

Passenger transportation is either for-hire or private. Unless exempted by statute or regulation, for-hire motor carriers must obtain operating authority registration under 49 U.S.C. 13902 before engaging in interstate transportation. While a passenger carrier may provide both for-hire and private transportation, a specific trip is either for-hire or private depending upon the presence or absence of direct or indirect compensation. Though private passenger transportation is not available to the public at large, for-hire transportation service may or may not be available to the general public. Compensation is the primary factor that determines for-hire transportation. An entity that is nonbusiness, nonprofit, or not-for-profit, is nevertheless engaged in for-hire passenger transportation when it receives compensation for such transportation. Compensation may come in many forms including donations, gifts, gas money, offerings, etc. received for transportation. The question of whether an operation is for-hire should not be conflated, however, with the distinction required to determine whether a private passenger carrier's operation is business or non-business. In those cases, the Agency has already determined that the operation is not for-hire.

Vanpools

In an interim final rule published on September 3, 1999 (64 FR 48510), FHWA qualified its previous expansive interpretation of ''compensation'' as applied to vanpools. In short, FHWA took the position that Congress never intended for commuter vanpools arranged and operated by groups of people trying to get to work, not attempting to start a commuter transportation side business, to be subject to federal regulation. Accordingly, FHWA affirmatively stated that the Agency had no intention to regulate vanpools created for the convenience of the passengers, not for financial gain in running a commuter transportation business. Because FHWA considered the term ''for compensation'' to be equivalent to ''for hire'', the Agency recognized that payments passengers made into a vanpool to cover vehicle expenses could be considered compensation subjecting the vanpool operator to government regulation. FHWA ultimately decided that as long as funds contributed to the vanpool were not used as a source of income or to grow a commuter transportation business, then the operation should not be regulated as a for-hire motor carrier of passengers. (*See* 64 FR 48514).

A few months later, Sec. 212 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748,1766, Dec. 9, 1999) established FMCSA and directed the Agency to decide whether all motor carriers operating, smaller vehicles designed or used for 9 to 15 passengers, receiving payment for transportation should

be covered by all of the FMCSRs. But the statute added another provision specifically directing FMCSA *not* to exempt all motor carrier operations in smaller vehicles, those designed or used for 9 to 15 passengers, for hire when making its decision about the scope of FMCSR applicability. (113 Stat. 1766). In the preamble of the notice of proposed rulemaking (NPRM) to implement that mandate, published on January 11, 2001 (66 FR 2767), FMCSA proposed to focus on small passenger carriers operating for direct compensation, stating that these operators were ''identified as having significant deficiencies in their safety management controls for their drivers and vehicles'' and pose ''a serious safety risk to the motoring public'' (66 FR 2768). The final rule reaffirmed this position and adopted the regulatory changes from the NPRM largely as proposed. (68 FR 47860, Aug. 12, 2003).

In view of the varied and sometimes inconsistent [3] regulatory guidance on ''compensation'' issued in the past, FMCSA takes this opportunity to clarify and explain its implementation of the statutory and regulatory requirements applicable to operations conducted in vehicles designed or used to transport between 9 and 15 passengers. Pursuant to 49 U.S.C. 31132(1)(B) and (C), a vehicle designed or used to transport between 9 and 15 passengers (counting the driver as a passenger) may not be a CMV for purposes of the FMCSRs unless it is used to transport passengers ''for compensation'' or has a GVW or GVWR of 10,001 pounds or greater. Similarly, under 49 U.S.C. 31132(1)(C), a vehicle designed or used to transport more than 15 passengers (including the driver) is a CMV even if it is ''not used to transport passengers for compensation.'' The term ''compensation'' is, therefore, jurisdictional. If a vehicle is designed and used to transport more than 8, but fewer than 16 passengers, and has a GVW and GVWR of less than 10,001 pounds, without ''compensation,'' it is not a CMV, and FMCSA has no safety jurisdiction over it.

This issue is particularly critical for vanpools. Although payment is compensation, FMCSA decided that the intent of Congress is not to recognize the money collected in a vanpool as compensation unless the revenue amount is required to be reported to the Internal Revenue Service (IRS), pursuant to 26 U.S.C. 1402(b) and 132(f). It is also important to recognize that although previously characterized as an exemption in policy and preamble statements, Congress never promulgated, and the Agency never adopted, a regulatory exemption for vanpool operations.

Consistent with prior statements regarding the applicability of the FMCSRs, and to remain consistent with congressional intent, the Agency is not changing its position. Therefore, FMCSA will not pursue enforcement against commuter vanpool operations when all the following conditions are met: (1) the motor vehicle is operated by individuals traveling to and from work transporting other individuals as part of a daily commute to and from work in an interstate, single daily round trip; (2) the motor vehicle is designed and used to carry no more than 15 individuals (including the driver); (3) the GVW and GVWR is less than 10,001 pounds; and (4) the money received by the vanpool operator for transportation is not reported to the IRS, pursuant to 26 U.S.C. 1402(b) and 132(f), or is not deemed reportable by an IRS investigation under the same provisions.

FMCSA recognizes that this guidance has compliance implications for motor carriers that previously considered themselves not subject to certain Agency requirements because such carriers mistakenly believed their passenger transportation operations were in intrastate commerce only, not for-hire, and/or otherwise exempt. It should be emphasized, however, that while for-hire motor carriers operating in interstate commerce must obtain both commercial operating authority registration (no matter how small or light the vehicle(s) used, unless exempted), and safety registration under 49 U.S.C. 31134,[4] the safety regulations apply only to motor carriers (private and for-hire) operating in interstate commerce that use vehicles that qualify as *commercial motor vehicles,* as defined in 49 U.S.C. 31132(1) and §§ 390.5T and 390.5.

The following examples show the real-world implications and interactions of ''interstate commerce,'' ''CMV,'' ''compensation,'' ''for-hire,'' and ''private'' carriage, and a variety of regulatory exemptions and exceptions. These examples are arranged in topical categories. The first provides guidance on the meaning of ''interstate commerce.'' All subsequent examples provide guidance in three regulatory applicability contexts, specifically (1) operating authority registration, (2) minimum level of financial responsibility, and (3) general safety regulatory jurisdiction.

III. Specific Example Scenarios

In determining the scope of FMCSA's jurisdiction for each of the following specific scenarios the analytical framework described early in this notice is employed. Specifically, for each scenario, the Agency considered whether the operation falls within FMCSA's jurisdiction based on the various statutory definitions, and, if so, whether any statutory or regulatory exemption limits the applicability of the FMCSRs. Again, should new scenarios arise in the future, the same analytical framework would be employed to determine whether a specific operation is subject to FMCSA's oversight.

In this section, FMCSA demonstrates the applicability of the FMCSRs to motor carriers of passengers operating in interstate commerce by providing example scenarios grouped into six categories below. Some of the analysis provided in response to these example scenarios cites to regulatory sections that FMCSA designated as temporary sections in a final rule published on January 17, 2017 (82 FR 5292). FMCSA notes that, to the extent the language between the suspended section and the temporary section is substantively the same, this guidance would also apply to the corresponding language in the suspended section once the suspension is lifted and the temporary section is eliminated, just as the pre-existing guidance for the now-suspended sections was applied to the corresponding language of the temporary sections that were substantively the same.

Passengers Using Multiple Transportation Modes

Scenario 1: A couple plans an interstate trip, for vacation. They hire a limousine to transport them from their residence to an airport, with a final destination out of state. This highway transportation is within a single State. The aircraft transports the couple to another State. After landing and obtaining checked baggage, the couple boards a mini-bus, which they reserved while planning the trip from their home, that transports them within the second State to a waterway port. The couple boards a cruise ship that transports them to foreign island countries.

Guidance: This scenario describes for-hire transportation by motor vehicle as a part of continuous interstate movement. Because the transportation was prearranged, both the limousine operator and the mini-bus operator may be required to comply with some if not all of the FMCSRs. Assuming prearrangement, both operators would require operating authority registration under 49 CFR part 365, subpart A, unless the ''incident to air travel'' exemption at 49 U.S.C. 13506(a)(8)(A) and § 372.117(a) applied. (See Scenario 3 below.) If the vehicles are CMVs under either the MCSA or the CMVSA, then the respective safety regulations, including the registration and applicable safety requirements in 49 CFR parts 390 through 399, and/or the CDL and drug and alcohol testing regulations in parts 382 and 383, would apply to the operations.

If a passenger plans a trip involving more than one mode of transportation that begins and ends in different States or a place outside the United States, and has prearranged the CMV portion of the trip, secured by an advance guarantee demonstrating an obligation by the passenger to take the service and the motor carrier to provide the service, all transportation during the trip is in interstate commerce because the passenger prearranged the transportation with fixed and persistent intent of continuous interstate movement throughout the trip. Additional prearranged side trips or excursions made before the trip begins or while traveling in interstate commerce are included as part of the flow of interstate commerce. However, if the passenger has made no arrangement for transportation upon arriving at an airport, waterway port, or railway station, and then makes arrangements for transportation, that transportation is not a continuation of the trip and is not in interstate commerce.

Scenario 2: A company offering sightseeing tours operates buses designed to transport

[3] Cf. 66 FR 2756, 2761 (final rule revising § 390.3(f)(6), among other changes) and 66 FR 2767, 2768 (NPRM proposing revisions to § 390.3(f)(6), among other changes), both Jan. 11, 2001 (providing different interpretations of how direct and indirect compensation apply to the exception in § 390.3(f)(6)).

[4] All initial registrations by new applicants must use the Unified Registration System online registration application. See *https://portal.fmcsa.dot.gov/UrsRegistrationWizard/.*

more than 15 passengers including the driver. It picks up cruise ship passengers at a port of call, takes them to nearby attractions, and returns them to the ship. The bus tour does not cross State lines, but all cruises originate in another State or foreign country. The cruise passengers book and pay for the bus tour before starting, or during, the cruise. The passenger transportation is not confined to a commercial zone.

Guidance: This scenario describes for-hire transportation by a commercial motor vehicle as a part of continuous interstate movement. FMCSA's position is that the company is a motor carrier subject to all applicable FMCSRs, including parts 350 through 399, and it must have registered by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. In addition, the company is operating a CMV, as defined in § 383.5, designed to transport 16 or more passengers. The bus driver must therefore hold a valid CDL with the applicable endorsement(s) and must comply with the drug and alcohol testing regulations in part 382.

In this instance, it is clear that the passengers prearranged the sightseeing tour and intended to continue in interstate transportation. Because the company is operating a commercial motor vehicle, a for-hire passenger vehicle with a seating capacity of at least 16 in interstate commerce, the company is required under §§ 387.33T and 387.33 to obtain and maintain $5 million of financial responsibility and to file evidence of the same with FMCSA.

Prearranged intrastate highway transportation occurring during an interstate trip is in the stream of interstate commerce, exactly like prearranged highway transportation immediately before or after an interstate trip. The fixed and persistent intent of the cruise ship passengers to travel by bus as part of the interstate cruise was demonstrated by their advance booking of the bus tour.

Scenario 3: While planning a trip, a person goes online, books an airline flight to a city in another State, and reserves a rental car in that city. The car rental company is located near the airport, and it offers shuttle bus service between the terminal and the facility where its customers can pick up and drop off cars. The shuttle does not require a reservation. The car rental company always has at least one shuttle vehicle circulating between the airport and its parking lot during business hours. All shuttle vehicles have a GVWR of 10,001 pounds or more and are designed to transport 16 or more passengers (including the driver). All shuttle operations are (1) conducted on roads and highways that are open to public travel, and (2) confined to a zone encompassed by a 25-mile radius of the boundary of the airport.

Guidance: This scenario describes for-hire transportation by a CMV as a part of continuous interstate movement, though limited exemptions apply. The company operates CMVs, as defined in §§ 390.5T and 390.5, for hire in interstate commerce, and the company is a motor carrier subject to all applicable FMCSRs, including parts 350 through 399, and it must register by following the procedures in 49 CFR part 390 subpart E. In addition, the company is operating a passenger-carrying CMV designed to transport 16 or more passengers, as defined in § 383.5. The bus driver must hold a valid CDL with the applicable endorsement(s) and comply with the drug and alcohol testing regulations in 49 CFR part 382.

Nonetheless, the company is not required to obtain operating authority registration. The shuttle service qualifies for the exemption from operating authority in 49 U.S.C. 13506(a)(8)(A) and § 372.117(a) for the transportation of passengers by motor vehicle that is (1) incidental to the transportation by aircraft, (2) limited to the transportation of passengers who have had or will have an immediately prior or subsequent movement by air, and (3) confined to a zone encompassed by a 25-mile radius of the boundary of the airport. Although the shuttle service, unlike the airline or rental car reservation, is not explicitly prearranged, it is in the stream of interstate commerce because customers expect and intend to utilize the service wherever a rental facility is not within walking distance of the airport terminal.

Though operating authority registration is not required, the company is operating passenger vehicles with a seating capacity of at least 16 for hire in interstate commerce and, accordingly, is required under §§ 387.33T and 387.33 to maintain $5 million of financial responsibility.

Hotel Related Passenger Transportation

Scenario 1: A hotel in Cincinnati, OH offers a courtesy van to take its guests to and from the Cincinnati/Northern Kentucky International Airport in KY. The van is designed to transport 15 passengers, including the driver, and has a GVW and GVWR of less than 10,000 pounds. All passenger transportation occurs within a zone encompassed by a 25-mile radius of the boundary of the airport.

Guidance: This scenario describes for-hire transportation by a CMV as a part of continuous interstate movement, though some exemptions apply. Though the safety regulations apply to transportation in a CMV within a single State if the transportation is a continuation of interstate transportation, the hotel's van operation is eligible for the limited exception to safety regulation applicability in §§ 390.3T(f)(6) and 390.3(f)(6) based on the size of the vehicle and how compensation is received. The hotel's van is designed and used to transport 9 to 15 passengers (including the driver), and payment for transportation is not received directly. If the hotel complies with the applicable provisions listed in §§ 390.3T(f)(6) and 390.3(f)(6), then this passenger transportation is compliant with the safety regulations contained in 49 CFR parts 350 through 399. Because the vehicle is a CMV under § 390.5 and the limited exception does not exempt the hotel from USDOT registration requirements, the hotel must register by following the procedures in 49 CFR part 390 subpart E. The hotel's 15-passenger van is not a CMV under § 383.5, therefore drivers of these vehicles are not required to have CDLs and are not subject to the drug and alcohol testing regulations in 49 CFR part 382.

Operating authority registration under 49 CFR part 365, subpart A, however, is not required. The hotel is providing service subject to the exemption in 49 U.S.C. 13506(a)(8)(A) and § 372.117(a). The hotel's shuttle transportation of passengers is (1) incidental to transportation by aircraft, (2) limited to the transportation of passengers who have had an immediately prior or will have an immediately subsequent movement by air, and (3) confined to a zone encompassed by a 25-mile radius of the boundary of the airport at which the passengers arrive or depart. The hotel does not meet the exemption requirements of 49 U.S.C. 13506(a)(3) for a motor vehicle owned or operated by or for a hotel and only transporting hotel patrons between the hotel and the ''local station of a carrier.'' The definition of carrier within this exemption means motor carrier, water carrier and freight forwarder but does not include air carrier. 49 U.S.C. 13102(3). However, the hotel only needs to meet the requirements of one exemption to not be subject to operating authority registration.

The hotel is providing indirectly compensated, for-hire transportation of passengers in interstate commerce in a vehicle with a seating capacity of 15 and is required under §§ 387.33T and 387.33 to maintain $1.5 million of financial responsibility.

Scenario 2: A hotel in Winchester, VA, located 12 miles outside of the zone encompassed by a 25-mile radius of the boundary of Washington Dulles International Airport, offers a courtesy van to take its guests to and from the airport in Dulles, VA. The van is designed to transport 15 passengers, including the driver, and has a GVW and GVWR of less than 10,000 pounds.

Guidance: This scenario describes for-hire transportation by a CMV as a part of continuous interstate movement, though some exemptions apply. Though the hotel is providing interstate transportation in a CMV, a 9 to 15 passenger vehicle operated for compensation, the hotel's van operation is eligible for the limited exception to regulatory applicability in §§ 390.3T(f)(6) and 390.3(f)(6).

This exemption does not relieve the hotel of the requirements in 49 CFR part 365 for operating authority registration. The hotel is providing interstate for-hire transportation (the costs for operating the shuttle van are included in the cost of the room, as an amenity) outside the zone that would qualify it for the incidental to air travel exemption within 49 U.S.C. 13506(a)(8)(A) and § 372.117(a). Also, the hotel's transportation does not meet the exemption requirements of 49 U.S.C. 13506(a)(3) for a motor vehicle owned or operated by or for a hotel and only transporting hotel patrons between the hotel and the local station of a carrier. The definition of carrier applicable to this exemption, at 49 U.S.C. 13102(3), does not include air carrier. The hotel must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. The hotel is also required under §§ 387.33T and 387.33 to obtain, file, and maintain $1.5 million of financial responsibility.

The hotel's 15-passenger van is not a CMV under § 383.5. Therefore, drivers of these

vehicles are not required to have CDLs and are not subject to the drug and alcohol testing regulations in 49 CFR part 382.

Employer Related Passenger Transportation

Scenario 1: A commercial building cleaning company owns and operates 15-passenger vans to transport its employees to client locations to perform cleaning services. The employer is located close to a State boundary, and employees are transported into a neighboring State. When employees are transported outside a specified distance from the company's single office location, the employer provides the transportation free of charge. However, when employees are transported wholly within the specified distance, the employer charges each employee a transportation fee and deducts that amount from the employee's pay. Most of this employee transportation is outside the commercial zone of the municipality where the company's office is located and where passenger transportation originates. All of the company's drivers and vehicles are at some point involved in interstate passenger transportation outside the commercial zone.

Guidance: This scenario describes for-hire transportation by a CMV as a part of continuous interstate movement, though some exemptions apply. The company is operating 15-passenger vans for compensation in interstate commerce, satisfying the definition of a *CMV* under § 390.5. Accordingly, the company must comply with the applicable regulations in 49 CFR parts 350 through 399. Because the employer charges each employee a transportation fee and deducts that amount from the employee's pay, the compensation is direct, and the company therefore does not qualify for the limited exception in §§ 390.3T(f)(6) and 390.3(f)(6) for 9 to 15 passenger-carrying CMVs operated not for direct compensation.

There are no exemptions to the commercial regulatory requirements for this interstate, for-hire motor vehicle operation. The company must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. The company is also required to obtain, maintain, and file financial responsibility of $1.5 million, as required under §§ 387.33T and 387.33.

The drivers of these 15-passenger vans, however, are not required to have CDLs and are not subject to employer conducted controlled substances and alcohol testing because the vehicles are not *CMVs* as defined in § 383.5. Although the drivers are not required to hold a valid CDL, they are subject to the general driver qualification regulations in part 391, including the requirements to be medically examined and certified in accordance with §§ 391.41, 391.43, and 391.45.

Scenario 2: A construction company owns and operates a bus designed to transport more than 15 passengers including the driver. The bus transports employees to work sites and does not charge a fee for the transportation. At the request of its employees, the company uses the bus on a Saturday during the summer to provide round-trip transportation for interested employees to an amusement park in a neighboring State. This trip is open only to employees and people the employees invite. The company collects money from each passenger. The transportation is not confined within a commercial zone.

Guidance: This scenario describes for-hire interstate transportation by a CMV as defined in §§ 390.5T and 390.5. The transportation is subject to all the applicable regulations in 49 CFR parts 350 through 399. The company must register for operating authority registration and USDOT number registration by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. In addition, the bus is also a *CMV* as defined in 49 CFR 383.5, and the driver must hold a valid CDL with a Passenger endorsement and must comply with the drug and alcohol testing regulations in 49 CFR part 382.

If the company operates its CMV in interstate commerce only on rare occasions, FMCSA has jurisdiction over the company, such vehicle, and the driver of such vehicle for a 4-month period after a trip in interstate commerce. However, records must be retained for whatever period is required by the FMCSRs, even if that period exceeds 4 months.

Operating authority registration is required in this scenario only because the construction company provided a trip for compensation to the amusement park in another State. Operating authority registration would not be necessary if the company limited its transportation to the free transportation provided for employees to travel to work sites.

Finally, because the company operates passenger vehicles with a seating capacity of at least 16 in interstate commerce, it must maintain financial responsibility of at least $5 million, as required under §§ 387.33T and 387.33. As long as the company is engaged in for-hire operations, evidence of financial responsibility must be maintained on file with FMCSA.

Education-Related Passenger Transportation

Scenario 1: A non-profit organization conducts educational tours with 15-passenger vans. All tours can be booked as part of a classroom course, or as a stand-alone tour. Each tour crosses either a State or international border, beyond a commercial zone. Passengers pay a single, inclusive of transportation fee whether they book a tour or a tour combined with a classroom lecture. The 15-passenger vans have a GVWR and actual GVW under 10,000 pounds.

Guidance: This scenario describes for-hire transportation by a CMV as defined in §§ 390.5T and 390.5, as a part of continuous interstate movement. The vans used by this organization are CMVs under §§ 390.5T and 390.5 because they have a passenger capacity of more than eight and are used to transport passengers for compensation in interstate commerce. However, the organization is eligible for the limited exception to regulatory applicability in §§ 390.3T(f)(6) and 390.3(f)(6) because (1) the vans are designed or used to transport between 9 and 15 passengers, (2) the organization does not receive direct compensation, and (3) the vans meet none of the alternative definitions of a CMV such as a GVW or GVWR of 10,001 pounds or more. The drivers of these vans do not need CDLs because the vehicles are not CMVs under § 383.5; both their passenger capacity and weight are below the applicable thresholds. For the same reasons, the drivers of these vans are not subject to the drug and alcohol testing regulations in 49 CFR part 382. The organization must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E because the operations clearly included interstate transportation for compensation in a motor vehicle and no exemptions from FMCSA's commercial regulatory authority apply.

The organization transports passengers across State lines and includes the cost of transportation in a flat rate fee. Its non-profit status is irrelevant. A carrier that receives compensation, even indirect compensation, is providing for-hire service, and, because the carrier operates beyond a commercial zone, it must obtain operating authority registration from FMCSA. This organization is not a youth or family camp, and the statutory exemption from operating authority registration for such camps that provide recreational or educational activities therefore does not apply. Further, the organization is engaged only in educational activities. Therefore, the exemption for providers of recreational activities does not apply.

Because the organization operates passenger vehicles with a seating capacity of 15 or fewer for hire in interstate commerce, the organization is required under §§ 387.33T and 387.33 to obtain, maintain, and file evidence of, $1.5 million of financial responsibility.

Scenario 2: A school bus contractor is hired by a school district to transport high school athletes, faculty, and volunteers to and from an athletic competition in another State on a single day. During the following week, the same school bus contractor is hired by the same school district to transport elementary school students and faculty to and from a historic site in another State for an educational tour. The school bus used by the contractor is designed to transport more than 15 passengers including the driver.

Guidance: This scenario describes for-hire interstate transportation by a CMV as defined in §§ 390.5T and 390.5, however, some exemptions may apply. The contractor is not eligible for the exception for ''school bus operations'' in §§ 390.3T(f)(1) and 390.3(f)(1) because the operations are defined in §§ 390.5T and 390.5 as the transportation of school children and/or personnel ''from home to school and from school to home.'' In this scenario, the students and faculty gather at the school and are transported, not from and to home, but from the school premises to out-of-State venues and then back to the school premises. The school bus contractor must obtain safety registration and a USDOT number under 49 U.S.C. 31134. The contractor must register by following the procedures in 49 CFR part 390 subpart E. In addition, the contractor is operating a school bus with a passenger capacity of at least 16, which also meets the definition of *CMV* under § 383.5. The drivers of the school buses must therefore hold CDLs with the applicable endorsements, and the employer

of such drivers must administer a drug and alcohol testing program in compliance with part 382.

Although both examples of the school bus contractor's passenger transportation are for-hire in interstate commerce, the contractor is not required to obtain operating authority registration. In this scenario the contractor is engaged in transportation to or from school, and the transportation is organized, sponsored, and paid for by the school district. The regulatory exception in § 372.103 and the statutory exemption in 49 U.S.C. 13506(a)(1) both apply to each type of passenger transportation conducted by the school bus contractor in this scenario.

Likewise, the school bus contractor qualifies for the exception in § 387.27(b)(4) because it is a motor carrier operating under contract providing transportation of preprimary, primary, and secondary students for extra-curricular trips organized, sponsored, and paid for by a school district. Accordingly, the contractor is not required to comply with Federal financial responsibility requirements.

Scenario 3: A private university transports only student athletes and university employees to games, sometimes in other States, in university-owned buses, which are designed to transport more than 15 passengers including the driver. The passenger transportation is financed by an allotment in the university athletic department's budget.

Guidance: This scenario describes interstate transportation by a CMV as defined in §§ 390.5T and 390.5, however, some exemptions may apply. The private university is a private motor carrier of passengers (business) operating *CMVs,* as defined in §§ 390.5T and 390.5, in interstate commerce. The private university fits within this definition because the financing of passenger transportation comes from a university budget source, not from payments or charges for transportation either directly or embedded in other tuition and fees. The transportation is only available to students and university employees, not the public at large. Private universities typically operate as commercial enterprises, as the passenger transportation to sporting events is in furtherance of the university's business and are an element of the institution's operations. Thus, transportation of students and faculty is in furtherance of its commercial purpose. The possible absence of ticket sales to sporting event spectators does not affect the commercial nature of the enterprise.

Except as noted in the next paragraph, the transportation is subject to the requirements of 49 CFR parts 350 through 399 relevant to passenger carrier operations. The university must register by following the procedures in 49 CFR part 390 subpart E. In addition, the private university's bus is a CMV as defined in § 383.5, and the driver must hold a valid CDL with a Passenger endorsement and be enrolled in a drug and alcohol testing program consistent with 49 CFR part 382.

There is a regulatory exception in § 391.69, however, from certain driver qualification requirements relating to applications for employment, investigations and inquiries, and road tests for single-employer drivers employed by a private motor carrier of passengers (business). Additionally, private motor carriers of passengers (business) may also continue to operate older buses manufactured before Federal fuel system requirements were adopted, provided the fuel system is maintained to the original manufacturer's standards (§ 393.67(a)(6)).

Because the private university is operating as a private motor carrier of passengers (business) it is not required to have operating authority registration. The operation is not for-hire because the private university does not receive payment for transportation services. Though in this scenario the transportation is not for-hire, it is important to reiterate that an entity's tax-exempt or non-profit status does not determine whether its passenger transportation is for-hire or private. Currently, Federal financial responsibility requirements do not apply to operations by private motor carriers of passengers (business).

Scenario 4: A private high school owns and operates buses to transport students, baseball team members, and faculty to games in another State. One vehicle is a school bus with a capacity of 48 passengers. Two other vehicles are mini-buses designed to transport 26 passengers including the driver, and one other vehicle is a van designed to transport 15 passengers including the driver. The school does not transport students from home to school or vice versa. The passenger transportation is financed by an allotment in the school's athletic department budget.

Guidance: This scenario describes some interstate transportation by a CMV as defined in §§ 390.5T and 390.5, however, some exemptions may apply. This scenario also describes some transportation outside the scope of FMCSA jurisdiction. The private high school is a private motor carrier of passengers (business) operating *CMVs,* as defined in §§ 390.5T and 390.5, in interstate commerce. The private high school fits within this definition because the financing of passenger transportation is from a general high school budget source, so there is no compensation for the transportation. The transportation is only available to students and school employees, not the public at large. Private schools typically operate as commercial enterprises as the passenger transportation to sporting events is in furtherance of the school's business, including its athletic activities which are an element of the institution's operations. Thus, transportation of students and faculty is in furtherance of its commercial purpose. The possible absence of ticket sales to sporting event spectators does not affect the commercial nature of the enterprise.

The transportation in larger vehicles is subject to the requirements of 49 CFR parts 350 through 399 relevant to passenger carrier operations. The school must register by following the procedures in 49 CFR part 390 subpart E. Because the private high school is a private motor carrier of passengers (business), not providing interstate transportation for compensation, it is not required to have operating authority registration under 49 CFR part 365. Whether the private high school is tax-exempt or has a non-profit status does not determine whether its passenger transportation is for-hire or private. The school is not required to comply with Federal financial responsibility requirements.

In addition, other than the van, the private high school's vehicles are *CMVs* as defined in 49 CFR 383.5, and the drivers of these vehicles must have CDLs with Passenger endorsements and be enrolled in a drug and alcohol testing program consistent with 49 CFR part 382.

The van is not a CMV because it is designed to transport 15 passengers including the driver and it is not transporting passengers for compensation. A vehicle is considered a CMV only if it is used to transport 16 or more passengers in interstate commerce, regardless of the nature of compensation; or if is used to transport 9 to 15 passengers including the driver for compensation in interstate commerce.

There is a regulatory exception in § 391.69, however, from certain driver qualification requirements relating to applications for employment, investigations and inquiries, and road tests for single-employer drivers employed by a private motor carrier of passengers (business). Additionally, private motor carriers of passengers (business) may continue to operate older buses manufactured before Federal fuel system requirements were adopted, provided the fuel system is maintained to the original manufacturer's standards (§ 393.67(a)(6)).

Faith-Based Organizations and Passenger Transportation

FMCSA frequently receives questions from religious and secular organizations regarding passenger-carrying vehicles the organizations own and use to transport their members and guests. The scenarios presented below are illustrative examples; the same principles apply to secular groups with similar operations.

Scenario 1: To raise funds, a faith-based organization organizes a one-time trip to an amusement park in a neighboring State. The organization advertises the trip on its website and in various public places such as grocery stores, libraries, etc., making the trip open to the public. A per-person fee will cover admission to the amusement park and round-trip transportation. The faith-based organization will use its own bus, which is designed to transport more than 15 passengers including the driver. A group member is the volunteer bus driver. The passenger transportation is not confined to a commercial zone.

Guidance: This scenario describes for-hire interstate transportation by a CMV. The faith-based organization's bus is a CMV, as defined in §§ 390.5T and 390.5, operating for-hire in interstate commerce, and the organization is a motor carrier subject to all applicable FMCSRs, including parts 350 through 399. In addition, the faith-based organization is operating a passenger-carrying CMV, as defined in § 383.5 because it is designed to transport 16 or more passengers; the driver of the organization's bus must therefore hold a valid CDL with a Passenger endorsement and comply with the drug and alcohol testing regulations in part 382.

The organization must register by following the procedures in 49 CFR part 365

subpart A regarding operating authority registration and part 390 subpart E regarding USDOT number registration, because it is receiving compensation for transportation in interstate commerce. No exemptions apply to this operation.

The faith-based organization is operating a passenger vehicle with a seating capacity of at least 16, for-hire in interstate commerce and is therefore required under §§ 387.33T and 387.33 to maintain $5 million of financial responsibility.

Scenario 2: A faith-based organization owns a bus which it uses to transport some of its members to an associated organization in another State. It suggests participating members contribute money to help cover the fuel expense. The bus is designed to transport more than 15 passengers including the driver. The transportation of the faith-based organization members is not confined to a commercial zone.

Guidance: This scenario describes for-hire interstate transportation by a CMV. The faith-based organization's bus is a CMV, as defined in §§ 390.5T and 390.5, operating in interstate commerce, and the organization is a motor carrier subject to all applicable FMCSRs, including parts 350 through 399. In addition, the faith-based organization is operating a passenger-carrying CMV, as defined in § 383.5 because it is designed to transport 16 or more passengers; the driver of the organization's bus must therefore hold a valid CDL with a Passenger endorsement and comply with the drug and alcohol testing regulations in part 382.

The money provided from the organization's members for the trip constitutes direct compensation. Any type of compensation for providing a passenger transportation service makes the faith-based organization a for-hire motor carrier of passengers. The organization must register by following the procedures in 49 CFR part 365 subpart A regarding operating authority registration and part 390 subpart E regarding USDOT number registration.

The faith-based organization is using a bus with a seating capacity of 16 or more to transport passengers for hire in interstate commerce and is thus required under §§ 387.33T and 387.33 to maintain financial responsibility of at least $5 million. The monetary contribution requested of each passenger constitutes compensation, making the faith-based organization a for-hire motor carrier.

Scenario 3: A faith-based organization sponsors a trip for its members to an amusement park in a neighboring State. The trip is announced in the organization's newsletters, but not advertised to the general public. Group members may invite friends and family, including non-members, to join. An event fee paid by all trip participants covers transportation, lodging, food, and admission to the amusement park. The organization's bus that will be used for the trip is designed to transport more than 15 passengers, including the driver. The trip will extend beyond the commercial zone of the city where the organization is located.

Guidance: This scenario describes for-hire, interstate transportation by a CMV. The faith-based organization's bus is a CMV, as defined in §§ 390.5T and 390.5, operating in interstate commerce, and the faith-based organization is a motor carrier subject to all applicable FMCSRs, including parts 350 through 399. In addition, the faith-based organization is operating a passenger-carrying CMV, as defined in § 383.5 because it is designed to transport 16 or more passengers; the driver of the bus must therefore hold a valid CDL with a Passenger endorsement and comply with the drug and alcohol testing regulations in part 382.

The organization is providing interstate motor vehicle transportation for compensation indirectly through the event fee, thus it must register by following the procedures in 49 CFR part 365 subpart A regarding operating authority registration and part 390 subpart E regarding USDOT number registration. The organization is a for-hire motor carrier even though the trip is not available to the public at large.

The organization is an interstate for-hire motor carrier of passengers compensated indirectly through the event fee. Because there is no applicable exception, it must maintain the $5 million of financial responsibility required to operate a vehicle with a seating capacity of at least 16 passengers (§§ 387.33T and 387.33).

Scenario 4: A high school cheerleading team wants to travel to a neighboring State to participate in a cheerleading competition. A parent of one cheerleader is a member of a faith-based organization that owns a bus designed to transport more than 15 passengers including the driver. The parent persuades the faith-based organization to take the team to the competition. The cheerleaders and their parents give the faith-based organization money for use of the bus, and the faith-based organization pays one of its members to drive it. The trip is not confined to a commercial zone.

Guidance: This scenario describes for-hire interstate transportation of passengers by a CMV. The faith-based organization's bus is a CMV, as defined in § 390.5, operating for hire in interstate commerce, and the organization is a motor carrier subject to all applicable FMCSRs, including parts 350 through 399. In addition, the faith-based organization is operating a passenger-carrying CMV, as defined in § 383.5 because it is designed to transport 16 or more passengers; the driver of the faith-based organization's bus must hold a valid CDL with a Passenger endorsement and comply with the drug and alcohol testing regulations in part 382.

This is for hire interstate transportation of passengers by motor vehicle because the families pay the organization to use the bus and no exemptions apply to the operation. Thus, operating authority registration is required. The organization must register by following the procedures in 49 CFR part 365 subpart A regarding operating authority registration and part 390 subpart E regarding USDOT number registration.

Likewise, because the faith-based organization is operating a passenger vehicle with a seating capacity of at least 16, for-hire in interstate commerce, it is required under §§ 387.33T and 387.33 to maintain $5 million of financial responsibility.

Scenario 5: A faith-based organization with many charitable operations provides transportation to a variety of passengers—both members of the organization and nonmembers—for a variety of events. For example, paid and volunteer collectors are sent to donation sites, the faith-based organization's employees are taken to and from the location of coat and food drives, donors are transported to fundraising events, children in daycare are taken on trips, and various individuals are provided transportation for job training programs. The faith-based organization's daycare center charges a fee for its services which include interstate passenger transportation. The faith-based organization uses different types of vehicles to transport its passengers. Some have a seating capacity of 16 or more passengers, and others have a seating capacity of 15 or fewer passengers. All passenger-carrying vehicles are used throughout the faith-based organization's various transportation operations. In addition, all of the faith-based organization's drivers operate a vehicle with a seating capacity of 16 or more passengers to transport the daycare children on interstate trips on at least an occasional basis. All of the various passengers are transported into another State.

Guidance: The daycare center-related transportation is for-hire interstate transportation of passengers by CMV. The organization operates CMVs, as defined in §§ 390.5T and 390.5, in interstate commerce as a for-hire motor carrier of passengers and is subject to the applicable FMCSRs in parts 350 through 399. The faith-based organization receives compensation through the collection of fees for services, including transportation, paid for the daycare, and all drivers and vehicles provide at least some transportation for the daycare. While some of the transportation operations are not for-hire, because all of the drivers and vehicles are used in all of the operations, the Agency considers the organization to be engaged in for-hire, interstate passenger transportation as well as private, interstate passenger transportation. While there is a limited exception from the safety regulations in parts 390 through 399 for smaller vehicles in §§ 390.3T(f)(6) and 390.3(f)(6), it does not apply to the organization because some of the organization's passenger-carrying vehicles are designed or used to transport 16 or more passengers in interstate commerce. In addition, because some of the vehicles are designed to transport 16 or more passengers, and all of the drivers operate all of the different vehicles on occasion, all the drivers must have CDLs with Passenger endorsements, and the faith-based organization must comply with the drug and alcohol testing regulations in part 382.

Because the faith-based organization receives indirect compensation through the fees charged for the daycare center, it is operating as an interstate, for-hire motor carrier of passengers. No exemption from operating authority registration requirements applies. The organization must register, therefore, by following the procedures in 49 CFR part 365 subpart A regarding operating authority registration and part 390 subpart E regarding USDOT number registration.

Because the faith-based organization operates some passenger vehicles with a

seating capacity of at least 16, for-hire in interstate commerce, it is required under §§ 387.33T and 387.33 to maintain $5 million of financial responsibility.

Scenario 6: A religiously-affiliated group of singers and musicians travels to various locations to perform at events and ceremonies. The group owns and operates multiple vehicles to transport its members and their equipment. Each vehicle has a GVWR and GVW of 10,001 to 26,000 pounds and is designed to transport more than 15 passengers including the driver. All the vehicles are driven between multiple States for performances. The hosting organizations ask event participants for donations which are provided to the musical group. Sometimes the musical group sells T-shirts, souvenirs, or other merchandise at the events.

Guidance: This scenario describes interstate transportation by CMV, but some exemptions may apply. The musical group is a private motor carrier of passengers (business) and is operating CMVs, as defined in §§ 390.5T and 390.5, in interstate commerce. The transportation is thus subject to 49 CFR parts 350 through 399 relevant to passenger carrier operations. The group is considered a private motor carrier of passengers (business) because the passenger transportation is not available to the public at large; but the receipt of money for a musical performance constitutes a business transaction, and a part of the furtherance of the musical group's commercial enterprise. Thus, the transportation of members and equipment has a commercial purpose. The possible absence of merchandise sales does not affect the commercial nature of the enterprise, as the primary purpose is promotion of the group's music, for which the group receives compensation. Whether a musical group is tax-exempt or has a non-profit status does not determine whether it is a business or nonbusiness. Finally, the transportation of passengers and equipment is an essential element of the group's operations, and such transportation is in furtherance of its commercial enterprise. All of the donations received may be used to cover the cost of fuel, maintenance, depreciation and insurance on the vehicle, but the transportation nevertheless furthers a commercial purpose.

Accordingly, the musical group must register by following the procedures in 49 CFR part 390 subpart E regarding USDOT number registration. In addition, because the musical group's vehicles are designed to transport more than 15 passengers including the driver, the drivers of these vehicles must have CDLs with a Passenger endorsement and be enrolled in a drug and alcohol testing program consistent with 49 CFR part 382.

There is a regulatory exception in § 391.69, however, from certain driver qualification requirements relating to applications for employment, investigations and inquiries, and road tests for single-employer drivers employed by a private motor carrier of passengers (business). Additionally, private motor carriers of passengers (business) may also continue to operate older buses manufactured before Federal fuel system requirements were adopted, provided the fuel system is maintained to the original manufacturer's standards (§ 393.67(a)(6)).

The musical group's interstate transportation of its members is in furtherance of a commercial enterprise, but the group is not receiving compensation for providing transportation. The compensation received is for their musical performance. The members of the group likewise do not pay a fee for their transportation. The musical group is thus a private motor carrier of passengers (business), and such carriers are not required to obtain operating authority registration.

The musical group is a private motor carrier of passengers (business), therefore, currently the group is not required to maintain evidence of financial responsibility on file with FMCSA.

Private motor carriers of passengers are not required to obtain operating authority registration and are not subject to the financial responsibility requirements.

Miscellaneous Passenger Transportation

Scenario 1: An assisted living apartment community is a commercial business that owns and operates a bus designed to transport more than 15 passengers, including the driver. The drivers are employees of the apartment community. The bus is used to transport residents to medical appointments, shopping centers, theaters, etc. Routine local transportation within the State is financed by general fees paid by all community residents. The community office assesses a special charge for entertainment-related transportation. The general public is not allowed to use the bus service. Some trips to shopping centers and theaters go into a neighboring State, but all transportation remains in the commercial zone of the community.

Guidance: This scenario describes for-hire interstate transportation by commercial motor vehicle, but some exemptions apply. The community is operating a CMV, as defined in §§ 390.5T and 390.5, in interstate commerce. The fact that all passenger transportation is entirely within a commercial zone is irrelevant for purposes of the ''interstate commerce'' component of the definition of *CMV* under §§ 390.5T and 390.5. The transportation is subject to all of the provisions in 49 CFR parts 350 through 399 relevant to passenger carrier operations. In addition, the 16-passenger van is also a CMV as defined in § 383.5, and the driver therefore must hold a valid CDL with a Passenger endorsement and be enrolled in a drug and alcohol testing program consistent with 49 CFR part 382.

Although the community is an interstate for-hire motor carrier of passengers assessing special charges for entertainment trips to a neighboring State, operating authority registration is not required because the transportation is wholly within the commercial zone where the community is located (49 U.S.C. 13506(b)(1)). However, the community must register by following the procedures in 49 CFR part 390 subpart E regarding USDOT number registration because the community operates a CMV, as defined in §§ 390.5T and 390.5, in interstate commerce.

Under §§ 387.33T and 387.33, the community must obtain and maintain $5 million of financial responsibility because it is a for-hire motor carrier of passengers operating in interstate commerce and at least one of its vehicles has seating for 16 or more passengers. The general fees paid by the community residents cover a multitude of services including local transportation. This indirect compensation arrangement for transportation is service for-hire. The special charge for entertainment-related transportation is direct compensation and is also a for-hire service.

Scenario 2: A youth camp transports campers in 15-passenger vans from an airport to the camp site and back, from the camp site to parks and other locations in neighboring States, and to facilities for medical care, etc. Trips to and from the airport extend beyond a 25-mile radius from the boundary of the airport and the commercial zone of the municipality that falls within the 25-mile radius of the airport. Other trips also extend beyond a commercial zone. Campers and camp employees are the only transported passengers. The vans have a GVW and GVWR below 10,001 pounds. The camp collects payment for the participating youth with a total package fee.

Guidance: If a single fee covers all services provided by the camp including transportation, most of the safety regulations would not apply to the camp. Although the camp operates CMVs as defined in §§ 390.5T and 390.5 in interstate commerce (more than 8 passengers, for compensation), it would qualify for the exception in §§ 390.3T(f)(6) and 390.3(f)(6) for CMVs designed or used to transport between 9 and 15 passengers not for direct compensation, and its vans meet none of the alternative definitions of a CMV (such as a GVW or GVWR of 10,001 pounds or more). The organization would therefore be required to comply only with those requirements specified in §§ 390.3T(f)(6) and 390.3(f)(6). Furthermore, the camp must register by following the procedures in 49 CFR part 390 subpart E regarding USDOT number registration.

However, if the camp collects a specific fee for passenger transportation, it is then receiving direct compensation and does not qualify for the limited exception in §§ 390.3T(f)(6) and 390.3(f)(6). If direct compensation occurs, the camp must comply with the applicable regulations in 49 CFR parts 350 through 399 including motor carrier registration in accordance with § 390.201. In the case of direct compensation, the drivers of these 15-passenger vans with a GVW and GVWR below 10,001 pounds are not required to hold a CDL and are not subject to employer conducted controlled substances and alcohol testing because such vehicles are not CMVs as defined in § 383.5. Although the drivers are not required to hold a CDL, they must be medically examined and certified in accordance with §§ 391.41, 391.43, and 391.45, and they are subject to the general driver qualification regulations in part 391 because such vehicles are CMVs as defined in §§ 390.5T and 390.5.

Though the camp is engaged in for-hire interstate transportation of passengers by motor vehicle, there is an exemption from

operating authority registration requirements in 49 U.S.C. 13506(a)(16). This camp falls within the exemption, which limits the Agency's jurisdiction over the transportation of passengers by 9- to 15-passenger motor vehicles operated by youth or family camps that provide recreational or educational activities.

Nonetheless, because the camp is an interstate for-hire motor carrier of passengers compensated indirectly through camp fees, it must maintain $1.5 million of financial responsibility (§§ 387.33T and 387.33). The camp is not required to maintain evidence of financial responsibility on file with FMCSA.

Issued under the authority delegated in 49 CFR 1.87.

Robin Hutcheson,

Administrator.

[FR Doc. 2022–24089 Filed 11–14–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2022–0111; FF09E22000 FXES11130900000 201]

RIN 1018–BG87

Endangered and Threatened Updating Entries for Two Species on and Removing Johnson's Seagrass From the Lists of Endangered and Threatened Wildlife and Plants Wildlife and Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in accordance with the Endangered Species Act of 1973 (Act), as amended, are amending the List of Endangered and Threatened Plants by removing Johnson's seagrass (*Halophila johnsonii*). We are also amending the List of Endangered and Threatened Wildlife by updating the entries for the Arctic subspecies of the ringed seal (*Pusa hispida hispida*) and the Beringia distinct population segment (DPS) of the Pacific bearded seal subspecies (*Erignathus barbatus nauticus*) to reflect the final designation of critical habitat for this subspecies and DPS, respectively. These amendments are based on previously published determinations by the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration, Department of Commerce, which has jurisdiction for these species.

DATES: This rule is effective November 15, 2022. *Applicability date:* The Johnson's seagrass delisting was effective May 16, 2022. The Arctic subspecies of the ringed seal and the Beringia DPS of the bearded seal critical habitat designations were both effective May 2, 2022.

FOR FURTHER INFORMATION CONTACT: Rachel London, Acting Chief, Branch of Delisting and Foreign Species, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; 703–358–2491; or Caitlin Snyder, Chief, Branch of Domestic Listing, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; 703–358–2171. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Act (16 U.S.C. 1531 *et seq.*) and Reorganization Plan No. 4 of 1970 (35 FR 15627; October 6, 1970), NMFS has jurisdiction over the marine taxa specified in this rule. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as an endangered or a threatened species. Under section 4(a)(2)(B) of the Act, if NMFS determines that a species should be removed from the Lists of Endangered and Threatened Wildlife and Plants (delisted), or that a species' status should be changed from an endangered to a threatened species, then NMFS is required to recommend the status change to the Service. NMFS makes these determinations via its rulemaking process. If the Service concurs with the recommended status change, then the Service will implement the status change by publishing a final rule to amend the Lists of Endangered and Threatened Wildlife and Plants (List or Lists) in title 50 of the Code of Federal Regulations (CFR) at 50 CFR 17.11(h) and 17.12(h).

On December 23, 2021, NMFS published a proposed rule (86 FR 72908) to remove Johnson's seagrass from the Federal List of Endangered and Threatened Plants. NMFS solicited public comments on the proposed rule through February 22, 2022. On April 14, 2022, NMFS published a final rule (87 FR 22137) to remove Johnson's seagrass from the Federal List of Endangered and Threatened Plants.

The delisting of Johnson's seagrass was effective May 16, 2022. In the April 14, 2022, final rule (87 FR 22137), NMFS addressed all public comments received in response to the proposed rule. In a June 10, 2022, letter (Letter from Gary Frazer to Kimberly Damon-Randall, June 10, 2022), per section 4(a)(2)(B), we concurred with NMFS's recommendation that the Johnson's seagrass should be removed from the List of Endangered and Threatened Plants. By publishing this final rule, we are simply taking the necessary administrative step to codify these changes in the List at 50 CFR 17.12(h).

We are also updating the entries on the List of Endangered and Threatened Wildlife for the Arctic subspecies of the ringed seal and the Beringia DPS of the bearded seal to reflect the final designation of critical habitat for this subspecies and DPS, respectively. On January 8, 2021, NMFS published a revised proposed rule (86 FR 1452) to designate critical habitat for the Arctic subspecies of the ringed seal, published a proposed rule (86 FR 1433) to designate critical habitat for the Beringia DPS of the bearded seal, and solicited public comments on both proposed rules through March 9, 2021 (86 FR 1452, January 8, 2021; 86 FR 1433, January 8, 2021). NMFS also solicited public comments at three public hearings for both proposed rules (see 86 FR 7686; February 1, 2021). In response to requests, NMFS extended the public comment period for both proposed rules through April 8, 2021 (see 86 FR 13517, March 9, 2021; 86 FR 13518, March 9, 2021). NMFS addressed all public comments received in response to both proposed rules, and on April 1, 2022, published a final rule (87 FR 19232) designating critical habitat for the Arctic subspecies of the ringed seal and a final rule (87 FR 19180) designating critical habitat for the Beringia DPS of the bearded seal. The Arctic subspecies of the ringed seal and the Beringia DPS of the bearded seal critical habitat designations were both effective May 2, 2022. By publishing this final rule, we are simply taking the necessary administrative step to codify these changes in the List at 50 CFR 17.11(h).

Administrative Procedure Act

Because NMFS provided an opportunity for public comment on the proposed rule to delist Johnson's seagrass, and we concurred with the NMFS action, we find good cause that the notice and public comment procedures of 5 U.S.C. 553(b) are unnecessary for this action. Because

NMFS provided an opportunity for public comment on the proposed rules to designate critical habitat for the Arctic subspecies of the ringed seal and the Beringia DPS of the bearded seal, we find good cause that the notice and public comment procedures of 5 U.S.C. 553(b) are unnecessary for this action. We also find good cause under 5 U.S.C. 553(d)(3) to make this rule effective immediately. The NMFS final rule to delist Johnson's seagrass (87 FR 22137; April 14, 2022) removed protection under the Act for this species, removed the species from the table at 50 CFR 223.102(e), and removed its critical habitat designation at 50 CFR 226.213. The April 1, 2022, NMFS critical habitat final rules (87 FR 19232 and 87 FR 19180) extended protection under the Act for the Arctic subspecies of the ringed seal and the Beringia DPS of the bearded seal, and amended 50 CFR parts 223 and 226 to designate critical habitat for the Arctic subspecies of the ringed seal and the Beringia DPS of the bearded seal. This rule is an administrative action to remove one species from the List at 50 CFR 17.12(h) and update two species' entries on the List at 50 CFR 17.11(h). The public would not be served by delaying the effective date of this rulemaking action.

Required Determinations

National Environmental Policy Act

We have determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We outlined our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the CFR, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11, amend paragraph (h) by revising the entries for ''Seal, bearded [Beringia DPS]'' and ''Seal, ringed (Arctic subspecies)'' under MAMMALS in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS				
*	* *	*	*	* * *
Seal, bearded [Beringia DPS].	*Erignathus barbatus nauticus*.	Beringia DPS—see 50 CFR 223.102.	T	77 FR 76740, 12/28/2012;[N] 79 FR 42687, 7/23/2014; 50 CFR 226.229.[CH]
*	* *	*	*	* * *
Seal, ringed (Arctic subspecies).	*Phoca* (=*Pusa*) *hispida hispida*.	Wherever found	T	77 FR 76706, 12/28/2012;[N] 79 FR 42687, 7/23/2014; 50 CFR 226.228.[CH]
*	* *	*	*	* * *

§ 17.12 [Amended]

■ 3. In § 17.12, amend paragraph (h) by removing the entry for ''*Halophila johnsonii*'' under FLOWERING PLANTS from the List of Endangered and Threatened Plants.

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–24741 Filed 11–14–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 211217–0261; RTID 0648–XC537]

Reef Fish Fishery of the Gulf of Mexico; 2022 Commercial and Recreational Accountability Measure and Closures for Gulf of Mexico Lane Snapper

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) for the lane snapper commercial and recreational sectors in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) for the 2022 fishing year through this temporary rule. NMFS has projected that the 2022 stock annual catch limit (ACL) for Gulf lane snapper has been reached. Therefore, NMFS closes the commercial and recreational sectors for Gulf lane snapper on November 15, 2022, and they will remain closed through the end of the current fishing year on December 31, 2022. These closures are necessary to protect the Gulf lane snapper resource.

DATES: This temporary rule is effective from 12:01 a.m., local time, on November 15, 2022, until 12:01 a.m., local time, on January 1, 2023.

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

SUPPLEMENTARY INFORMATION: NMFS manages the Gulf reef fish fishery, which includes lane snapper, under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico

(FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) through regulations at 50 CFR part 622. All lane snapper weights discussed in this temporary rule are in round weight.

The current stock ACL for Gulf lane snapper is 1,028,973 lb (466,734 kg). As specified in 50 CFR 622.41(k), if the sum of the commercial and recreational landings reaches or is projected to reach the stock ACL, then NMFS will close the commercial and recreational sectors for the remainder of the fishing year. Based on latest recreational landings estimates, which were available in October 2022, NMFS has determined that the stock ACL for Gulf lane snapper was reached as of August 28, 2022. Accordingly, this temporary rule closes the commercial and recreational sectors for Gulf lane snapper effective at 12:01 a.m., local time, on November 15, 2022, and both sectors will remain closed through the end of the current fishing year on December 31, 2022.

During the commercial and recreational closures, the commercial sale or purchase of lane snapper taken from the Gulf EEZ is prohibited and all harvest or possession in or from the Gulf EEZ of lane snapper is prohibited. The prohibition on possession of Gulf lane snapper also applies in Gulf state waters for a vessel issued a valid Federal charter vessel/headboat permit for Gulf reef fish. During the closures, the operator of a vessel with a valid commercial vessel permit for Gulf reef fish having lane snapper on board must have landed and bartered, traded, or sold such lane snapper prior to 12:01 a.m., local time, on November 15, 2022. The prohibition on the sale or purchase of lane snapper does not apply to fish that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, on November 15, 2022, and were held in cold storage by a dealer or processor.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.41(k), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations associated with the closure of the lane snapper commercial and recreational sectors at 50 CFR 622.41(k) have already been subject to notice and public comment, and all that remains is to notify the public of the closure. Prior notice and opportunity for public comment are contrary to the public interest because there is a need to immediately implement this action to protect the lane snapper stock. Prior notice and opportunity for public comment would require time and allow for additional harvest in excess of the stock ACL.

For the aforementioned reasons, the Assistant Administrator also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: November 9, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–24900 Filed 11–10–22; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220216–0049; RTID 0648–XC553]

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

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from catcher vessels using trawl gear and vessels using pot gear to catcher vessels using hook-and-line gear and catcher/processors using hook-and-line gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to allow the 2022 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective November 9, 2022, through 2400 hours, Alaska local time (A.l.t.), December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

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

The 2022 Pacific cod TAC specified for catcher vessels using trawl gear in the Western Regulatory Area of the GOA is 2,579 metric tons (mt), as established by the final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022).

The 2022 Pacific cod TAC specified for vessels using pot gear in the Western Regulatory Area of the GOA is 2,552 mt, as established by the final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022).

The 2022 Pacific cod TAC specified for catcher vessels using hook-and-line gear in the Western Regulatory Area of the GOA is 94 mt, as established by the final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022).

The 2022 Pacific cod TAC specified for catcher/processors using hook-and-line gear in the Western Regulatory Area of the GOA is 1,330 mt, as established by the final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that catcher vessels using trawl gear will not be able to harvest 400 mt of the 2022 Pacific cod TAC allocated to those vessels under § 679.20(a)(12)(i)(A)(*3*), and vessels using pot gear will not be able to harvest 150 mt of the 2022 Pacific cod TAC allocated to those vessels under § 679.20(a)(12)(i)(A)(*5*).

Therefore, in accordance with § 679.20(a)(12)(ii)(B), NMFS apportions 400 mt of Pacific cod from catcher vessels using trawl gear to the annual amount specified for catcher/processors using hook-and-line gear, and 150 mt of Pacific cod from vessels using pot gear to the annual amount specified for catcher vessels using hook-and-line gear.

The harvest specifications for 2022 Pacific cod included in the final 2022 and 2023 harvest specifications for groundfish in the Western Regulatory Area of the GOA (87 FR 11599, March 2, 2022) is revised as follows: 2,179 mt to catcher vessels using trawl gear, 2,402 mt to vessels using pot gear, 244 mt to catcher vessels using hook-and-line

gear, and 1,730 mt to catcher/processors using hook-and-line gear.

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the originally specified apportionment of the Pacific cod TAC. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 8, 2022.

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

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

Dated: November 9, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–24809 Filed 11–9–22; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220216–0049; RTID 0648–XC375]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processors Using Hook-and-Line Gear in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher/processors using hook-and-line (HAL) gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2022 Pacific cod total allowable catch (TAC) apportioned to catcher/processors using HAL gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), November 9, 2022, through 2400 hours, A.l.t., December 31, 2022.

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

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

The 2022 Pacific cod TAC apportioned to catcher/processors using HAL gear in the Central Regulatory Area of the GOA is 749 metric tons (mt) as established by the final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the 2022 Pacific cod TAC apportioned to catcher/processors using HAL gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 739 mt and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher/processors using HAL gear in the Central Regulatory Area of the GOA.

While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the closure of Pacific cod by catcher/processors using HAL gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 8, 2022.

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

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

Dated: November 9, 2022.

Samuel D. Rauch, III,

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

[FR Doc. 2022–24848 Filed 11–9–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 219
Tuesday, November 15, 2022

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

DEPARTMENT OF ENERGY

10 CFR Part 1021

Request for Information Regarding Categorical Exclusions

AGENCY: Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (DOE) requests information to help inform potential updates to categorical exclusions in its regulations implementing the National Environmental Policy Act (NEPA). DOE is considering revisions to ensure that its NEPA reviews are aligned with the latest DOE programs and initiatives for clean energy and electricity transmission projects, fully consider potential environmental impacts and community concerns, and are efficient and effective at informing DOE decisions. Through this request for information, DOE seeks recommendations and supporting information from interested individuals and organizations on establishing new categorical exclusions and revising existing ones.

DATES: Responses should be submitted by December 30, 2022.

ADDRESSES: Responses to this request for information should be submitted to *doe-nepa-rulemaking@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: For further information on submitting responses, contact Carrie Abravanel, Office of NEPA Policy and Compliance (GC–54), (202) 586–8397, *Carrie.Abravanel@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE is responsible for investing billions of taxpayer dollars in new or expanded efforts in the research and development, demonstration, and deployment of clean energy projects and clean energy infrastructure throughout the United States and its territories. DOE must comply with NEPA (42 U.S.C. 4321, *et seq.*) to inform its decisions about these actions, including decisions related to financial assistance (*e.g.,* grants, loan guarantees) to the private and public sector. DOE also must fulfill its responsibilities under other laws such as the National Historic Preservation Act and the Endangered Species Act. In addition, DOE is committed to providing meaningful and timely opportunities for engagement with local communities, Tribal Nations, and others potentially affected by its decisions.

Central to implementation of NEPA is the principle that the extent of analysis should be proportional to the potential for significant environmental impacts. Accordingly, the Council on Environmental Quality (CEQ) established three types of NEPA review: categorical exclusion, environmental assessment, and environmental impact statement. (*See e.g.,* 40 CFR parts 1501 and 1502.) An agency prepares an environmental assessment or environmental impact statement when the proposed action may result in significant environmental impacts, or the significance of potential impacts is unknown.

A categorical exclusion is a category of actions that a federal agency has determined, in its agency NEPA procedures, normally do not have a significant effect on the human environment (40 CFR 1508.1(d)). DOE's categorical exclusions are listed in appendices A and B to subpart D of its NEPA procedures (*10 CFR part 1021*). Actions that qualify for a categorical exclusion do not require preparation of an environmental assessment or environmental impact statement.

A DOE proposal to establish or modify a categorical exclusion must be accompanied by technical support demonstrating why DOE has concluded that the category of actions normally does not pose the potential for significant environmental impacts. Once established in its procedures, before determining that a categorical exclusion applies to any particular proposed action, DOE evaluates whether that proposed action meets the conditions contained in the categorical exclusion and whether there are any extraordinary circumstances associated with the proposed action that pose the potential for significant environmental impacts. For more information on DOE's process for applying a categorical exclusion to a proposed action see 10 CFR 1021.410 and *Conditions That Are Integral Elements of the Classes of Action in Appendix B* at the start of appendix B to subpart D of DOE's NEPA procedures in *10 CFR part 1021.*

What information is DOE requesting?

The Infrastructure Investment and Jobs Act (aka, Bipartisan Infrastructure Law), the Inflation Reduction Act, the CHIPS and Science Act, and DOE's annual appropriations all provide funding for DOE to lead the nation's transition to a clean energy economy and improve the resilience of its energy infrastructure. DOE's website includes information on this funding, such as a general *web page on the Bipartisan Infrastructure Law, list of DOE programs funded by the Bipartisan Infrastructure Law, fact sheet on the Inflation Reduction Act, and statement regarding the CHIPS and Science Act.*

With respect to these laws and initiatives, DOE seeks information to help it identify activities associated with its furtherance of clean energy projects and clean energy infrastructure that should be considered for new or revised categorical exclusions. DOE requests that interested parties:

- Identify a specific category of actions related to clean energy projects and clean energy infrastructure that is not covered by existing DOE categorical exclusions, but that is likely to meet the standard of not having a significant effect on the human environment; and
- Provide suggestions for revising DOE's existing categorical exclusions related to clean energy projects and clean energy infrastructure.

Along with the above information, interested parties should provide:

(1) A brief explanation of the rationale for any suggested new categorical exclusions or revisions to the existing ones,

(2) Any limits or conditions that should be included in the new or revised categorical exclusions to ensure that the category of actions normally does not pose the potential for significant environmental impacts, and

(3) Technical or empirical support for the suggested changes to DOE's categorical exclusions.

How should information be provided?

Responses should be submitted to *doe-nepa-rulemaking@hq.doe.gov* by December 30, 2022. Submitted information will be included in the public record of any associated rulemaking, should DOE decide to

undertake revisions to its NEPA regulations.

Confidential Business Information: Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Signing Authority

This document of the Department of Energy was signed on November 8, 2022, by Samuel Walsh, General Counsel, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 9, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–24799 Filed 11–14–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 203

[Docket ID: COE–2021–0008]

RIN 0710–AA78

Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers

AGENCY: U.S. Army Corps of Engineers (Corps), Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: The Corps is proposing to revise its natural disaster procedures under this part of the Code of Federal Regulations (CFR), which implements a section of the Flood Control Act of 1941, as amended. Revisions will incorporate advances in risk-informed decision-making approaches and disaster response lessons learned, as well as recent amendments to this section of the Flood Control Act of 1941.

DATES: Comments must be received on or before January 17, 2023.

ADDRESSES: You may submit comments, identified by docket number COE–2021–0008, using any of these methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: 33CFR203@usace.army.mil* and include the docket number, COE–2021–0008, in the subject line of the message.

3. *Mail:* HQ, U.S. Army Corps of Engineers, ATTN: 33CFR203/CECW–HS/3D64, 441 G Street NW, Washington, DC 20314–1000.

4. *Hand Delivery/Courier:* Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2021–0008. The public docket will include all comments exactly as submitted and without change and may be made available on-line at *http://www.regulations.gov.* This will include any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information where disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *regulations.gov* or email. The *regulations.gov* website is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to the Corps without going through *regulations.gov*, your email address will be automatically captured and included as part of the comment placed in the public docket and made available on the internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as 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.

FOR FURTHER INFORMATION CONTACT: Mr. Willem H.A. Helms, Office of Homeland Security, Directorate of Civil Works, U.S. Army Corps of Engineers, at (202) 761–5909 or *willem.h.helms@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

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Background

Section 5 of the Flood Control Act of 1941, as amended, (33 U.S.C. 701n), commonly and hereinafter referred to as ''Public Law 84–99'' authorizes the Corps to undertake certain emergency management activities. Specifically, Public Law 84–99 authorizes an emergency fund to be expended in preparation for emergency response to any natural disaster, in flood fighting and rescue operations, or in the repair or restoration of any flood control work threatened or destroyed by flood. These activities may include the strengthening, raising, extending, realigning, or other modification thereof as may be necessary in the discretion of the Chief of Engineers for the adequate functioning of the work for flood control and subject to the condition that the Chief of Engineers may include modifications to the structure or project, or in implementation of nonstructural alternatives to the repair or restoration of such flood control work if requested by the non-Federal sponsor. The emergency fund may also be expended for use in the emergency protection of federally authorized hurricane or shore protection when in the discretion of the Chief of Engineers such protection is warranted to protect against imminent

and substantial loss to life and property. In addition, the emergency fund may be expended for the repair and restoration of any federally authorized hurricane or shore protective structure or project damaged or destroyed by wind, wave, or water action of other than an ordinary nature. Such repair and restoration must be completed to either the pre-storm level or the design level of risk reduction, whichever provides greater protection, when, in the discretion of the Chief of Engineers, such repair and restoration is warranted for the adequate functioning of the structure or project for hurricane or shore protection, subject to the condition that the Chief of Engineers may include modifications to the structure or project to address major deficiencies or implement nonstructural alternatives to the repair or restoration of the structure if requested by the non-Federal sponsor. The emergency fund may also be expended for emergency dredging for restoration of authorized project depths for Federal navigable channels and waterways made necessary by flood, drought, earthquake, or other natural disasters. In any case in which the Chief of Engineers is otherwise performing work under this section in an area for which the Governor of the affected State has requested a determination that an emergency exists or a declaration that a major disaster exists under the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 *et seq.*], the Chief of Engineers is further authorized to perform on public and private lands and waters for a period of 10 days following the Governor's request any emergency work made necessary by such emergency or disaster. Such work must be essential for the preservation of life and property, including, but not limited to, channel clearance, emergency shore protection, clearance and removal of debris and wreckage endangering public health and safety, and temporary restoration of essential public facilities and services. The Chief of Engineers, in the exercise of his discretion, is further authorized to provide emergency supplies of clean water, on such terms as he determines to be advisable, to any locality which he finds is confronted with a source of contaminated water causing or likely to cause a substantial threat to the public health and welfare of the inhabitants of the locality.

The Corps' Public Law 84–99 Program is multi-faceted program that encompasses disaster preparedness, response and recovery activities in support of Federal, State, Tribal, and local stakeholders. The Corps' Public Law 84–99 Rehabilitation Program is a voluntary disaster recovery program that provides for the rehabilitation (*e.g.,* repair) of damage to eligible Federal and non-Federal flood risk management projects damaged by flood or coastal storms.

The Corps and other Federal agencies can assist communities in assessing, communicating, and managing their flood risks and can help them prepare for and respond to a flood, hurricane, or other natural disaster. However, State, Tribal, and local governments, and those living and working behind a flood or coastal storm risk management project have the primary responsibility and role in this effort. The residual flood risk associated with their projects is a result of how those projects are expected to perform under a range of potential floods, and the consequences that would result from their failure during a flood.

The focus of this rulemaking is the Public Law 84–99 program. In addition to Public Law 84–99, the Corps has other authorities. For example, through its Planning Assistance to States program and its Flood Plain Management Services program, the Corps is able to assist a community to identify and evaluate options where the flood risk is increasing due to climate change. Similarly, through these planning and technical assistance programs, the Corps is able to encourage and facilitate a collaborative approach to address complex natural resources issues and Tribal treaty rights. However, the Corps generally does not perform this kind of work through the Public Law 84–99 program. The Corps also recognizes the importance of environmental justice. It applies this policy both in the Public Law 84–99 program and under its other authorities.

Part 203 of Title 33 of the CFR is the Corps' implementing regulation for Public Law 84–99 and was last promulgated in 2003 (68 FR 19357, April 21, 2003). Engineering Regulation 500–1–1 provides internal agency-specific procedures implementation guidance for implementing Public Law 84–99.

General Information for the Proposed Rule

1. Does this action apply to me? This action is directed to the public in general, but will be of particular interest to a variety of organizations, to include legally constituted non-Federal public bodies responsible for operating and maintaining flood and coastal storm risk management projects (referred to as ''non-Federal sponsors'' in 33 U.S.C. 701n), State, Tribal, territorial, and local emergency management agencies, water resources agencies, environmental agencies, fish and wildlife management agencies and organizations, and floodplain, dam, and levee safety managers. This proposed rule applies to many communities nationwide, including those with environmental justice interests, and commenters are encouraged to provide their views and inputs on environmental justice strategies related to this rulemaking effort.

2. What should I consider as I prepare my comments for submission? Commenters not familiar with current policy should review the references section. These resources are available on the Federal eRulemaking portal at *http://www.regulations.gov.* For ease of comment review and consideration, commenters should consider referencing a specific section or paragraph of 33 CFR part 203. In addition to solicitation on the specific changes being proposed, the Corps solicits comments in general on other issues or concerns related to this part that commenters may wish to raise. For example, commenters may provide comments on how best to incorporate nature-based solutions into this program. For these comments, the commenter should state the issue or concern, provide or reference any supporting documentation (*e.g.,* reports, statistical data, and studies), and make a proposal or recommendation about how to improve the regulation.

Need for Revision

This rule includes a proposed change in the focus of the Rehabilitation Program. The eligibility of a levee system for consideration for rehabilitation assistance after a flood was once based only on inspections conducted by the Corps. More recently, the Public Law 84–99 program has been transitioning to risk-informed eligibility determinations for projects, which are based on an evaluation of the non-Federal sponsor's overall risk management activities, including information developed through inspections. Additional changes are also proposed to effectively implement recent amendments to Public Law 84–99.

Since the last revision in 2003, significant disasters, including Hurricane Katrina (2005), Hurricane Sandy (2012), flooding on the Mississippi and Missouri Rivers (2008, 2011, and 2013), and Hurricanes Harvey, Irma, and Maria (2017) have provided a more detailed understanding of the nature and severity of the risks associated with coastal storms and floods. These significant events

provided information regarding project performance and the effects of climate change that the Corps has considered when formulating this rule update.

During Hurricane Katrina, the Federal response was found to be reactive once State and local governments had exhausted available response resources, and was not necessarily anticipatory. This rule update provides ability to lend expertise and gain a greater understanding of State, Tribal, and local needs and requirements in order to improve their ability to prepare for, respond, and recover from natural disasters. Lessons learned have also resulted in the ''whole of community'' principles outlined in the National Preparedness Goal and supporting frameworks and which are incorporated in this rule update.

Additionally, the maturation of risk-informed decision-making approaches and technological advancements from a purely standards-based perspective has influenced the outlook on how Public Law 84–99 activities should be implemented, with a shift towards better alignment with the Corps Levee Safety and National Flood Risk Management Programs. Risk-informed decision making uses an iterative process to reduce risk over time by identifying the areas of acceptable risk, monitoring the acceptable risk, and then devoting resources to manage the sources of unacceptable risk in priority order. The process begins by capturing activities and efforts within three overarching categories: risk assessment, risk management, and risk communications. Through this process, the Corps and non-Federal sponsors assess the flood risk to property, infrastructure, public safety, and the environment; and seek to reduce that risk in stages by addressing the highest priority flood risk management deficiencies first, and by working with elected officials and other risk managers to identify other priority areas for investment. Through risk communication, people living and working behind flood risk management projects also can make informed decisions regarding flood insurance, evacuation measures, flood proofing, and relocation. Risk assessment, risk management, and risk communication concepts are included in this proposed update.

Given these developments since the last revision in 2003, the Corps is proposing to repeal and replace part 203. The proposed revisions include updated eligibility criteria for rehabilitation assistance under Public Law 84–99. The proposed criteria are more risk-informed, with the intended result of improved targeting of non-Federal sponsor investments.

In addition to the lessons learned identified previously and the evolution of Corps and national policy related to risk-informed decision making and disaster risk management, the proposed revisions reflect the enactment of the following statutes, which amended or otherwise affected the Public Law 84–99 program:

1. Subsection 3029(a) of the Water Resources Reform and Development Act of 2014 (WRRDA) (Pub. L. 113–121) grants the Chief of Engineers authority to restore eligible hurricane or shore protection works to the design level of risk reduction and, under certain circumstances, to make modifications to flood control and hurricane or shore protection works damaged during flood or coastal storms events, as well as the authority to implement nonstructural alternatives in the repair and restoration of hurricane or shore protection works if requested by the non-Federal sponsor.

2. Section 3011 of WRRDA 2014 mandates that a levee system shall remain eligible for rehabilitation assistance under Public Law 84–99 as long as the system's non-Federal sponsors continue to make satisfactory progress, as determined by the Secretary of the Army, on an approved system wide improvement framework or letter of intent.

3. Section 1176 of the Water Resources Development Act of 2016 (WRDA) (Pub. L. 114–322, Title I) provides an express definition of ''nonstructural alternatives,'' as that term is used in Public Law 84–99, and authorizes the Chief of Engineers, under certain circumstances, to increase the level of risk reduction of flood control works when conducting repair or restoration activities to such works under Public Law 84–99.

4. Section 1160 of the Water Resources Development Act of 2018 (WRDA) (Pub. L. 115–270, Title I) provides the option of realignment to the kinds of modifications that can be made to flood control works; and changes the authorized level of restoration for coastal storm risk management (CSRM) projects.

5. Section 1161 of the Water Resources Development Act of 2018 (WRDA) (Pub. L. 115–270, Title I), as amended by section 120 of the Water Resources Development Act of 2020 (Division AA, Pub. L. 116–260), authorizes the Chief of Engineers to repair or restore Federal and non-Federal flood risk management (FRM) projects and federally authorized CSRM projects when the costs of the repair or restoration work exceed the benefits, if the non-Federal sponsor agrees to pay, in cash or in-kind contributions, all costs in excess of the benefits of the repair or restoration work and the Secretary determines that the damage to the structure was not a result of negligent operation or maintenance and that repair of the project could benefit another Corps project.

Overview of Proposed Changes

The section titles referred to in this section of the preamble reflect the titles in the proposed regulatory text which may be different than what is reflected in the currently codified regulatory text.

Rulemaking Alternatives Considered

1. No rule update: In this alternative, the Corps would follow status quo and continue to implement all changes through agency discretion and internal regulations. This alternative was not selected because the Public Law 84–99 amendments are very prescriptive and public rulemaking is necessary to ensure implementing policy will achieve its intended purpose as described in the proposed rule.

2. Repeal and replace only those provisions that pertain to the Public Law 84–99 Rehabilitation and Inspection Program: In this alternative, the Corps would issue a separate rule for the Public Law 84–99 Rehabilitation Program and would repeal the provisions in the current rule that affect that program. This alternative was not selected because it would result in two published rules for the Public Law 84–99 program. That could result in misunderstandings of program activities and inhibit transparency.

3. Repeal and replace all of the current rule (selected alternative): In this selected alternative, the Corps proposes to incorporate and integrate the current state of the practice of flood risk management principles and concepts through the provision of agency policy codified in a federal rule. The intended benefit is to encourage broader community flood risk management activities by non-Federal project sponsors specific to the flood risk management projects they operate and maintain and in coordination with the applicable communities. This rule alternative also consolidates recent Public Law 84–99 amendments into one comprehensive rule, ensuring the public has a clear understanding of the responsibilities and requirements.

Proposed Changes to Each Section

Subpart A—Introduction

Section 203.11 General. Minor editorial changes are proposed for

clarity to better describe the purpose of this section of the regulation and to reflect the requirements of Public Law 84–99, as amended (33 U.S.C. 701n). Editorial changes also are proposed for clarity and accuracy to better reflect the current authorities and activities of the Corps under Public Law 84–99, such as changing ''flood control works'' to the more appropriate ''flood risk management projects.'' In addition, two new subsections are proposed for ''Form of Assistance'' and ''Availability of Assistance.'' The ''Form of Assistance'' proposed text clarifies that direct assistance is only provided to responsible State, Tribal, territorial, and local interests rather than individuals and that the Corps generally does not transfer Federal funds for the non-Federal performance of assistance activities. The ''Availability of Assistance'' subsection proposed text clarifies that Public Law 84–99 assistance is only provided when similar assistance is not reasonably available from other Federal agencies.

Section 203.12 Definitions. To enhance transparency and common understanding, new definitions are proposed for coastal storm risk management projects; emergency repair, rehabilitation, and restoration; Federal coastal storm risk management project; Federal flood risk management projects; flood risk management projects; Tribal Nation; interim risk reduction measures (IRRM); Lands, Easesment, Right-of-Way, Relocation, and Disposal/Borrow sites (LERRDs); levee segment; levee system; maintenance; non-Federal flood risk management project; nonstructural alternatives; operation; rehabilitation; repair; replacement; responsible State, Tribal, and local interests. In general, these are terms commonly used by the Corps. Updated definitions are proposed for Governor, to clarify that the Governor is the chief executive of a State; and non-Federal Sponsor, to clarify the applicable types of agreements. The current definition of Federal project, flood control project, hurricane shore protection project (HSPP), non-Federal project, repair and rehabilitation are proposed to be removed as the proposed new and updated definitions would supersede the content in those existing definitions to provide added granularity and clarity.

Section 203.13 Federally-recognized Tribal Nations and the Alaska Native corporations. Minor changes are proposed. There is an exception proposed for tribes regarding emergency water assistance as the statute defines such assistance is provided to States. The proposed exception is required to ensure emergency water assistance may be provided to tribes, albeit indirectly through the States. In other Public Law 84–99 assistance areas, the Tribal Nations may submit requests for assistance directly to the Corps.

Section 203.14 Exceptions to policy. An ''exception to policy'' section is proposed in order to ensure flexibility when accomplishing activities, prescribed in this rule, with complex and/or unforeseen interdependencies.

Subpart B—Emergency Preparedness

Section 203.21 Emergency preparedness assistance. A new section is proposed to clarify the purpose of this assistance to Federal, State, Tribal, and local agenciesTribal, which is to help support their efforts to prepare for a specific identified storm or forecasted high water event that may lead to flooding. It also provides examples of types of emergency preparedness activities.

Section 203.22 Emergency preparedness responsibilities of non-Federal sponsors. This existing section is being renamed to use ''emergency'' rather than ''disaster'' to identify the broader set of circumstances and emergency nature of the preparedness responsibilities of non-Federal sponsors. It is also being renumbered to accommodate the new section proposed above.

Through experience gained in recent disasters, the Corps has learned that increased local preparedness capability is crucial to subsequent natural disaster response and recovery. Changes are proposed to improve local capability for disaster preparedness and planning, primarily through technical assistance in support of this goal. Preparedness planning and training are proposed to be listed as separate subsections for clarity and emphasis on the respective actions under the responsibility of the non-Federal sponsor. Floodplain management and interim risk reduction measures are recognized as a local reponsibility in this proposed rule. The current subsection on the Corps Rehabilitation and Inspection Program (RIP) is proposed to be replaced by the ''Emergency repair, rehabilitation, and restoration assistance'' subsection to reflect the proposed transition to a risk-informed eligibility determination. The proposed subsection also clarifies the actions a non-Federal sponsor must undertake to maintain eligibility for the Public Law 84–99 Program.

Subpart C—Emergency Operations

Subpart C is proposed to be rearranged for clarity and to eliminate redundancies with the addition of a new section at § 203.33. Much of the content remains the same as the current regulation other than the changes described below.

Section 203.31 General. The title of the section is proposed to be modified from the existing ''Authority'' to reflect that the section describes both the authority of the Corps and the responsibilities of non-Federal sponsors for Emergency Operations. Changes are also proposed in this section to remove duplicative information already found in the proposed renumbered §§ 203.32 and 203.33.

Section 203.31(b) is being proposed to modify the current regulation at § 203.31(a), which states that the Corps' flood response measures are not appropriate for projects which protect strictly agricultural lands. The new subsection allows for the Corps, in some cases, to provide such measures for an FRM project that primarily reduces the flood risk to agricultural lands. This allows for Corps assistance to be provided in these limited situations and reflects the contribution of agricultural lands to the national economy.

Section 203.31(c) is proposed to establish the non-Federal sponsor's role and responsibilities for certain Emergency Operations activities. These are not new responsibilities. Rather, the propsoed changes serve to ensure understanding of the role and responsibilities of the non-Federal sponsor for those Emergency Operations activities.

Section 203.32 Flood response procedures. Language is proposed and intended to address coordination with other Federal agencies to ensure there is appropriate consideration of relevant statutes related to environmental and cultural resources taking into account the exigency of the circumstances. This proposed addition recognizes that environmental and cultural resource protection statutes are applicable to emergency actions and that coordination with other agencies at the time of or in advance of the emergency response may be necessary. The proposed language recognizes the importance of these statutory requirements and ensures appropriate compliance and coordination occurs. As proposed, Corps Districts should evaluate their emergency response portfolio in coordination with other relevant agencies (*e.g.,* the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, or the applicable State Historic Preservation Office) and their response partners to determine whether programmatic compliance or establishment of common standard operating procedures in advance of any

emergency response may be appropriate.

Section 203.33 Post flood response procedures. Minor changes are proposed to simplify and clarify post flood response policy.

Subpart D—Rehabilitation Assistance for Flood Risk Management Projects Damaged by Flood

Changes to this subpart title are proposed to incorporate the more appropriate title ''flood risk management projects'' as opposed to the formerly used term ''flood control works.'' In addition, the coastal storms have been removed from the title as coastal storm risk management is now proposed to be discussed in the revised Subpart E—Emergency Repair, Rehabilitation, and Restoration Assistance for Federal Coastal Storm Risk Management (CSRM) projects, to provide clarity in distinguishing between the FRM and CSRM projects. Lastly, reference to the Corps' Rehabilitation and Inspection Program is proposed to be removed from the title to reflect the change in focus of the program from the RIP to the risk-informed determinations.

As discussed previously, this proposed section introduces revised criteria for initial and continued eligibility in the Rehabilitation Program, modifications to existing flood risk management projects, and the System Wide Improvement Framework (SWIF). By incorporating lessons learned from recent disasters, the proposed changes will help non-Federal sponsors improve their flood risk management. Risk-informed decision making uses an iterative process to reduce risk over time by identifying the areas of acceptable risk, monitoring the acceptable risk, and then effectively devoting resources to manage the sources of unacceptable risk in priority order. The proposed changes in this subpart will transition from eligibility criteria for rehabilitation assistance based on an inspection to a risk-informed approach, primarily based on an evaluation of a broader set of non-Federal sponsor's risk management activities.

The changes are necessary to encourage broad flood risk management actions, including establishing investment priorities at the local level based on risk and cost-effectiveness, and to achieve greater flexibility to protect and restore natural resources. The proposed changes also are intended to promote community discussion and engagement in a broader set of actions to help communities manage flood risk; and to encourage dialogue and problem solving.

Section 203.41 General. The current section is proposed to be completely replaced. The changes proposed in this section introduce the reframing of the current inspection-only program for eligibility determinations to the updated risk-informed determinations of the Rehabilitation Program. It outlines both the proposed initial and continuing eligibility criteria for Federal and non-Federal FRM projects to include the components required and process for obtaining an eligibility determination. These proposed changes provide clarity and transparency to the program.

Section 203.42 Initial eligibility assessment of non-Federal flood risk management projects. The current section is proposed to be retitled and completely replaced to be consistent with the proposed risk-informed approach. Therefore, the proposed language eliminates the current focus on an inspection-only approach to support the initial eligibility assessment (IEA) for non-Federal FRM projects in favor of the risk-informed approach based on a broader assessment. This section proposes to provide the process for the IEA and outlines the content of the required initial eligibility application. As proposed, IEAs would be primarily based on an evaluation of a broader set of non-Federal sponsor's risk management activities through an initial eligibility application package and assessment for non-Federal Flood Risk Management Projects, as opposed to solely through a traditional inspection. However, the Corps will also conduct a site inspection as part of the IEA to supplement the application materials received. The application as proposed would require documentation of the level of risk reduction provided by the non-Federal FRM project and an assessment of the expected performance of the project, as well as documentation of maintenance status and identification of any deficiencies of the project. Much of the information required in the proposed application was already included in the current § 203.48 describing the inspection procedures for the Corps. With the focus now on a broader set of non-Federal sponsor's risk management activities and a risk-informed decision-making approach, it is appropriate to incorporate these elements in the proposed application by a non-Federal sponsor rather than limit them to the Corps' inspection procedures. Once completed, the assessment is proposed to be provided to the non-Federal sponsor of the non-Federal FRM project for awareness and transparency, and a record will also be maintained by the Corps. The results of the assessment will determine initial eligibility for emergency repair, rehabilitation, and restoration assistance. The proposed eligibility criteria would ensure the non-Federal sponsor has sufficiently demonstrated its project meets the level of function necessary for inclusion in the Public Law 84–99 program, that the project will essentially function as designed and intended. The proposed regulation also provides for the non-Federal sponsor to provide additional information and request reconsideration of an assessment if it does not agree with the initial eligibility determination.

Federal flood risk management projects would be automatically granted initial eligibility in the Rehabilitation Program under the proposed language, based upon the provision of notice of construction completion, similar to the current initial eligibility pathway.

Section 203.43 Continuing eligibility assessment of Federal and non-Federal flood risk management projects. The current section is proposed to be completely retitled and replaced to be consistent with the proposed risk-informed approach, and therefore eliminates the focus on an inspection-only approach to support the continuing eligibility assessment (CEA) for Federal and non-Federal FRM projects. The proposed text in this section provides the procedures and content of required elements for a CEA. As proposed, the CEA would assess the non-Federal sponsor's risk management activities through: implementation of its project Operation, Maintenance, and Inspection Activities; a review of emergency preparedness planning; and a review of public outreach activities accomplished to share FRM project condition and performance. Inspection information would be verified in accordance with their provided plan. The CEA also would include a review of the participation for the non-Federal sponsor in past inspections and assessments conducted by themselves or with the Corps. The CEA would identify changed project conditions that could impact project performance. The CEA would also verify that the criteria required for the IEA to maintain its eligibility are being met. The specific requirements for a favorable CEA determination would be defined in the project partnership agreement, O&M manual, or Levee Owner's manual for non-Federal sponsors. The proposed criteria would demonstrate whether the non-Federal sponsor has continued to maintain the project to ensure it will essentially function as designed and intended, and also would include emergency planning and public

outreach to ensure it is adequately prepared for an emergency at the local level. The Corps believes that improved local preparedness capabilities are crucial to ensure natural disaster preparedness and planning.

A favorable CEA determination under § 203.43, or continued progress under an approved system-wide improvement framework under § 203.50, would be required for the non-Federal sponsor to retain its eligibility for emergency repair, rehabilitation, and restoration assistance, which is similar to the current practice.

Section 203.44 Emergency repair, rehabilitation, and restoration of Federal and non-Federal flood risk management projects. Minor changes are proposed. The section title is proposed to be modified for updating to the current terminology of FRM projects and to include both Federal and non-Federal projects. The proposed language provides the eligibility requirements for emergency repair, rehabilitation, and restoration activities, which are the same for Federal and non-Federal FRM projects. The proposed regulation eliminates inspection ratings, which are no longer proposed to be used to determine eligibility; instead, assessments of the previously described activities would be performed. Also, the proposed text provides that all applicable environmental compliance requirements must be satisfied to make clear that even these emergency activities must comply with relevant environmental statutes. In addition, the proposed rule describes the non-Federal sponsor's responsibility to provide a share of certain costs. Lastly, a new subsection is proposed which is moved from its current location at § 203.46 to clearly articulate the required economic justification and minimum threshold for construction costs for emergency repair, rehabilitation, and restoration efforts under the Pubic Law 84–99 program. An increase is proposed to the minimum repair cost for the rehabilitation of flood risk management projects from $15,000 to $50,000 and is necessary to warrant Federal involvement. Considerations in setting a minimum damage threshold include the Corps' cost to complete Project Information Reports, experience with the application of the existing minimum damage threshold, and feedback from non-Federal sponsors regarding their investments in operation and maintenance activities. These new clarifications ensure transparency for the non-Federal sponsor regarding the cost and economic justifcation requirements to qualify for consideration for assistance.

Section 203.45 Emergency repair, rehabilitation, and restoration of Federal flood risk management projects. This section in the current regulation has been combined into one section under proposed § 203.44. In addition, the exception found in the current regulation regarding certain conditions to cooperation agreements for Federal FRM projects has been relocated to § 203.114.

Section 203.46 Restrictions. This section is largely unchanged. The Corps will not generally provide emergency repair, rehabilitation, and restoration assistance under Public Law 84–99 to address damages by occurrences other than floods or coastal storms. However, other natural disasters may impact the structural integrity of a FRM project and trigger an emergency flooding situations. Those cases are proposed to be evalauted on a case-by-case basis.

Section 203.47 Modifications to flood risk management projects during rehabilitation. Changes are necessary to implement provisions for the authority under Subsection 3029(a) of WRRDA 2014 and Section 1176 of WRDA 2016, which authorize modification to flood risk management projects under certain conditions. This section proposes to prescribe how a non-Federal sponsor may request modification of an existing flood risk management project that is undergoing rehabilitation under Public Law 84–99 in order to address major deficiencies or in certain circumstances to increase the level of risk reduction or pump station capacity.

The proposed section (a) provides the criteria for when the Corps would consider requests for a modification to address major deficiencies. It also provides examples of allowable features of modifications to address major deficiencies, such as incorporating features to make the overall levee system more durable (*e.g.,* low sills, riprap, and hardening features), constructing setback levees, or floodproofing.

The proposed section (b) provides allowances for consideration of a new set of modifications to increase the pre-flood level of risk reduction or pump station capacity. New criteria are also proposed for consideration under these types of modifications.

The proposed criteria in both subsections would ensure that the modifications are appropriate to undertake through the Public Law 84–99 program. This limitation will ensure the Corps can give continue to give priority to short-term emergency repairs and to the rehabilitation and restoration of projects that have sustained extensive damage. Where a non-Federal sponsor wants to construct major modification of a flood or coastal storm risk management project after a flood or coastal storm, the Corps is able to provide technical and planning assistance outside of the Public Law 84–99 program.

In addition, a new section is proposed to outline the procedures for a request for modifications to ensure a consistent and transparent process. Also, new sections are proposed to clarify cost-sharing requirements with the non-Federal sponsor, to provide the requirement for modifications to be economically justified, and to clarify that modifications will not be undertaken under Public Law 84–99 to achieve a purpose that is not related to flood risk management, as those are outside the bounds of the intent of Public Law 84–99 program.

Section 203.48 Inspections and risk assessments for flood risk management projects. Editorial changes and removal of duplicative information are proposed. For example, inspection activities are now proposed to be prescribed in §§ 203.42 and 203.43 as a component of the broad set of non-Federal sponsor's risk management activities and requirements in the IEAs and CEAs and as such can be removed from this section. Much of the content as described in the current inspection procedures is now included in the IEA and CEA descriptions as part of the proposed risk-informed approach for information to be provided by the non-Federal sponsor.

Section 203.49 Levee Management Guide. The existing § 203.49 (Rehabilitation of hurricane and shore protection projects) is proposed to be removed in its entirety as the contents are now found in Subpart E. The existing § 203.50 content on non-structural alternatives is moved to the proposed Subpart F. The current § 203.51 is now moved and renumbered as this proposed section. Only minor changes are proposed for consistency with the proposed changes herein (*e.g.,* referring to eligible projects as opposed to ''active'' projects under the inspection-only RIP).

Section 203.50 System-wide improvement framework. This proposed new section implements Section 3011 of WRRDA 2014, which provides that a levee system shall remain eligible for rehabilitation assistance under Public Law 84–99 as long as the system's non-Federal sponsor(s) continues to make satisfactory progress under an approved system-wide improvement framework (SWIF). As proposed, a SWIF is a plan developed by a non-Federal sponsor(s) and accepted by the Corps to conduct a

series of improvements to a levee system (or multiple levee systems within a watershed) to address system-wide deficiencies that are complex or time-consuming to correct.

The proposed changes ensure committed non-Federal sponsors have the opportunity to transition their levees over time to Corps standards. By using a SWIF, non-Federal sponsors can prioritize deficiencies to address the highest risk first to achieve system-wide risk reduction. In the requirements for a SWIF, the proposed rule recognizes that some non-Federal sponsors may also need to engage at the Federal, State, and local levels to address complex levee system issues in a more long-term, comprehensive approach to identify solutions that optimize resources; prioritize improvements and corrective actions based on risk; and coordinate overlapping or competing programs and requirements. The Corps also is proposing to expand the use of a SWIF to maintain the eligibility of these non-Federal sponsors where they are making progress to correct complex system-wide issues or to address a complex natural resources issue such as consultation/mitigation actions for resources subject to the Endangered Species Act or Tribal treaty rights.

Subpart E—Rehabilitation Assistance for Coastal Storm Risk Management (CSRM) Projects

Subpart E is proposed to prescribe Rehabilitation Assistance activities specific to CSRM projects formerly found in Subpart D of the 2003 version of 33 CFR part 203.

Section 203.61 General. Minor changes are proposed to the current § 203.49(a) to update the terminology from hurricane and shore protection projects to CSRM projects. In addition, the proposed language states that the Corps may include modifications to a CSRM project to address major deficiencies and describes the circumstances where nonstructural alternatives may be employed.

This proposed revised section clarifies that emergency repair, rehabilitation, and restoration assistance for Federal CSRM projects generally is limited to the project's design profile template. However, at the request of the non-Federal sponsor, the Corps may evaluate restoration to a pre-storm profile as a restoration alternative where the pre-storm profile is greater than the design profile template and is deemed necessary to ensure adequate functioning of the project. The current regulation text states that the assistance is limited to the pre-storm condition that allows for adequate functioning of the project.

This proposed language implements Subsection 3029(a) of WRRDA 2014, under which the Corps would be able to restore hurricane or shore protection works to the design level of risk reduction. As proposed, rehabilitation assistance for CSRM projects generally is limited to the project's design profile, which is the level of restoration that will allow for the adequate functioning of the structure. The proposed language also implements Subsection 1160 of WRDA 2018, which allows consideration of restoration to the pre-storm profile, which is the profile that existed the day prior to the storm. In some circumstances, the pre-storm profile may be greater than the design profile and restoration to the pre-storm profile may be necessary to ensure adequate functioning of the project based on project-specific conditions, such as greater than anticipated erosion rates or as a result of climate change. The proposed language uses the project's design profile as the baseline profile for assistance, and also provides that the Corps may evaluate circumstances when the pre-storm profile may be more appropriate. In addition, if restoration to the pre-storm profile is not necessary to ensure adequate functioning of the project, the proposed language clarifies that the Corps may use Public Law 84–99 funds to restore a beach to its the pre-storm profile only if the incremental costs above the costs to restore to the design profile are subject to the cost-sharing that would apply for periodic nourishment and the non-Federal sponsor requests the Corps to proceed on that basis. This would ensure the Corps does not default to and cover the costs for the restoration to the pre-storm profile where that exceeds what the Corps views as required for the adequate functioning of the project.

The proposed language also clarifies that an extraordinary storm is the event which triggers emergency repair, rehabilitation, and restoration assistance. A proposed definition for extraordinary storm is found in § 203.63.

The revised language also proposes to clarify that Federal CSRM projects would not be eligible for assistance if the non-Federal sponsor has not established and maintained adequate conditions of public use and access. This language also clarifies the roles and responsibilities of the non-Federal sponsor to qualify for Corps assistance to ensure the Corps is only repairing, rehabilitating, or restoring. Restoration activities beyond the authorized design profile or pre-storm condition (where determined appropriate) are considered beyond the scope of the Public Law 84–99 program.

The proposed language also clarifies conditions for Corps assistance on Federal CSRM projects located completely or partially within a unit of the Coastal Barrier Resources System, focusing on whether or not an exception to a statutory limitation on Federal expenditures within the System has been provided.

Section 203.62 Non-Federal sponsor responsibilities for CSRM projects. Clarification of non-Federal Sponsor roles and responsibilities are proposed in this new proposed section.

Section 203.63 Emergency repair, rehabilitation, and restoration of Federal CSRM projects. This proposed section includes the proposed definition of ''extraordinary storm,'' which entails minor modifications to the existing definition found at § 203.49(b)(6). Proposed modifications include removing the specific category of storm or exceedance frequency required to meet the term, but retains a finding that an extraordinary storm event is the cause of the substantial damage to a Federal CSRM project, such that it no longer provides significant risk reduction benefits. The key terms further proposed to be defined relate to the ''duration or severity'' and the ''substantial damage'' incurred. The Corps has found over the 18 years since the regulation was last promulgated that limiting the term of ''duration or severity'' to specific criteria of a particular category of storm event, for example, did not always correlate to the damage caused. For example, lower category repetitive storms within a short period of time may combine to have a greater effect than a single higher category storm. In addition, criteria are proposed for identifying when ''substantial damage'' has been incurred, some of which are carried forward from the current regulation with modifications to modernize costs. New criteria are also proposed with respect to ''substantial damage'', based on the Corps' experience in implementing the program, such as where only hard structural features of the project were damaged. One new subsection is proposed to be consistent with other aspects of the program, by including a requirement for the rehabilitation to be economically justified. The proposed rule also clarifies that Corps assistance under the Public Law 84–99 program is available for a Federal CSRM project only if an extraordinary storm significantly compromised the project's ability to provided risk reduction.

Section 203.64 Modifications to CSRM projects undergoing rehabilitation. The proposed changes implement Subsection 3029(a) of WRRDA 2014. This section prescribes how a non-Federal sponsor may request modification of an existing coastal storm risk management project as part of the emergency repair, rehabilitation, and restoration of the project under Public Law 84–99. As proposed, a modification is a work effort that consists of the addition of new features, elements, components, or items, or the upgrading of existing ones, which would improve the structural integrity of the project, but would not increase its level of risk reduction or have the effect of expanding the area for which the project is effective in reducing the coastal storm risk. The scope of modifications, as proposed, ensures the Corps can effectively perform short-term emergency repairs. This section maintains consistency, to the extent practicable, with previous discussions of modifications to FRM projects.

Subpart F—Nonstructural Alternatives to Rehabilitation of Flood Risk Management and Coastal Storm Risk Management Projects

The content for this proposed subpart is currently found in § 203.50 but is proposed to be included as a separate subpart for clarity and ease of reference. The separate subpart also allows for more focused discussion of the nonstructural alternatives (NSAs) and how they may be applied for both FRM and CSRM projects. This proposed subpart replaces the current subpart F for ''Advanced Measures,'' which is now proposed in subpart I.

Section 203.71 General. This proposed section implements Subsection 3029(a) of WRRDA 2014 and provides for the consideration of NSAs in lieu of the repair and restoration of projects. As proposed, the Corps may implement nonstructural alternatives to the rehabilitation, repair, or restoration of flood or coastal storm risk management projects at the request of the non-Federal sponsor, which may include efforts to restore or protect natural resources, including streams, rivers, floodplains, wetlands, or coasts, if those efforts are related to achieving a reduction in the flood or coastal storm risk. The proposed section carries forward the Corps' existing policy regarding NSAs with minor changes.

A requirement for an amendment to the project partnership agreement (PPA) is proposed to be included. This ensures the PPA is updated to reflect the changes of including NSAs in the project to ensure the PPA is consistent with the current state of the project.

Another proposed change is to include more specificity as to when exceptions to the limitation on Corps expenditures may be approved. The current regulation provides that the limitation may be waived when compelling reasons exist but does not provide examples or criteria of what such compelling reasons may be. The proposed regulatory text provides specific criteria for when such exceptions may be approved for improved public awareness and transparency in the process.

Subpart G—Emergency Drinking Water Assistance: Contaminated Water Source

The content for this proposed subpart is currently found in subpart E but is proposed to be moved to this subpart for organizational purposes as a result of edits made to other subparts. This proposed subpart replaces the current subpart G for ''Local Interests/ Cooperation Agreements,'' which is now proposed in subpart J. The subpart title is proposed to be renamed from the current ''Emergency Waters Supplies: Contaminated Water Sources and Drought Assistance'' to reflect the specific focus of this proposed subpart on the emergency drinking water assistance. The ''Drought Assistance'' topic is proposed to be covered in a new separate subpart at subpart H. This allows for improved clarity and discussion on these separate assistance efforts provided under the Public Law 84–99 program. The proposed subpart G carries forward the Corps' existing policy regarding drinking water assistance in response to contaminated water sources with minor changes.

Section 203.81 General. Minor changes are proposed for improved readability. The duration of assistance is now proposed to be included in § 203.82 but maintains the current text with minor changes for clarity.

Section 203.82 Eligibility criteria and procedures. This proposed section proposes minor clarifying changes to the eligibility criteria and procedures contained in the existing subpart E. For example, a Tribal official, in addition to a Governor, may request assistance under this section. The proposed section also clarifies that a Cooperation Agreement (CA), as described in subpart J, is required for Corps assistance under this section.

Subpart H—Drought Assistance

The content for this proposed subpart is currently found in subpart E but is proposed to be moved to this subpart for organizational purposes as a result of edits made to other subparts. This proposed subpart adds a new subpart to the CFR. The subpart title is proposed to be renamed from the current ''Emergency Waters Supplies: Contaminated Water Sources and Drought Assistance'' to reflect the specific focus of this proposed subpart on drought assistance. This allows for improved clarity and discussion on this distinct assistance effort provided under the Public Law 84–99 program. The proposed subpart H carries forward the Corps' existing policy regarding drought assistance with minor changes.

Section 203.91 General. Minor changes are proposed for readability. In addition, the proposed language designates the Corps Deputy Commanding General for Civil and Emergency Operations as the official who designates a drought distressed area. The definitions included in the current regulation text at § 203.62 are proposed to be included in this section.

Section 203.92 Eligibility criteria and procedures. Editorial and clarifying changes are proposed. For example, a Tribal official may request assistance directly under this section, without a requirement to make this request through the Governor of the State in which the Tribal lands are located, as is currently provided in the existing regulation text. This proposed section also includes the contents of the written request, which now are provided in § 203.62. This section also proposes that a CA is required for Corps assistance, which is consistent with CA requirements proposed for other Corps assistance efforts provided under this program. In addition, this section proposes to provide clarity and transparency to the responsibilities of the non-Federal sponsor for drought assistance under this section.

Subpart I—Advance Measures

The content for this proposed subpart is currently found in subpart F but is proposed to be moved to this subpart for organizational purposes as a result of edits made to other subparts. This proposed subpart adds a new subpart to the CFR. The proposed subpart I carries forward the Corps' existing policy regarding advance measures with minor changes.

Section 203.101 General. Minor clarifying changes are proposed. The primary proposed modification is to allow a Tribal official, in addition to a Governor, to request assistance under this section.

Section 203.102 Eligibility criteria and procedures. Minor changes are proposed for clarity and readability.

Subpart J—Cooperation Agreements

The content for this proposed subpart is currently found in subpart G but is proposed to be moved to this subpart for organizational purposes as a result of edits made to other subparts. This proposed subpart adds a new subpart to the CFR. The proposed subpart J carries forward the Corps' existing policy regarding cooperation agreements with minor changes. The title is proposed to be modified from the current, ''Local Interests/Cooperation Agreements'' to only include ''Cooperation Agreements'' for clarity on the specific focus of this section on the cooperation agreements and to eliminate unnecessary text.

Section 203.111 General. Minor changes and removal of duplicative information are proposed for improved readability.

Section 203.112 Non-Federal sponsor requirements. Minor changes and additional non-Federal sponsor requirements are proposed regarding consideration of the non-Federal sponsor's prior performance capability. In addition, elements of local cooperation required for asssistance provided under Subpart C are proposed.

Section 203.113 Funds and cost sharing. Minor changes are proposed for improved clarity. In addition and as proposed, assistance provided under Subpart I in which ''permanent construction standards'' are applied would be now subject to a 35 percent non-Federal cost share. Cost share requirements are also proposed when accomplishing modification activities to flood or coastal storm risk management projects under Subparts D and E. These proposed changes are consistent with the cost-sharing for this type of work under other Corps Civil Works authorities. The proposed changes also implement provisions for the authority under Subsection 1161(a) of WRDA 2018 in which a non-Federal sponsor may contribute funds for all costs in excess of benefits and subject to the conditions outlined in § 203.113 of this proposed rule. Subsection 1161(b) of WRDA 2018 is not addressed in this proposal due to the sunset provision of that authorization. Instead, the Corps will continue to implement this provision through existing guidance (''Implementation Guidance for Section 1161 of the Water Resources Development Act of 2018, Cost and Benefit Feasibility Assessment, dated 12 April 2019.)

Section 203.114 Project partnership agreements. Minor changes are proposed for improved clarity and readability.

Section 203.115 Procedures and responsibilities upon completion of Corps work. Minor changes are proposed for improved clarity and reability.

Expected Benefits and Costs of Proposed Changes

Over time, cities and towns have developed behind levees and along our coasts, and the nature of the risk posed by the movement of water in a flood or storm in our rivers, lakes, and coasts has changed due to a variety of factors (*e.g.,* more stormwater runoff due to development, building of upstream dams, and climate change). As such a standards-only-based approach (*i.e.,* focus on the condition of the levee or beach only) may not address some of the sources of unacceptable risk. For a programmatic perspective, of the nearly 6,600 miles of levees currently in the Rehabilitation Program, 4,850 miles are Federal levees (federally authorized and constructed, but locally owned, operated, and maintained) and 1,750 miles are non-Federal levees (locally constructed, and locally owned, operated, and maintained). Overall, the changes to this regulation will provide greater flexibility to the Federal government and non-Federal sponsors and improve the effectiveness of Federal and local investments in riverine and coastal projects. These proposed changes take advantage of our increased understanding of project risks, moving from an assessment of how the project is expected to perform to a focus on a broader set of actions to reduce risk through effective operation, maintenance, planning, and execution actions; and to improve emergency warning and evacuation, and the ability of communities and individuals to understand and manage project-related risks. Informed by more detailed understanding of risk for flood risk management projects, the Federal government and non-Federal sponsors are able to apply available resources to the risk management activities that most effectively reduce flood risk and avoid expenditures that have little risk reduction benefit.

Changes reflected in this proposed rule are aimed at encouraging and enabling emergency managers, local officials, and members of the public to identify risks where loss of life may occur, and to prepare for actions when needed to move people out of harm's way. Non-Federal sponsors may see an initial cost increase associated with documenting activities necessary for eligibility for the Rehabilitation program, however the assessment and risk management activities are activities already required as non-Federal sponsors and will likely result in efficient use of available resources.

The Corps uses the funds appropriated in its Flood Control and Coastal Emergencies account to pay for most of its costs for the work covered by this rule. Over a recent 10-year period—from fiscal year (FY) 2012 through FY 2021—the Corps spent an average of roughly $307 million per year from this account on the Public Law 84–99 program. The Corps uses most of this funding to repair damaged flood and coastal storm risk management projects.

The Corps also uses funds appropriated in its Operation and Maintenance account to pay a portion of the work used as data for eligibility determinations, outlined in this proposed rule. For example, the Corps spends an average of roughly $30 million per year to inspect locally owned levee systems that the Congress has authorized as a Corps project.

We anticipate the costs to the Federal government to implement this program to remain roughly the same under the proposed rule.

Incorporation of Public Comments

The Corps received input from State and Federal agencies, stakeholders, and other interested parties through the issuance of an Advanced Notice of Proposed Rulemaking (ANPR). The ANPR was published in the **Federal Register** on February 13, 2015 (80 FR 8014; **Federal Register** Document #2015–03033) soliciting public comment on specific policy revision concepts being considered for this proposed rulemaking. In response to the ANPR, we received 267 comments from 47 organizations and individuals. Of the 47 submissions, 23 were from non-Federal sponsors who contributed almost half (173) of all comments received. The remaining comments were received from eight individuals, five associations, four Tribal nation organizations, and four State government agencies. Overall, the comments were generally supportive of the policy revision concepts outlined in the ANPR and recognized the value of using risk-informed approaches for decision making. There was widespread support among commenters for continuing the System-wide Improvement Framework (SWIF) policy. Several commenters indicated some concerns about the proposed concepts and how they may impact non-Federal sponsors. Commenters noted that the collaboration and flexibility provided by this framework positively contributed to good decision making, however several said that the current two-year timeframe

under the current SWIF policy was too short. There was a perception among commenters that the Corps would be deemphasizing the role and use of inspections for eligibility determinations and commented that continuing these inspections was important. Other Federal agencies mentioned the need for compliance with all applicable statutes. We have carefully considered all of these comments in developing the proposed rule.

References

For additional information, see the following references:

33 CFR part 203 (68 FR 19359)
Engineer Regulation 500–1–1, ''Civil Emergency Management Program,'' September 30, 2001 Engineer Pamphlet 500–1–1, ''Civil Emergency Management Program Procedures,'' September 30, 2001
Engineering and Construction Bulletin, ''Interim Risk Reduction Measures (IRRMs) for Levee Safety,'' March 5, 2014
Levee Owner's Manual for Non-Federal Flood Control Works, March 2006
Memorandum, CECW–HS, 29 November 2011, subject: Policy for Development and Implementation of System-Wide Improvement Frameworks (SWIFs)
Memorandum, CECW–HS, 21 March 2014, subject: Interim Policy for Determining Eligibility Status of Flood Risk Management (FRM) Projects for the Rehabilitation Program Pursuant to Public Law (P.L.) 84–99
Memorandum, CECW–HS, 30 May, 2017, Subject: Implementation Guidance for Section 3029(a)(2) of the Water Resources Reform and Development Act (WRRDA) of 2014, Emergency Response to Natural Disasters; Repair or Restoration of Coastal Storm Risk Management Projects to Design Level of Protection

Procedural Requirements

a. *Review under the National Environmental Policy Act.* As required by the National Environmental Policy Act (NEPA), the Department of Army prepares appropriate environmental analysis for its activities affecting the quality of the human environment. We have preliminarily determined that this proposed revision to the regulation, if finalized, would not constitute a major Federal Action significantly affecting the quality of the human environment because the part 203 regulations require that the Corps conduct an action-specific NEPA analysis before undertaking any activities that could potentially affect the quality of the human environment. The draft Environmental Assessment to support this preliminary determination is available at *http://www.regulations.gov* for public comment. The preliminary determination that an Environmental Impact Statement (EIS) will not be required for the promulgation of these regulations will be reviewed in consideration of the comments received.

b. *Unfunded Mandates Reform Act.* The Unfunded Mandates Reform Act does not apply to this proposed rule because this rule provides policy for emergency assistance at the request of any State, Tribal, local government, or non-Federal sponsor. The Corps has also found, under section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

c. *National Technology Transfer and Advancement Act.* This proposed rule does not involve technical standards and as such there is no anticipated requirements under this Act.

d. *Executive Order 12866.* Executive Order 12866 (58 FR 51735, October 4, 1993), defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rule has been found to be a significant regulatory action, because it raises novel policy issues in how the Corps implements its Natural Disaster Procedures. Accordingly, the rule was submitted to the Office of Management and Budget (OMB) for review.

e. *Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).* This proposed rule does not impose any information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act is required.

f. *Executive Order 13132: Federalism.* This rule will not have substantial direct effects on the states, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

g. Regulatory Flexibility Act. The Regulatory Flexibility Act (RFA), as amended (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of the proposed rule on small entities, a small entity is defined as: (1) A small business based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The U.S. Army Corps of Engineers certifies that this proposed revision to the regulation does not have a significant economic impact on a substantial number of small entities. The proposed modifications to the regulation, and the regulation as a whole, do not place any regulatory burdens on small entities or have a significant economic impact on such entities. The regulation merely provides a construct under which the Corps can provide limited forms of emergency assistance and project rehabilitation to State, local, and Tribal governments upon request from the same. Although small entities might benefit from such emergency assistance—just as large entities and private individuals might—the provision of such assistance under the regulation does not place any burden on small entities nor does it entail direct involvement by such entities.

h. Congressional Review Act (5 U.S.C. 801 et seq.). Pursuant to the Congressional Review Act, this proposed rule has not been designated a major rule, as defined by 5 U.S.C. 804(2). This proposed rule is not a ''major rule'' as defined by 5 U.S.C. 804(2), because it is not likely to result in: (1) An annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-

based enterprises in domestic and export markets.

i. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Under Executive Order 13175, the Federal government may not issue a regulation that has substantial, direct effects on one or more Tribal Nation, on the relationship between the Federal government and Tribal Nation, or on the distribution of powers and responsibilities between the Federal government and Tribal Nations, and imposes substantial direct compliance costs on those communities, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the Tribal Nation governments, or we consult with those governments. If complying by consulting, Executive Order 13175 requires us to provide the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of prior consultation with representatives of affected Tribal Nation governments, a summary of the nature of Tribal Nation concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13175 requires that agencies develop an effective process permitting elected officials and other representatives of Tribal Nation governments an opportunity to provide timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities. This proposed revision to the regulation, and the regulation as a whole, do not impose significant compliance costs on any Tribal Nation or otherwise have substantial direct effects on the same. The regulation merely provides a construct under which the Corps can provide limited forms of emergency assistance and project rehabilitation to State, Tribal, and local governments upon request from the same. Whether the Corps provides emergency assistance under the regulation is completely at the discretion of State, local and Tribal governments. When requested, and otherwise permissible, the Corps' provision of such services does not affect the distribution of power or responsibilities between the Federal government and Tribal Nations. In the event that Tribal Nations have concerns with the proposed regulation, they may submit them through the normal comment process or to request government-to-government consultation.

List of Subjects in 33 CFR Part 203

Disaster assistance, Flood control, Intergovernmental relations, Technical assistance, Water resources.

Approved by:

Michael L. Connor,

Assistant Secretary of the Army (Civil Works).

Accordingly, for the reasons set out in the preamble, 33 CFR part 203 is proposed to be revised as follows:

PART 203—NATURAL DISASTER PROCEDURES: PREPAREDNESS, RESPONSE, AND RECOVERY ACTIVITIES OF THE CORPS OF ENGINEERS

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Authority: 33 U.S.C. 701n.

Subpart A—Introduction

§ 203.11 General.

(a) This part prescribes the regulations implementing the authority of the United States Army Corps of Engineers (Corps) to undertake natural disaster preparedness, response, and recovery pursuant to Public Law 84–99, as amended (33 U.S.C. 701n). In implementing this authority, the Corps sets priorities on a risk-informed basis.

(b) Section 5 of the Flood Control Act of 1941, as amended (33 U.S.C. 701n), commonly and hereinafter referred to as Public Law 84–99, authorizes an emergency fund to be expended at the discretion of the Chief of Engineers for: preparation for natural disasters; flood fighting and rescue operations; repair or restoration of flood risk management projects threatened, damaged, or destroyed by flood, and modifications or nonstructural alternatives thereto; emergency protection of federally authorized coastal storm risk management projects which are threatened, when such protection is warranted to protect against imminent and substantial loss of life and property; repair and restoration of federally authorized coastal storm risk management projects damaged or destroyed by wind, wave, or water of other than ordinary nature or modifications to the structure or project to address major deficiencies; for emergency dredging for restoration of authorized project depths for Federal navigable channels and waterways made necessary by flood, drought,

earthquake, or other natural disasters; and, for a period of 10 days subsequent to the end of a flood event, certain limited activities which are essential for the preservation of life and property, or to protect against significant threats to public health and welfare. The law also authorizes the Chief of Engineers to provide emergency supplies of clean water when a contaminated source threatens the public health and welfare of a locality and authorizes the Secretary of the Army to construct wells and transport water to areas determined to be drought distressed. For the purposes of provision of emergency supplies of clean water due to drought, the Secretary of the Army has delegated the authority vested in the Secretary under Public Law through the Assistant Secretary of the Army for Civil Works to the Chief of Engineers.

(c) *Form of assistance.* The Corps implements the authority provided in Public Law through the provision of direct assistance to responsible State, Tribal, and local interests. Direct assistance to individual homeowners, individual property owners, or individual businesses is not permitted. Except as provided in § 203.71(l)(9) of this part, the Corps does not transfer Federal funds to non-Federal sponsors or other responsible State, Tribal, or local interests for the non-Federal performance of assistance activities described in this part.

(d) *Availability of assistance.* Except as provided in § 203.91(b)(2) of this part, the provision of Public Law 84–99 assistance is predicated upon a finding that similar assistance is not reasonably available to responsible State, Tribal, and local interests from other Federal agencies.

§ 203.12 Definitions.

The following definitions are applicable throughout this part:

Coastal storm. Hurricane and abnormal tide flooding.

Coastal storm risk management (CSRM) project. A project designed, constructed, operated, and maintained to reduce the risk of damage to property and public infrastructure, and the risk of loss of life, from the non-riverine impacts of a coastal storm. These impacts generally result from a combination of wave action, storm surge, wind, and tidal effects during the storm. CSRM projects include Coastal Storm Damage Reduction (CSDR) projects, Hurricane/Shore Protection Projects (HSPP's), shore protection projects, shore protection structures, periodic nourishment projects, and similar terms. A CSRM project may include both structural measures (*e.g.,* seawalls and jetties) and natural and nature-based features (*e.g.,* dunes and beach berms).

Emergency repair, rehabilitation, and restoration. Activities to repair, rehabilitate, rebuild, or replace a project after it has been damaged by a flood or coastal storm. Such activities may include realigning segments of a FRM project in which substantial cross-sectional damage has occurred when the Corps determines that realignment would cost less or be more effective than an in-line repair.

Federal coastal storm risk management (CSRM) project. A CSRM project operated and maintained by a non-Federal sponsor that was designed and constructed by the Corps or the non-Federal sponsor under Federal erosion control or water resources development authorities. A CSRM project, or portion of such a project, constructed by a non-Federal sponsor is considered a Federal CSRM project only if the non-Federal sponsor carried out construction in compliance with applicable authorities for non-Federal construction of water resources development projects, such as section 204 of the Water Resources Development Act of 1986 (33 U.S.C. 2232) or section 221(a)(4) of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b(a)(4)).

Federal flood risk management (FRM) project. A flood risk management (FRM) project that was designed and constructed by the Corps or the non-Federal sponsor under Federal flood control or water resources development authorities. A FRM project, or portion of such a project, constructed by a non-Federal sponsor is considered a Federal FRM project only if the non-Federal sponsor carried out construction in compliance with applicable authorities for non-Federal construction of water resources development projects, such as section 204 of the Water Resources Development Act of 1986 (33 U.S.C. 2232) or section 221(a)(4) of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b(a)(4)).

Flood risk management (FRM) project. A project designed, constructed, operated, and maintained to reduce the risk of damage to property and public infrastructure, and the risk of loss of life, from flooding.

Governor. The chief executive of a State. All references to the ''Governor'' or ''Governor of a State'' in this part also refer to the Governors of United States commonwealths, territories, and possessions; and to the Mayor of Washington, DC.

Tribal Nation (Federally recognized Indian tribe or Tribal organization). An Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 5130.

Interim risk reduction measure (IRRM). Actions that can be taken to reduce flood risks posed by a flood risk management project while long-term solutions are being pursued.

Lands, easements, rights-of-way, relocations, and disposal/borrow sites (LERRDs). For a project or other assistance activity, the required lands, easements, and rights-of-way, including those required for borrow or disposal of dredged or excavated material; facility and utility relocations; and improvements to land necessary to enable the disposal of dredged or excavated material.

Levee segment. A discrete physical portion of a levee system that is managed by a single non-Federal sponsor.

Levee system. A manmade barrier and ancillary drainage and conveyance facilities, managed by one or more non-Federal sponsors, that together function to reduce the risk that flood waters will inundate the leveed area during flood events.

Maintenance. Short-term activities, normally accomplished at least annually, such as vegetation management and control of burrowing animals; and longer-term activities, such as repair, replacement, or rehabilitation of the project and its structural components. All of these activities are necessary for the proper care and efficient operation of an FRM or CSRM project.

Non-Federal flood risk management (FRM) project. A FRM project that is not a Federal FRM project. The term may include a project constructed by the Works Progress Administration; a project constructed by, or under a program administered by, a Federal agency other than the Corps; or a project constructed under Federal emergency disaster authorities, including Public Law 84–99 or the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121, *et seq.*) (hereinafter referred to as the Stafford Act).

Non-Federal sponsor. A legally constituted public body with full authority and capability to perform the terms of the applicable agreement with the Corps and to pay damages, if necessary, in the event of its failure to perform. For Federal CSRM and Federal FRM projects, the applicable agreement is generally the Project Partnership

Agreement required by section 221(a)(1) of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b(a)(1)). For non-Federal FRM projects, the applicable agreement is the Cooperation Agreement for the provision of Public Law 84–99 assistance detailed in subpart J of this part. A non-Federal sponsor may be a State, county, city, town, federally recognized Tribal Nation or Tribal organization, Alaska Native corporation, any political subdivision of a State, or a group of States.

Nonstructural alternative. A measure or combination of measures that reduces human exposure or vulnerability to a flood or coastal storm without altering the nature or extent of the flooding. A nonstructural alternative may include efforts to restore or protect natural resources, including streams, rivers, floodplains, wetlands, or coasts, if those efforts will also reduce flood risk.

Operation. Activities that are necessary for the safe and efficient functioning of a project to produce the benefits set forth in the project authorization. Operation includes exercising closure structures, providing information about the condition of the project to the public, and risk communication efforts.

Rehabilitation. Activities that are necessary to bring a damaged or deteriorated project back to its original condition.

Repair. Activities of a routine or non-routine nature that are necessary periodically to maintain a project in a well-kept condition.

Replacement. Activities undertaken when the project, or a worn-out feature or component of the project, is replaced.

Responsible state, tribal, and local interests. Non-Federal sponsors and State executive agencies, Tribal organizations, and offices of political subdivisions of the State with responsibility for disaster preparedness and emergency management within their respective jurisdictions.

Tribal official. The elected or duly appointed official of a Tribal Nation that may request assistance on behalf of the Tribal Nation.

§ 203.13 Federally-recognized Tribal Nations and the Alaska Native corporations.

Except as provided in § 203.92(a), all requests/for Public Law 84–99 assistance on Tribal lands held in trust by the United States, or on lands of the Alaska Natives, may be submitted to the Corps directly by the affected Federally recognized Tribal Nation or Alaska Native corporation, or through the appropriate regional representative of the Bureau of Indian Affairs, or through the Governor of the State where such lands are located.

§ 203.14 Exceptions to policy.

Exceptions to any regulation or policy contained in this part may be requested by a non-Federal sponsor or responsible State, Tribal, or local interest. Exceptions must be requested in writing and will be reviewed and approved by the Corps Director, Contingency Operations and Office of Homeland Security.

Subpart B—Emergency Preparedness

§ 203.21 Emergency preparedness assistance.

Public Law 84–99 authorizes an emergency fund for use in preparedness for emergency response to any natural disaster. The Corps may provide technical assistance to responsible State, Tribal, and local interests upon request to help support their efforts to prepare for a specific identified storm or forecasted high water event that may lead to flooding. Generally, the Corps will provide this technical assistance to support State, Tribal, and local efforts to inspect the condition of their FRM or Federal CSRM projects within their respective jurisdictions before an approaching flood or coastal storm to identify potential areas of vulnerability, and for related flood fight preparedness and training activities related to the expected flooding. Emergency preparedness activities include coordination, planning, training and conducting exercises with other Federal agencies and responsible State, Tribal, and local interests. These activities are to both lend expertise and to gain a greater understanding of State, Tribal, and local needs and requirements in order to mitigate against natural disasters as well as reduce impacts from future floods or other identified hazards. Technical assistance to support specialized studies or to develop long-term options for managing flood risks is beyond the scope of this emergency preparedness assistance.

§ 203.22 Emergency preparedness responsibilities of non-Federal sponsors.

Assistance under Public Law 84–99 is intended to supplement the maximum efforts of responsible State, Tribal, and local interests. Assistance will not be provided when responsible State, Tribal, and local interests have made insufficient efforts to prepare for the flood event or other emergency, or when a request for assistance is based entirely on a lack of fiscal resources with which to respond to the flood event or other emergency. State, Tribal, and local interests' responsibilities include the following:

(a) *Operation and maintenance of FRM and Federal CSRM projects.* FRM and Federal CSRM projects must be operated and maintained by non-Federal sponsors.

(b) *Preparedness planning.* Responsible State, Tribal, and local interests must ensure that appropriate and current plans are in place and ready to be implemented in the event of disaster. Considerations for these plans may include emergency operations procedures, updated contact information, identification of known problem areas that may need to be addressed, and public notification procedures.

(c) *Procurement/stockpiling.* Responsible State, Tribal, and local interests must procure and stockpile sandbags, pumps, and other materials or equipment that might be needed during flood or coastal storm events. The Corps will provide assistance when the resources of responsible State, Tribal, and local interests are exhausted. Local interests must request such materials from State assets prior to seeking Corps assistance.

(d) *Training.* Responsible State, Tribal, and local interests must train personnel to operate, maintain, and patrol FRM and Federal CSRM projects during crisis situations (*e.g.,* floods, storms, ice jam conditions).

(e) *Floodplain management.* Responsible State, Tribal, and local interests must develop and implement floodplain management plans that comply with federal, state, and local policy for management of activities in the floodplain intended to reduce loss of life, injuries, damage to property and other impacts associated with flooding.

(f) *Emergency repair, rehabilitation, and restoration assistance.* To be eligible for emergency repair, rehabilitation, and restoration assistance under Public Law 84–99, non-Federal sponsors of FRM and Federal CSRM projects must take those actions necessary to maintain eligibility detailed in subparts D and E of this part.

(g) *IRRMs.* Non-Federal sponsors are responsible for implementing IRRMs.

Subpart C—Emergency Operations

§ 203.31 General.

(a) Emergency operations assistance under Public Law 84–99 is intended to supplement the efforts of responsible State, Tribal, and local interests. Assistance is limited to temporary activities and measures necessary to meet the immediate threat and to preserve life and property. Assistance

may include Corps assumption of control over the management and coordination of emergency operations; however, legal liability remains with the responsible State, Tribal, or local interests. Emergency operations assistance under Public Law 84–99 consists of direct assistance during the flood response and post flood response phases.

(1) *Flood response.* Flood response assistance may include the provision of technical advice and assistance, performance of flood fighting activities, the procurement and issuance of flood fighting supplies and equipment (*e.g.,* sandbags, lumber, polyethylene sheeting, and pumps), the lending of Federally owned equipment, performance of rescue operations, and installation of temporary emergency measures to strengthen FRM and Federal CSRM projects where no other federal emergency flood fighting authority exists. Assistance may be provided using emergency contracting procedures.

(2) *Post flood response.* Post flood response assistance may include the provision of technical advice and assistance; cleaning of drainage channels, bridge openings, or structures blocked by debris deposited during a flood event, when the immediate threat of flooding of or damage to public facilities has not abated; removal of debris blockages of critical water supply intakes and sewer outfalls; clearance of the minimum amounts of debris necessary to reopen critical transportation routes or public facilities and services; and other activities intended to reduce the risk of imminent loss of life or significant damage to public property, or to protect against significant threats to public health and welfare. The Corps may use its Public Law 84–99 authority to furnish post flood response assistance for a period not to exceed 10 days from the date of the request of the Governor or Tribal official to the Federal Emergency Management Agency (FEMA) for an emergency or disaster declaration under authority of the Stafford Act.

(3) *Rescue Operations.* The Corps may assist in rescue operations during flood response. Any Corps equipment and personnel used in the operation should be directed by a local official such as a law enforcement officer, or Tribal/State/city/county officials duly appointed to conduct rescue operations.

(b) *Agricultural lands.* Emergency operations assistance may be provided to a FRM project currently enrolled in the Rehabilitation Program detailed in subpart D of this part that primarily reduces the flood risk to agricultural lands only if the Corps determines that such assistance is justified based on a finding that, in the absence of Corps assistance, the project is likely to sustain significant damage as a result of the flood event, and such damage poses a significant risk to life safety or is likely to result in significant economic losses.

(c) *Non-Federal responsibilities during emergency operations.* (1) During emergency operations, responsible State, Tribal, and local interests must commit their available resources, to include work force, supplies, equipment, and funds, to flood response and post flood response activities.

(2) Non-Federal sponsors must furnish formal written assurances of local cooperation and legal liability for emergency operations assistance related to FRM and Federal CSRM projects by entering into Cooperation Agreements (CAs), as detailed in subpart J of this part, if such assurances were not provided in an agreement entered into under section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b).

(3) After the risk of flooding from a flood event or coastal storm has abated, the non-Federal sponsor for a FRM or Federal CSRM project is responsible for removing temporary improvements installed by the Corps at the flood response stage under Public Law 84–99 authority. This includes the removal and disposal of used sandbags.

(4) Removal of ice jams is a non-Federal responsibility. In ice jam situations, the Corps may provide technical advice and assistance with flood fight operations. The Corps will not perform or provide advice on ice jam blasting operations.

(5) Responsible State, Tribal, and local interests must promptly return any equipment loaned to such interests by the Corps immediately after emergency operations conclude. Responsible State, Tribal, and local interests must properly maintain the equipment while it is in their custody, and fund the cost of any repairs determined by the Corps to be necessary upon the equipment's return to Federal custody.

(6) Responsible State, Tribal, and local interests must replace expendable supplies provided by the Corps or reimburse the Corps for the value of such supplies. Unused expendable supplies must be returned to the Corps promptly after emergency operations conclude.

§ 203.32 Flood response procedures.

(a) *Requesting flood response assistance.* Requests for Corps flood response assistance should be in writing from the responsible State, Tribal, or local official, or his or her authorized representative, to the responsible Corps district commander. When time does not permit a written request, a verbal request from the responsible State, Tribal, or local official will be accepted.

(b) *Coordination.* The Corps will coordinate all flood response assistance with the Tribal or State Emergency Management Agency or equivalent and will coordinate with other Federal agencies on an emergency basis to ensure there is appropriate consideration of environmental and cultural resources considering the exigency of the circumstances if there has not been coordination in advance of the emergency response.

(c) *Termination of Corps flood response assistance.* Corps flood response assistance will be terminated when the flood waters recede below bank full or storm surge associated with a coastal storm has ended, absent a short-term threat (*e.g.,* a significant storm front expected to arrive within a day or two) likely to cause additional flooding.

(d) *Loan or issue of supplies and equipment and Reimbursement Waiver Criteria for Issued Expendable Supplies.* Corps supplies issued, or equipment loaned, to responsible State, Tribal, and local interests for use in supplementing their flood response operations must be hand receipted to the receiving agency. The responsible Corps district commander may waive the obligation of responsible State, Tribal, and local interests to replace or pay for expendable supplies if a Stafford Act Presidential disaster declaration has been made for the affected locality or the responsible State, Tribal, or local interests have issued over 500,000 sandbags from their own supplies in the applicable calendar year. All unused expendable supplies will be returned to the Corps when the operation is terminated.

§ 203.33 Post flood response procedures.

(a) *Requesting post flood response assistance.* A written request to the responsible Corps district commander from the Governor or Tribal official, or authorized representative thereof, is required to receive Corps post flood response assistance. The written request will include verification that the Federal Emergency Management Agency (FEMA) has been requested to make an emergency or disaster declaration; a statement that the assistance required is beyond the State's or Tribal Nation's capability; specific damage locations; and the extent of Corps assistance required to supplement State or Tribal Nation efforts.

(b) *Coordination.* The Corps will coordinate all post flood response assistance with the Tribal Nation or State Emergency Management Agency or equivalent and will coordinate with other Federal agencies on an emergency basis to ensure there is appropriate consideration of environmental and cultural resources considering the exigency of the circumstances if there has not been coordination in advance of the emergency response.

(c) *Duration of post flood response assistance.* The Corps may furnish post flood response assistance for a period not to exceed 10 days (the statutory limitation) from the date of the Governor's request to the Federal Emergency Management Agency for an emergency or disaster declaration under authority of the Stafford Act. After a request has triggered the 10-day period, a subsequent request for additional assistance resulting from the same flood or coastal storm event will not extend the 10-day period or trigger a new 10-day period.

Subpart D—Emergency Repair, Rehabilitation, and Restoration Assistance for Flood Risk Management Projects Damaged by Flood

§ 203.41 General.

(a) Public Law 84–99 authorizes emergency repair, rehabilitation, and restoration of FRM projects damaged in a flood. The Rehabilitation Program implements this authority.

(b) The Corps will conduct an Initial Eligibility Assessment (IEA) of non-Federal FRM projects, and a Continuing Eligibility Assessment (CEA) of Federal and non-Federal FRM projects, to determine eligibility for emergency repair, rehabilitation, and restoration assistance.

(c) *Initial eligibility criteria.* The following criteria are required for initial eligibility:

(1) *Federal FRM projects.* A completed Federal FRM project, or completed functional portion thereof, is granted initial eligibility for emergency repair, rehabilitation, and restoration assistance upon the provision of the written notice of completion of construction by the responsible Corps district commander to the non-Federal sponsor.

(2) *Non-Federal FRM projects.* The following initial eligibility requirements must be met in order for a non-Federal FRM project to be considered eligible for emergency repair, rehabilitation, and restoration assistance:

(i) Project must have a non-Federal sponsor as defined in § 203.14.

(ii) Project may not provide exclusive benefits to an individual homeowner, property owner, or a business (to include an individual agricultural business or farming operation).

(iii) Non-Federal sponsor must prepare and submit an initial eligibility application provided by the Corps for eligibility consideration.

(iv) Project satisfies the initial eligibility assessment requirements outlined in § 203.42 to verify and document the level of risk reduction provided by the FRM project and the status of maintenance of the project.

(d) *Continuing eligibility criteria.* Non-Federal sponsors of Federal and non-Federal FRM projects must conduct the following flood risk management activities to maintain eligibility for emergency repair, rehabilitation, and restoration assistance:

(1) Documentation that outlines the operation, maintenance, and inspection activities taken by the non-Federal sponsor to effectively operate and maintain the FRM project. The documentation will include the following information:

(i) Identification of the project (or segment of a project). This should include the name of the project; the name of the non-Federal sponsor; a brief description of the project and its components; a brief discussion of the population and infrastructure relying on the project for flood risk reduction; and a map showing the project alignment and area benefitted by the project.

(ii) Documentation of inspections conducted by the non-Federal sponsor since the last inspection of the project by the Corps.

(iii) A schedule and summary of operation and maintenance activities performed since the last inspection of the project by the Corps.

(2) Develop, maintain, and exercise an emergency plan. The non-Federal sponsor of a FRM project must develop and exercise an emergency plan that outlines the planned preparedness activities and coordination actions taken by the non-Federal sponsor to effectively prepare for and manage the project during flood emergencies. If there is an existing emergency preparedness plan for the jurisdiction that covers the project area, the non-Federal sponsor's preparedness plan actions may be incorporated in these jurisdictional plans. In such cases, a separate emergency plan developed by the non-Federal sponsor is not necessary. The emergency plan will include the following information:

(i) Roles and responsibilities of the project personnel as they relate to preparedness, response, and recovery associated with the project during emergency flood operations.

(ii) Levels of emergency activation and the actions being taken at these various activation levels to ensure operations of the project during flood emergencies.

(iii) Sharing Information. Communications and notification procedures to ensure that public officials and the public impacted by the projects are aware of FRM project condition and performance for the purpose of evacuation planning and land-use planning.

(iv) Flood activation process to include notification procedures and warnings.

(v) Evacuation notification process, emergency training and exercises.

(vi) Emergency equipment and supplies that are maintained or required during flood emergencies.

(3) Develop and implement public outreach activities to provide information regarding the FRM project's condition and risks to appropriate public officials and stakeholders of the project. The non-Federal sponsor's activities must ensure that public officials and decision-makers are aware of and informed about the condition of the FRM project and the risks associated with the project, project inspection and risk assessment results are available to appropriate public officials and stakeholders, and public outreach activities are included in the Emergency Preparedness Plan prepared by the non-Federal sponsor under paragraph (d)(2) of this section.

(4) Actively participate in project inspections and assessments conducted by the Corps as outlined in § 203.48. Non-Federal sponsors of levee segments and systems must also participate in Corps Levee Safety Program activities including, but not limited to, risk assessments, coordination with FEMA, and risk communication activities.

(5) Project satisfies the continuing eligibility assessment requirements outlined in § 203.43 to determine if the FRM project maintains minimum engineering and maintenance criteria for continued eligibility.

(e) *Modifications.* Public Law 84–99 provides authority to undertake certain modifications to FRM projects undergoing emergency repair, rehabilitation, and restoration. A modification is a work effort that is the addition of new features, elements, components, or items, or the upgrading of existing ones. Subject to certain conditions, the Corps will consider requests from non-Federal sponsors for modifications to address major deficiencies or to increase the design

level of risk reduction or pump station capacity. Policy, procedures, and requirements for modifications are described in more detail in § 203.47.

(f) *System-wide improvement framework (SWIF).* A SWIF may be developed to facilitate interagency collaboration to address complete levee system deficiencies and encourage the establishment of interagency teams to jointly identify and implement regionally appropriate, science-based solutions and tools to reduce risk associated with levees or levee systems while ensuring compliance with other Federal laws, such as the Endangered Species Act, as appropriate. Non-Federal sponsors will maintain or regain eligibility in the Rehabilitation Program while they are developing and implementing a SWIF. Policy, procedures, and requirements for a SWIF are described in more detail in § 203.50.

§ 203.42 Initial eligibility assessment of non-Federal flood risk management projects.

(a) The Corps will conduct an Initial Eligibility Assessment (IEA), including an onsite inspection, to verify project information, determine if a project meets the definition of a non-Federal FRM project and minimum engineering and maintenance criteria to ensure that the project is capable of providing reliable flood risk reduction, and determine the Federal interest in future emergency repair, rehabilitation, and restoration of the project. A non-Federal FRM project that is determined to meet the initial eligibility requirements will be eligible for rehabilitation assistance beginning on the date the responsible Corps district commander notifies the non-Federal sponsor of the project in writing of the determination. To be initially considered for rehabilitation assistance, the non-Federal sponsor for a non-Federal FRM project must submit an initial eligibility application.

(b) *Contents.* The initial eligibility application must include:

(1) Documentation of the level of risk reduction provided by the non-Federal FRM project that is expressed in terms of an exceedance frequency (*e.g.,* a 20% chance of a levee being overtopped in any given year).

(2) The most recent inspection results provided by the non-Federal sponsor.

(3) Documentation of the status of maintenance, to include recent maintenance activities, and identification of deficiencies that compromise the ability of the non-Federal FRM project to provide the designed level of risk reduction.

(c) *Level of detail.* The level of detail required in the initial eligibility application and on-site inspection will be commensurate with the complexity of the non-Federal FRM project, the potential for catastrophic failure of the project to cause significant loss of life, the potential for significant economic losses, and other special circumstances that may apply.

(d) *Assessment results.* Information on the results of an IEA will be furnished in writing to the non-Federal sponsor of the non-Federal FRM project and will be maintained in Corps district offices.

(1) The responsible Corps district commander will inform the non-Federal sponsor in writing of the IEA determination. If the project meets the IEA criteria, the project will be eligible for emergency repair, rehabilitation, and restoration assistance. If the project does not meet the IEA criteria, the project will not be eligible for emergency repair, rehabilitation, and restoration assistance. The Corps will provide a summary of the IEA criteria that resulted in the decision.

(2) If the non-Federal sponsor does not agree with the initial Corps eligibility assessment, the non-Federal sponsor may choose, at its own expense, to provide additional information relative to the eligibility criteria and request a reconsideration of the Corps determination.

§ 203.43 Continuing eligibility assessment of Federal and non-Federal flood risk management projects.

(a) Continuing Eligibility Assessments (CEA) for Federal and non-Federal FRM projects are conducted periodically to ensure that projects continue to meet Corps initial eligibility criteria outlined in § 203.42 and the continuing eligibility criteria outlined in this section. A CEA assesses the non-Federal sponsor's implementation of its project operation, maintenance, and inspection activities; emergency planning; and sharing information about FRM project condition and performance. A CEA also seeks to detect changed project conditions that could impact project performance. An acceptable CEA determination is required to retain eligibility for emergency repair, rehabilitation, and restoration assistance.

(b) *Contents.* Continuing eligibility assessment consists of:

(1) Verification that initial eligibility criteria outlined in § 203.42 continue to be met.

(2) A review of the operation, maintenance, and inspection activities. The Corps will verify that the non-Federal sponsor is using a risk-informed approach to prioritizing operation and maintenance activities and is regularly inspecting the project. The Corps will identify changes in project condition and/or consequences associated with the non-performance of the project.

(3) A review of emergency plan and associated activities. The Corps will verify the emergency plan is regularly updated and exercised.

(4) A review of information sharing/outreach activities accomplished about FRM project condition and performance.

(5) A review of participation in project inspections and assessments conducted by non-Federal sponsor and/or the Corps.

(c) *Assessment Results.* Information on the results of a CEA will be furnished in writing to the non-Federal sponsor of the Federal or non-Federal FRM project and will be maintained in Corps district offices.

(1) The responsible Corps district commander will inform the non-Federal sponsor in writing of the CEA determination. If the project meets the CEA criteria the project will retain eligibility for emergency repair, rehabilitation, and restoration assistance. If the project does not meet the CEA criteria the project will no longer be eligible for emergency repair, rehabilitation, and restoration assistance. The Corps will provide a summary of the CEA criteria that resulted in the decision.

(2) The Corps will inform the non-Federal sponsor of the Corps' determination of the project's ability to reliably provide a level of risk reduction and the maintenance that must be accomplished to provide that level of risk reduction for the non-Federal sponsor's information and use in understanding risk and planning future maintenance activities.

(3) If the results of a Corps eligibility assessment are not acceptable to the non-Federal sponsor, the non-Federal sponsor may choose, at its own expense, to provide additional information relative to the eligibility criteria and request a reconsideration of the Corps determination.

(d) *Regaining eligibility.* A Federal or non-Federal FRM project determined by the Corps to not meet continuing eligibility requirements will remain ineligible for emergency repair, rehabilitation, and restoration assistance until such time as the continuing eligibility criteria are met. Follow-up inspections can be made by the Corps to monitor progress in correcting deficiencies when warranted.

§ 203.44 Emergency repair, rehabilitation, and restoration of Federal and non-Federal flood risk management projects.

(a) *Eligibility for emergency repair, rehabilitation, and restoration assistance.* An FRM project is eligible for emergency repair, rehabilitation, and restoration assistance if the project has received a favorable determination on the IEA and subsequent CEAs, the damage was caused by the flood event, the work is economically justified, and the work is not otherwise prohibited by subpart D. The Corps will comply with all applicable environmental compliance requirements prior to any emergency repair, rehabilitation, or restoration of the project.

(b) *Work at non-Federal sponsor expense.* The Rehabilitation Program will cost share the work required to restore the non-Federal FRM project to its pre-flood event condition, as documented in the most recent inspection, as well as any costs necessary to comply with environmental requirements in accordance with cost share provisions in § 203.113. If deficient or deferred project maintenance is outstanding when damage to an FRM project occurs, then the deficient and deferred maintenance will be accomplished by or at the expense of the non-Federal sponsor. At the earliest opportunity prior to commencement of emergency repair, rehabilitation, and restoration work, the responsible Corps district commander will inform the non-Federal sponsor in writing of any work that must be accomplished at non-Federal sponsor expense.

(c) *Nonconforming works.* The Corps will not provide emergency repair, rehabilitation, and restoration assistance for any non-Federal FRM project constructed or modified without the appropriate Federal, State, Tribal, and local permits, or waivers thereof.

(d) *Cooperation agreements.* A Cooperation Agreement is required in accordance with subpart J.

(e) *Economic justification.* Except as provided in § 203.113(c) of this part, the emergency repair, rehabilitation, and restoration effort must be economically justified and the construction cost of the work, excluding the cost of LERRDs, must exceed $50,000. Construction costs greater than $50,000 do not preclude the Corps from making a determination that the required work is a maintenance responsibility of the non-Federal sponsor, and not eligible for emergency repair, rehabilitation, and restoration assistance.

§ 203.46 Restrictions.

(a) *Eligibility restricted to flood risk management projects.* Structures built primarily for the purposes of channel alignment, navigation, recreation, fish and wildlife enhancement, land reclamation, habitat restoration, drainage, bank protection, or erosion protection, are generally ineligible for Public Law 84–99 emergency repair, rehabilitation, and restoration assistance.

(b) *Non-flood related emergency repair, rehabilitation, and restoration.* The Corps will not generally provide emergency repair, rehabilitation, and restoration assistance under Public Law 84–99 to address damages by occurrences other than floods or coastal storms. However, there may be instances when other natural disasters may impact the structural integrity of a FRM project. In these instances, the provision of assistance will be evaluated on a case-by-case basis.

§ 203.47 Modifications to flood risk management projects undergoing emergency repair, rehabilitation, and restoration.

(a) *Modifications to address major deficiencies.* (1) Modifications to address a major deficiency that also would increase the level of risk reduction provided prior to the most recent flood or floods are beyond the scope of this subsection and must be evaluated under paragraph (b) of this section. Where the modification would not increase the level of risk reduction provided prior to the most recent flood or floods, the Corps will consider requests by the non-Federal sponsor for a modification to address major deficiencies as part of the emergency repair, rehabilitation, and restoration of the project under Public Law 84–99 based on one or more of the following criteria:

(i) The modification is expected to significantly decrease the risk of loss of life and property damage.

(ii) The modification is expected to decrease the risk of loss of life, the risk of damage to property and public infrastructure, or the total life-cycle flood response, post flood response, and rehabilitation costs for the project.

(iii) The modification is necessary to preserve the structural integrity or otherwise reduce the risk of failure of the existing project in a flood.

(iv) The modification is the most cost-effective means of complying with substantive environmental requirements such as the Endangered Species Act.

(2) *Allowable features of modifications.* Modifications to address major deficiencies may include:

(i) Incorporating features to make the overall levee system more durable, such as low sills, riprap, hardening features, and similar measures.

(ii) Incorporating landscaping features that promote safety and/or preserve natural protective features.

(iii) Constructing set back levees.

(iv) Constructing relief wells, if deemed an engineering necessity.

(v) Installing cutoff walls and stability or seepage berms to address seepage issues.

(vi) Floodproofing or otherwise reducing the risk of damage to essential project facilities in a flood.

(b) *Modifications to increase the design level of risk reduction or pump station capacity.* The Corps will consider requests by the non-Federal sponsor for modification of a FRM project to increase the design level of risk reduction, or to increase pump station capacity, as part of the emergency repair, rehabilitation, and restoration of that project under Public Law 84–99 if all of the following criteria are satisfied:

(1) The Corps previously provided emergency repair, rehabilitation, and restoration assistance for that FRM project, or the flood response or post flood response assistance that the Corps provided to that area related to that project, at least twice in any 10-year period preceding the requested modification.

(2) The requested modification is expected to significantly decrease the risk of loss of life, the risk of damage to property and public infrastructure, or the total life-cycle flood response, post flood response, and rehabilitation costs for the project.

(3) The Corps has sufficient staffing and resources to accommodate the requested modification without adversely impacting the timeline for the provision of emergency repair, rehabilitation, and restoration assistance for other FRM projects in that Corps district's other areas of responsibility.

(4) The requested modification is unlikely to result in a significant transfer of flood risk to areas outside the area protected by the project, and the non-Federal sponsor agrees to pay all costs associated with mitigating any transfer of flood risk determined to result from the requested modification.

(c) *Requests for modifications.* The non-Federal sponsor for a FRM project must submit a request in writing to the responsible Corps district commander for consideration of modifications to address major deficiencies or to increase the design level of risk reduction or pump station capacity. The modification request must be provided

by the non-Federal sponsor concurrently with a request to determine repair eligibility as outlined in § 203.44 or § 203.45. The request must describe the modification and its purpose. Requests for modifications will require the approval of the Corps Director, Contingency Operations and Office of Homeland Security.

(d) *Cost sharing for modifications.* The non-Federal sponsor for the FRM project must fund all costs associated with a modification that the Corps determines to exceed the cost of emergency repair, rehabilitation, and restoration.

(e) *Economic justification.* Both the emergency repair, rehabilitation, and restoration work and the incremental cost of the modifications must be economically justified.

(f) *Timeline for modifications.* Requested modifications must be carried out within three years once the emergency repair, rehabilitation, and restoration of the project under Public Law 84–99 has begun.

(g) *Limitations of modifications.* The Corps will not consider modifications of a FRM project under Public Law 84–99 to improve the condition of the project beyond its pre-flood condition, or to achieve a purpose that is not related to flood risk management. The Corps also will not consider modifications to a project under Public Law 84–99 that would have the effect of extending the length of a FRM project beyond its current footprint.

§ 203.48 Inspections and risk assessments for flood risk management projects.

The Corps will continue to conduct inspections and risk assessments of all Federal and non-Federal FRM projects eligible for emergency repair, rehabilitation, and restoration assistance. The primary purpose of the inspections and risk assessments is to assess and communicate the physical condition of the FRM project based on observations; to verify the adequacy of operation and maintenance; and to inform the non-Federal sponsors in the development and execution of their operation, maintenance, and inspection plan, emergency preparedness plan, and public outreach activities. Additionally, inspections are performed to verify that non-Federal sponsors of Federal FRM projects are fulfilling their responsibilities in accordance with Title 33—Navigation and Navigable Waters; Chapter II—Corps of Engineers, Department of the Army (33 CFR part 208) requirements and project partnership/cooperation agreements.

§ 203.49 Levee guide.

(a) Section 202(f) of the Water Resources Development Act of 1996 (33 U.S.C. 701n(c)) directs the Corps to provide a levee manual (guide) to the non-Federal sponsor of any project determined to be eligible for emergency repair, rehabilitation, and restoration assistance.

(b)(1) *Eligible non-Federal flood risk management projects.* The Corps will provide a levee guide to non-Federal sponsors of non-Federal FRM projects determined to be eligible for emergency repair, rehabilitation, and restoration assistance. The levee guide will include the criteria that must be met to gain and maintain eligibility in the rehabilitation program. Upon written request, the Corps will also provide a levee guide to the non-Federal sponsor of a non-Federal FRM project for which eligibility for assistance has not yet been evaluated to aid the non-Federal sponsor in preparing for an initial eligibility assessment.

(c) *Procedural requirements.* The Corps will provide a levee guide to the non-Federal sponsor of a non-Federal FRM project during scheduled initial and continued eligibility assessments, or upon written request from a non-Federal sponsor to the responsible Corps district commander.

§ 203.50 System-wide improvement framework.

(a) A system-wide improvement framework (SWIF) is a plan developed by the non-Federal sponsors of a levee system or systems and accepted by the Corps to maintain eligibility for emergency repair, rehabilitation, and restoration assistance while conducting a series of improvements to the levee system (or multiple levee systems within a watershed) to address system-wide deficiencies that are complex or time-consuming to correct.

(b) *SWIF process.* The SWIF process is available to non-Federal sponsors of levee systems facing system-wide deficiencies as a way to facilitate the development of solutions to satisfy multiple requirements that apply to their levee systems while allowing the non-Federal sponsors participating in the SWIF process to remain eligible for emergency repair, rehabilitation, and restoration assistance while addressing the deficiencies. The SWIF can be used to address deficiencies or issues that cannot be addressed through routine corrective actions, including:

(1) A reduction in the level of risk reduction of a FRM project below the minimum basic eligibility criteria due to changed conditions.

(2) Improvements that involve multiple levee systems.

(3) Additional time or coordination is needed to adequately address complex considerations to ensure life safety.

(4) Additional time or coordination is needed to address a complex natural resource issue such as consultation/mitigation actions for resources subject to the Endangered Species Act.

(5) Additional time or coordination is needed to observe and protect the rights of Tribal Nations pursuant to treaty and statute.

Subpart E—Emergency Repair, Rehabilitation, and Restoration Assistance for Federal Coastal Storm Risk Management Projects

§ 203.61 General.

(a) The Chief of Engineers is authorized to repair and restore Federal coastal storm risk management (CSRM) projects damaged or destroyed by wind, wave, or water action of other than an ordinary nature to either the pre-storm level or to their design profile, whichever provides greater risk reduction, when, in the discretion of the Chief of Engineers, such repair and restoration is required for the adequate functioning of the structure or project for hurricane or shore protection. Further, the Chief of Engineers may include modifications to these projects to address major deficiencies. Finally, the Chief of Engineers may implement nonstructural alternatives to the repair or restoration of the project if requested by the non-Federal sponsor.

(1) Emergency repair, rehabilitation, and restoration assistance for Federal CSRM projects generally is limited to the project's design profile, which is the level of restoration that will allow for the adequate functioning of the project. In some circumstances, the pre-storm profile, which is the profile that existed the day prior to the storm, may be greater than the design profile, and restoration to the pre-storm profile may be necessary to ensure adequate functioning of the project based on project-specific conditions, such as much greater than anticipated erosion rates. Accordingly, at the request of the non-Federal sponsor for a Federal CSRM project, the responsible Corps district will evaluate restoration to the pre-storm profile as an additional restoration alternative. If the evaluation demonstrates that restoration to the pre-storm profile is not necessary to ensure adequate functioning of the project, restoration to the pre-storm profile may only proceed if the incremental costs above the costs to restore to the design profile are subject to the cost-sharing

that would apply for periodic nourishment. In these cases, a cost allocation between emergency repair, rehabilitation, and restoration assistance and periodic nourishment will be based on the necessary material volumes.

(2) To be considered for emergency repair, rehabilitation, and restoration assistance, a Federal CSRM project must be substantially damaged by wind, wave, or water action of other than an ordinary nature, commonly known as an extraordinary storm. The determination of whether a storm qualifies as extraordinary will be made by the Corps Deputy Commanding General of Civil and Emergency Operations, who may delegate this authority to the Corps Director, Contingency Operations and Office of Homeland Security. Criteria for the extraordinary storm and substantial damage determinations are outlined in § 203.63.

(3) For Federal CSRM projects that include a beach, the Corps will provide emergency repair, rehabilitation, and restoration assistance only to the extent that the non-Federal sponsor has established and maintained adequate conditions of public use and access for the beach. The Corps will undertake emergency repair, rehabilitation, and restoration of a segment or reach of a Federal CSRM project that includes a beach for which the non-Federal sponsor has not established or maintained adequate conditions of public use and access only if the non-Federal sponsor pays all costs allocated by the Corps to emergency repair, rehabilitation, and restoration of the segment or reach.

(4) For Federal CSRM projects located completely or partially within a unit of the Coastal Barrier Resources System, the Corps will provide emergency repair, rehabilitation, and restoration assistance only to the extent that the project, or segment or reach of the project located within the System, qualifies for an exception under section 6 of the Coastal Barrier Resources Act (16 U.S.C. 3505) from the Act's prohibition on federal expenditures within the System (16 U.S.C. 3504). The Corps will undertake emergency repair, rehabilitation, and restoration of a segment or reach of a project located within the System that does not qualify for an exception only if the non-Federal sponsor pays all costs allocated by the Corps to emergency repair, rehabilitation, and restoration of that segment or reach.

§ 203.62 Non-Federal sponsor responsibilities for Federal CSRM projects.

The non-Federal sponsor for a Federal CSRM project is responsible for complying with the Project Partnership Agreement, Project Cooperation Agreement (PCA), Local Cooperation Agreement (LCA), or similar document including any project specific O&M manuals. The non-Federal sponsor must provide to the Corps an accurate beach survey of the project on at least an annual basis, unless this survey requirement is otherwise provided for by other project authority.

§ 203.63 Emergency repair, rehabilitation, and restoration of Federal CSRM projects.

(a) *Extraordinary storm.* Emergency repair, rehabilitation, and restoration assistance is only available for Federal CSRM projects after an extraordinary storm event. An extraordinary storm is a storm that, due to duration or severity, causes substantial damage to a Federal CSRM project such that it no longer provides significant risk reduction benefits. Wave or water action of other than an ordinary nature caused by a geological event such as an earthquake, volcano, or tsunami may be determined to be an extraordinary storm. A determination of an extraordinary storm requires a finding both of ''duration or severity'' and of ''significant amount of damage'' incurred in accordance with the following criteria:

(1) *Duration or severity.* ''Duration or severity'' may include but is not limited to the following characteristics of the event: storm surge, total water elevation, significant wave height, significant wave period, local sustained winds, wave direction, wave power or storm duration, which individually or collectively have exceeded the 90% cumulative distribution function value, as determined by analysis of regional historic storm characteristics for the project; or a storm that is larger than or equal to the design storm of the project, if a design storm has been identified; or a storm that is larger than or equal to a comparable standard identified in the project authority or design documents. ''Duration or severity'' may include repetitive storms within a single hurricane season or over a comparable short period of time where their combined effect meet these characteristics.

(2) *Substantial damage.* Substantial damage may have occurred when one or more of the following criteria are satisfied:

(i) The cost of the construction effort to effect repair of the Federal CSRM project for damages caused by the storm (exclusive of dredge mobilization and demobilization costs) exceeds two million dollars and is greater than 10 percent of the original costs required to construct the initial CSRM project template (expressed in current-day dollars) of the Federal CSRM project.

(ii) The cost of the construction effort to effect repair of the Federal CSRM project for damages caused by the storm (exclusive of dredge mobilization and demobilization costs) exceeds eight million dollars.

(iii) More than 50 percent of the planned or historically placed sand for nourishment efforts for the Federal CSRM project is lost in a single season because of one or more extraordinary storms, which each meet the criteria for duration or severity.

(iv) Only hard structural features of the project are damaged.

(b) *Project function compromised.* Emergency repair, rehabilitation, and restoration assistance is available for a Federal CSRM project following an extraordinary storm only if the damage sustained by the project significantly compromises the project's ability to provide risk reduction.

(c) Work at non-Federal sponsor expense. The Rehabilitation Program will cost share the work required to restore the CSRM project to its design profile, as documented in the most recent inspection, as well as any costs necessary to comply with environmental requirements in accordance with cost share provisions in § 203.113. If deficient or deferred project maintenance is outstanding when damage to an CSRM project occurs, then the deficient and deferred maintenance will be accomplished by or at the expense of the non-Federal sponsor. At the earliest opportunity prior to commencement of emergency repair, rehabilitation, and restoration work, the responsible Corps district commander will inform the non-Federal sponsor in writing of any work that must be accomplished at non-Federal sponsor expense.

(d) *Economic justification.* The rehabilitation of the Federal CSRM project must be economically justified.

§ 203.64 Modifications to Federal CSRM projects undergoing emergency repair, rehabilitation, and restoration.

Public Law 84–99 provides authority to include modifications to Federal CSRM projects as part of the emergency repair, rehabilitation, and restoration under Public Law 84–99. The Corps will consider modifications proposed by the non-Federal sponsor to address a major deficiency of a Federal CSRM project that has been damaged by the effects of wind, wave, or water action of other than ordinary nature is limited to those modifications that address major deficiencies determined necessary to restore the adequate functioning of the

structure. Modifications that expand the area protected by a project, or that alter the design profile in a manner that substantially change the nature or magnitude of the project's benefits are beyond the scope of Public Law 84–99 assistance.

(a) *Principal purposes of modifications.* If economically justified, a Federal CSRM project undergoing emergency repair, rehabilitation, and restoration under Public Law 84–99 may be modified at the request of the non-Federal sponsor. A modification consists of the addition of new features, elements, components, or items, or the upgrading of existing ones, which would improve the structural integrity of the project. The Corps will consider requests for such a modification of a Federal CSRM project to address major deficiencies based on one or more of the following criteria:

(1) The modification is expected to significantly decrease the risk of loss of life and property damage without expanding the area protected or substantially changing the nature or magnitude of the project's benefits (*e.g.,* armoring).

(2) The modification is expected to decrease total Corps life-cycle rehabilitation costs (to include flood fight costs) for the project.

(3) The modification is necessary to preserve the structural integrity of the existing project.

(4) The modification is the most cost-effective means of complying with substantive environmental requirements such as the Endangered Species Act.

(b) *Allowable features of modifications.* Modifications to address major deficiencies may include:

(1) Adjusting the project's sand volume and distribution within the authorized profile features (dunes, storm berm, and beach) to address project performance deficiencies.

(2) Adjusting nourishment sediment size and type or sand sources.

(3) Strengthening or improving hard or hardened features of the project.

(c) *Cost sharing of modifications.* The non-Federal sponsor for the Federal CSRM project must fund all costs associated with a modification that the Corps determines to exceed the cost of emergency repair, rehabilitation, and restoration. Costs assigned to emergency repair, rehabilitation, and restoration will be funded by the Corps. Cost sharing requirements are described in more detail in § 203.113.

(d) *Requests for modifications.* The non-Federal sponsor for a Federal CSRM project must submit a request in writing to the responsible Corps district commander for consideration of modifications to address major deficiencies. The modification request must be submitted by the non-Federal sponsor concurrently with a request to determine repair eligibility as outlined in § 203.63. The request must include a description of the major deficiencies that the modification is intended to correct. Requests for modifications will require the approval of the Corps Director, Contingency Operations and Office of Homeland Security.

(e) *Limitations of modifications.* The Corps will not consider modifications of a Federal CSRM project under Public Law 84–99 to improve the condition of the project beyond its pre-storm condition, or to achieve a purpose that is not related to coastal storm risk management.

Subpart F—Nonstructural Alternatives to Emergency Repair, Rehabilitation, and Restoration of Flood Risk Management and Federal Coastal Storm Risk Management Projects

§ 203.71 General.

(a) Under Public Law 84–99, the Chief of Engineers is authorized, when requested by the non-Federal sponsor, to implement nonstructural alternatives to the emergency repair, rehabilitation, and restoration of FRM projects and Federal CSRM projects damaged by floods or coastal storms.

(1) The option of implementing a nonstructural alternative project (NSAP) in lieu of structural emergency repair, rehabilitation, and restoration is available only to non-Federal sponsors of FRM or Federal CSRM projects eligible for emergency repair, rehabilitation, and restoration assistance in accordance with this part, and only upon the written request of the non-Federal sponsor.

(2) *A sponsor is required for implementation of an NSAP.* The NSAP sponsor must be either a non-Federal sponsor, as defined in § 203.14, or another Federal agency with sufficient authority to jointly fund implementation of the NSAP and assume the responsibilities described in paragraph (d) of this section.

(3) The Corps shall not be responsible for the operation, maintenance, or management of any NSAP implemented under this section.

(4) Implementation of a nonstructural alternative for a Federal FRM project or Federal CSRM project requires an amendment to the project partnership agreement for the project. The Corps Director, Contingency Operations and Office of Homeland Security, will approve such amendments.

(5) The criteria for evaluating a proposed NSAP include:

(i) Reduction of overall risk of loss of life and future flood damages, including to areas that may be upstream or downstream of the project.

(ii) Floodplain restoration.

(iii) Provision or restoration of floodways.

(iv) Habitat restoration, when incidental to the principal purpose of reducing vulnerability to a flood or coastal storm event.

(6) The Corps may, in its sole discretion, reject any request for an NSAP that would:

(i) Increase future Federal costs or economic damages;

(ii) Have a significant adverse impact on the integrity, stability, or level of risk reduction of adjacent or nearby flood risk management projects; or

(iii) Lead to an increased risk of loss of life or property during flood events.

(c) *Corps expenditures.* Exclusive of the costs of investigation, report preparation, engineering and design work, and related costs, Corps expenditures for implementation of an NSAP are limited to the lesser of the Federal share of emergency repair, rehabilitation, and restoration construction costs of the project were the FRM or Federal CSRM project to be structurally rehabilitated in accordance with subparts D or E of this part, or the Federal share of computed benefits which would be derived from such structural rehabilitation. The Corps Director, Contingency Operations and Office of Homeland Security, may approve exceptions to the limitations on Corps expenditures when the following criteria are met:

(1) The costs of the NSAP are economically justified.

(2) The costs of the NSAP are reasonable in comparison to the estimated total life-cycle Corps flood response, post flood response, and rehabilitation costs for the FRM or Federal CSRM project.

(3) Implementation of the NSAP will significantly reduce the risk of life loss and property damage in the area protected by the FRM or Federal CSRM project.

(d) *Responsibilities of the NSAP sponsor.* Responsibilities of the sponsor for the NSAP include:

(1) Operate and maintain the NSAP.

(2) Provide, or arrange for and obtain, all funding required to implement the NSAP in excess of the limitation established in paragraph (c) of this section.

(3) Acquire or provide all LERRDs required to implement the NSAP or, if the Corps elects to perform acquisition

or relocations, accept the transfer of ownership of, or jurisdiction over, any lands or interests in land acquired by the Corps.

(e) *Federal agency acting as NSAP sponsor.* If another Federal agency serves as the NSAP sponsor, an interagency agreement between the Corps and the Federal agency serving as the NSAP sponsor is required, in accordance with paragraph (l) of this section.

(f) *Responsibilities of the non-Federal sponsor for a non-Federal flood risk management project, Federal flood risk management project, and/or Federal Coastal Storm Risk Management project (FRM/CSRM) requesting implementation of a NSAP.*

(1) The non-Federal sponsor for a FRM or CSRM project must request the Corps undertake a NSAP in lieu of emergency repair, rehabilitation, and restoration of the FRM or CSRM project, in accordance with the sponsor's applicable laws, ordinances, rules, and regulations.

(2) If not also the NSAP non-Federal sponsor, the non-Federal sponsor for the FRM or CSRM project must:

(i) Divest itself of responsibility to operate and maintain the FRM or CSRM project involved in the NSAP.

(ii) Provide to the NSAP sponsor such lands or interests in lands as it may have which the Corps determines are necessary to implement the NSAP.

(g) *Allowable Public Law 84–99 expenses for NSAPs.* Some of the allowable expenses relative to implementing a NSAP reflect:

(1) Acquisition of land or interests in land.

(2) Removal of structures, including manufactured homes, for salvage or reuse purposes.

(3) Demolition and removal of structures, including utility connections and related items.

(4) Debris removal and debris reduction.

(5) Removal, protection, and relocation of highways, roads, utilities, cemeteries, and railroads.

(6) Construction to promote, enhance, control, or modify water flows into, out of, through, or around the nonstructural project area.

(7) Nonstructural habitat restoration, to include select planting of native and desirable plant species, native species nesting site enhancements, etc.

(8) Total or partial removal or razing of existing reaches of a levee, to include removal of bank protection features and/or riprap.

(9) Flood proofing or otherwise reducing the risk of flood related damages to essential public facilities within the non-structural project area.

(10) Supervision, administrative, and contract administration costs of other expenses allowed in this paragraph.

(h) *Time limitation.* Corps participation in development and implementation of an NSAP may cease, at the sole discretion of the Corps, three years after the date of approval of emergency repair, rehabilitation, and restoration of the damaged FRM or CSRM project or the date of receipt of the non-Federal sponsor's written request for an NSAP, whichever is earlier, if insufficient progress is being made to develop and implement the NSAP for reasons beyond the control of the Corps. In such circumstances, the Corps may, at its sole discretion, deny the emergency repair, rehabilitation, and restoration assistance that the non-Federal sponsor would have received for the damaged project in the absence of the proposed NSA.

(i) *Participation and involvement of other Federal, State, Tribal, local, and private interests.* Nothing in this section shall be construed to limit the participation of other Federal, State, Tribal, local, and private interests in the development, implementation, or future operation and maintenance of an NSAP under this section, subject to the limitations of such participating interest's authorities and regulations.

(j) *Future assistance.* After transfer of responsibility for all future operation, maintenance, repair, replacement, and rehabilitation of a NSAP to the NSAP non-Federal sponsor or the lead Federal agency, flood-related assistance pursuant to Public Law 84–99 will not be provided for the area for which the FRM or Federal CSRM project was effective in reducing the risk of flood or storm damages, except for rescue operations provided in accordance with § 203.31(a)(3). As an exception, on a case-by-case basis, levees repaired or set back as part of the implementation of an NSAP may be considered for future flood-related assistance by the Corps Director, Contingency Operations and Office of Homeland Security.

(k) *Environmental considerations.* NSAPs are subject to the same environmental requirements, restrictions, and limitations as are structural rehabilitation projects.

(l) *Requirement for cooperation agreement (CA) or Interagency Agreement.* (1) In order to clearly define the obligations of the Corps and of the non-Federal sponsor of a NSAP, a CA with the non-Federal sponsor is required. CA provisions for a NSAP are addressed in paragraphs (l)(2) through (l)(9) of this section. When another Federal agency serves as the NSAP sponsor, an interagency agreement between the Corps and the Federal agency is required. The provisions of the interagency agency agreement will be similar to, and consistent with, requirements detailed in paragraphs (l)(2) through (l)(9) of this section, with appropriate modifications based on the other Federal agency's authorized expenditures and programs.

(2) In addition to the responsibilities described in paragraph (d) of this section, the CA will require the non-Federal sponsor of the NSAP or, in the case of a NSAP sponsored by another Federal agency, the non-Federal sponsor of the FRM or CSRM project requesting implementation of the NSAP, to hold and save the United States free from damages due to the project, except for damages due to the fault or negligence of the United States or its contractor.

(3) The CA will provide that the Corps will assume up to 100 percent of the costs of implementing a NSAP, subject to the limitations set forth in paragraph (c) of this section.

(4) The CA may allow the non-Federal sponsor for a NSAP to use funding from other Federal agencies to fulfill its sponsor responsibilities, but only if the Federal agency providing the funding determines in writing that use of the funds for such purposes is specifically authorized by law.

(5) The CA will allow the non-Federal sponsor for a NSAP to elect to assume responsibility for a larger percentage of eligible costs for the NSAP than the maximum provided for in this section.

(6) The CA will include the prohibition of future assistance described in paragraph (j) of this section.

(7) The CA will include acknowledgment of, and a statement of planned adherence to, Executive Order 11988, Floodplain Management, 3 CFR part 117 (1977 Compilation), or as it may be revised in the future, by the NSAP non-Federal sponsor.

(8) The CA will require the non-Federal sponsor for the NSAP to place legal restrictions on lands formerly protected by the FRM or Federal CSRM project that will preclude future use and development of such lands in a fashion incompatible with the purposes of the NSAP.

(9) In the event the Corps does not elect to perform real property acquisition for a NSAP, the CA will provide for reimbursement of the costs incurred by the non-Federal sponsor to acquire lands or interests in land that are required for the NSAP, subject to the limitations set forth in paragraph (c) of this section. The Corps will not reimburse the non-Federal sponsor of a NSAP for the value of lands or interests

in land required for the NSAP that are publicly owned on the effective date of the CA, unless the lands or interests in land were acquired by the non-Federal sponsor for purposes of implementing a NSAP after the date of the flood or coastal storm event that damaged the eligible FRM or Federal CSRM project.

Subpart G—Emergency Drinking Water Assistance: Contaminated Water Source

§ 203.81 Authority and policy.

(a) *Authority.* The Chief of Engineers is authorized to provide emergency supplies of clean water to any locality confronted with a source of contaminated water causing, or likely to cause, a substantial threat to the public health and welfare of the inhabitants of the locality.

(b) *Policy.* (1) Any locality faced with a threat to public health and welfare from a contaminated source of drinking water is eligible for assistance.

(2) Eligibility for assistance will be based on one or more of the following factors:

(i) Exceedance of the maximum contaminant level for a contaminant, as established by the Environmental Protection Agency pursuant to the Safe Drinking Water Act (see 40 CFR part 141).

(ii) The water supply has been identified as a source of illness by a Federal, State, or Tribal public health official. The specific contaminant does not have to be identified.

(iii) An emergency (*e.g.,* a flood or chemical spill) has occurred that has resulted in one of the following:

(A) One or more contaminants entering the source on a sufficient scale to endanger health.

(B) Inoperability of the equipment necessary to remove known contaminants.

(iv) The presence of a contaminant is indicated based on other information available.

(3) Corps assistance will be scaled to provide the minimum amount of water required to maintain the health and welfare requirements of the affected population. The quantity of water and the means of distribution will be at the discretion of the responsible Corps district commander, who will consider the needs of the individual situation, the needs of the affected community, and the cost-effectiveness of providing water by various methods.

(4) If a locality has multiple sources of water, assistance will be furnished only to the extent that the remaining sources, with reasonable conservation measures, cannot provide adequate supplies of drinking water.

(5) Loss of water supply is not a basis for assistance under this authority.

(6) Water will not be furnished for commercial processes, except as incidental to the use of existing distribution systems. This does not prohibit the furnishing of water for drinking by employees and on-site customers. Water for preparing retail meals and similar personal needs may be provided to the extent it would be furnished to individuals.

(7) The permanent restoration of a safe supply of drinking water is the responsibility of local interests.

(8) State, Tribal, and local governments must make full use of their own resources, including National Guard capabilities.

§ 203.82 Eligibility criteria and procedures.

(a) *Written request.* The Governor or his/her authorized representative or the responsible Tribal official must submit a written request for assistance to the responsible Corps district commander. Requests must provide the following information:

(1) Describe the State/Tribal/local efforts undertaken. Indicate if all reasonably available resources have been committed.

(2) Identify the specific needs of the locality, and what is being requested from the Corps.

(3) Identify additional commitments to be accomplished by the State or Tribal Nation, to include the entity or agency responsible for development of the permanent resolution.

(4) Identify the non-Federal project sponsor.

(b) *Cooperation agreement.* Corps assistance requires a non-Federal sponsor to enter in a Cooperation Agreement (CA) subject to subpart J of this part. This agreement must cover specified services and responsibilities of each party, and provision of a firm schedule for the non-Federal sponsor to provide normal supplies of water.

(c) *Duration of assistance.* Corps assistance is generally limited to 30 days. Extension of this 30-day period requires execution of an amendment to the CA between the non-Federal sponsor and the Corps.

(d) *Non-Federal sponsor responsibilities.* Non-Federal sponsors are responsible for:

(1) Restoration of the routine supply of clean drinking water, including correcting any situations that cause contamination.

(2) Adhering to the CA.

(3) Implementation of reasonable water conservation measures.

(4) Operating, fueling, and maintaining any leased or loaned equipment.

(5) Removing and returning leased or loaned equipment in a fully maintained condition to the Corps within a reasonable timeframe after the assistance period in the CA has expired.

Subpart H—Drought Assistance

§ 203.91 Authority and policy.

(a) *Authority.* The Chief of Engineers, acting for the Secretary of the Army, has the authority under certain conditions to construct wells for farmers, ranchers, and political subdivisions, and to transport water to political subdivisions, within areas determined to be drought-distressed.

(b) *Policy.* (1) Corps assistance to provide emergency water supplies will only be considered when eligible applicants have exhausted reasonable means for securing necessary water supplies, including assistance and support from other Federal agencies.

(2) Before Corps assistance is considered under this authority, the applicability of other Federal assistance authorities must be evaluated. If these programs cannot provide the needed assistance, then maximum coordination should be made with appropriate agencies in implementing Corps assistance.

(c) *Definitions applicable to this subpart.* (1) *Construction.* Initial construction, reconstruction, or repair.

(2) *Drought-distressed area.* An area that the Corps Deputy Commanding General for Civil and Emergency Operations has determined, due to drought conditions, to have an inadequate water supply that is causing, or is likely to cause, a substantial threat to the health and welfare of the inhabitants of the impacted area, including the threat of damage or loss of property.

(3) *Eligible applicant.* Any rancher, farmer, or political subdivision within a designated drought-distressed area that is experiencing an inadequate supply of water due to drought.

(4) *Farmer or rancher.* An individual who realizes at least one-third of his or her gross annual income from agricultural sources and is recognized in the community as a farmer or rancher. A farming partnership, corporation, or similar entity engaged in farming or ranching, which receives its majority income from such activity, is also considered to be a farmer or rancher, and thus an eligible applicant.

(5) *Political subdivision.* A city, town, borough, county, parish, district, association, or other public body created by, or pursuant to, State law, having jurisdiction over the water supply of such public body.

(6) *Reasonable cost.* In connection with the Corps construction of a well, means the lesser of:

(i) The cost of the Corps to construct a well in accordance with these regulations, exclusive of:

(A) The cost of transporting equipment used in the construction of wells.

(B) The cost of investigation and report preparation to determine the suitability to construct a well.

(ii) The cost to a private business of constructing such a well.

(7) *State.* Any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Northern Marianas Islands, American Samoa, and the Trust Territory of the Pacific Islands.

§ 203.92 Eligibility criteria and procedures.

(a) *Written request.* The Governor or his/her authorized representative must submit a request for assistance in writing to the responsible Corps district commander. Tribal Nations may request assistance through the Governor of the State where affected Tribal lands are located. Requests must provide the following information:

(1) Describe the State, Tribal, and local efforts undertaken. Indicate if all reasonably available resources have been committed.

(2) Identify the specific needs of the locality, and what is being requested from the Corps.

(3) Identify additional commitments to be accomplished by the State or Tribe, to include the entity or agency responsible for development of the permanent resolution.

(4) Identify the non-Federal project sponsor.

(b) *Cooperation agreement.* Corps assistance requires a non-Federal sponsor to enter into a Cooperation Agreement (CA) subject to subpart J of this part. This agreement must cover specified services and responsibilities of each party, and provision of a firm schedule for local interests to provide normal supplies of water.

(c) *Duration of assistance.* Corps assistance is generally limited to 90 days. Extension of this 90-day period requires execution of an amendment to the CA between the non-Federal sponsor and the Corps.

(d) *Non-Federal sponsor responsibilities.* Non-Federal sponsors are responsible for:

(1) Adhering to the CA.

(2) Implementation of reasonable water conservation measures.

(3) Operating, fueling, and maintaining any leased or loaned equipment.

(4) Removing and returning leased or loaned equipment in a fully maintained condition to the Corps within a reasonable timeframe after the situation is resolved.

(e) *Well construction.* Assistance to an eligible applicant for the construction of a well may be provided only on a cost-reimbursable basis. Equipment owned by the United States will be utilized to the maximum extent possible in exercising the authority to drill wells, but only when commercial firms cannot provide comparable service within the time needed to prevent the applicant from suffering significantly increased hardships from the effects of an inadequate water supply. Assistance may be provided when:

(1) It is in response to a written request by a farmer, rancher, or political subdivision for construction of a well under Public Law 84–99.

(2) The applicant is located within an area that has been determined to be drought-distressed.

(3) The determination has been made that:

(i) The applicant, because of the drought, has an inadequate supply of water.

(ii) An adequate supply of water can be made available to the applicant through the construction of a well.

(iii) As a result of the drought, a private business could not construct the well within a reasonable time.

(4) The applicant has secured the necessary funding for well construction from commercial or other sources or has entered into a contract to pay to the United States the reasonable cost of such construction with interest over a period of years, not to exceed 30, as the Assistant Secretary of the Army, Civil Works, deems appropriate.

(5) The applicant has obtained all necessary Federal, State and local permits.

(f) *Transport of water.*

(1) Assistance may be provided when:

(i) It is in response to a written request by a political subdivision for transportation of water; and

(ii) The applicant is located within an area that has been determined to be drought-distressed.

(2) Transportation of water by vehicles, small diameter pipeline, or other means as determined by the Corps will be at 100-percent Federal cost.

(3) Corps assistance will be provided only in connection with water needed for human consumption. Assistance will not be provided for livestock, irrigation for crop production, recreation, commercial, or industrial processing under this authority.

(4) Corps assistance will not include the purchase of water, or the cost of loading or discharging the water into or from any Government conveyance, to include Government-leased conveyance.

(5) Equipment owned by the United States will be utilized to the maximum extent possible in exercising the authority to transport water, consistent with lowest total Federal cost.

Subpart I—Advance Measures

§ 203.101 General.

Advance measures consist of those activities performed prior to flooding or flood fighting activities to protect and mitigate against loss of life and significant damages to urban areas, public facilities, flood and coastal storm risk management systems or critical infrastructure due to an imminent threat of unusual flooding.

(a) *Emergency work.* Emergency work under this authority will be considered when requested by the Governor of a State or a Tribal official confronted with an imminent threat of unusual flooding. Corps assistance will be scaled to complement the maximum efforts of responsible State, Tribal, and local interests. Projects will be designed for the specific threat and temporary in nature.

(b) *Contingency planning.* The Corps will consider providing contingency planning assistance for advance measures when requested by the Governor of a State or Tribal official. Contingency planning assistance consists of technical assistance and contingency planning activities to supplement responsible State, Tribal, and local interests in their efforts to plan for, and protect and mitigate against, loss of life and significant damages.

(c) *Definitions.* (1) *Imminent threat.* A subjective statistical evaluation of how quickly a threat scenario can develop, and how likely that threat is to develop in each geographical location. Implicit in the timing aspect can be considerations of available time (*e.g.,* when the next flood or storm event is likely to occur), season (*e.g.,* a snowpack that will melt in the coming spring runoff), or of known cyclical activities. An imminent threat does not exist when a request for advance measures identifies threats that can be addressed through the water resources development project planning process.

(2) *Unusual flooding.* A subjective determination that considers the potential for a flood or coastal storm event to cause flooding that approaches an area's flood of record or is otherwise catastrophic and that results in significant damage and disruption of the

normal functioning of a community for an extended period of time.

§ 203.102 Eligibility criteria and procedures.

(a) *Advance measures assistance.* (1) *Qualifying conditions.* An imminent threat of unusual flooding must exist before the Corps will approve advance measures. The threat may be established by National Weather Service predictions, or by Corps determinations of a threat unusual flooding due to specific adverse and unusual conditions. The threat must be clearly defined to the extent that it is readily apparent that damages will be incurred if preventive action is not taken immediately.

(2) *Written request.* The Governor or Tribal official must submit a request for advance measures assistance in writing to the responsible Corps district commander. All requests must include the following information:

(i) Describe the efforts undertaken by non-Federal sponsors and responsible State, Tribal, and local interests. Verify that all available resources have been committed.

(ii) Identify the specific needs and describe the advance measures assistance requested to address those needs.

(iii) Identify additional commitments to be accomplished by non-Federal sponsors or responsible State, Tribal, and local interests.

(iv) Identify the non-Federal sponsor for the requested advance measures.

(3) *Feasibility.* Advance measures must be temporary in nature, technically feasible, designed to deal effectively and efficiently with the specific threat, and capable of construction in time to prevent anticipated damages. A permanent standard of construction may be considered in certain circumstances in which a specific threat exists in a multi-year scenario such as wildfire burn scars and subsequent denuded landscapes and/or cyclical high lake level events on the Great Lakes.

(4) *Economic justification.* Advance measures must be economically justified.

(5) *Cooperation Agreement.* The requirements of subpart J of this part apply to the CA for advance measures. The non-Federal project sponsor must remove temporary works constructed by the Corps when the operation is over, at no cost to the Corps.

(b) *Contingency planning efforts for potential advance measures activities.* Occasionally weather phenomena occur which produce a much higher than normal probability or threat of flooding which may be predicted several months in advance of occurrence or significant impact. Impacts on specific locations may be unpredictable, but regional impacts may have a high likelihood of occurrence. In such situations, the Corps may provide technical and contingency planning assistance to responsible State, Tribal, and local interests, commensurate with the predicted weather phenomena, based on written requests for assistance from responsible State, Tribal, and local interests. Specific proposed advance measures resulting from such planning efforts must be addressed as specified in paragraph (a) of this section.

Subpart J—Local Interests/ Cooperation Agreements

§ 203.111 General.

The Corps and the non-Federal sponsor will sign a Cooperation Agreement (CA) whenever assistance (other than short-term technical assistance) is furnished. A CA does not require approval by HQUSACE unless they contain special or unusual conditions.

§ 203.112 Non-Federal sponsor requirements.

It is Corps policy that the provision of assistance under Public Law 84–99 will, insofar as feasible, require a non-Federal sponsor to provide, without cost to the United States, all LERRDs necessary for the assistance activities; hold and save the United States free from damages due to the assistance activities, exclusive of damages due to the fault or negligence of the United States or its contractor; and operate and maintain, in a manner satisfactory to the Corps, any works constructed by the Corps after completion. If any permanent works are constructed, then the non-Federal sponsor is required to operate and maintain the works in accordance with requirements determined by the Corps. In determining whether a non-Federal sponsor is capable of fulfilling the non-Federal obligations for a project, the Corps will consider the non-Federal sponsor's performance capability, taking into account any shortcomings in meeting prior commitments with Federal entities, including but not limited to past experiences with the Corps and any instances when the non-Federal sponsor has been listed as excluded or disqualified from receiving Federal assistance.

(a) *Provision of LERRDs.* This item requires the non-Federal sponsor to provide LERRDs by acquiring all privately owned lands, easements, and rights-of-way required for the assistance activities; authorizing the Corps and its contractors to enter onto all lands, easements, and rights-of-way required for the assistance activities for purposes of carrying out the assistance activities; performing all facility and utility relocations required for the assistance activities; and constructing all improvements to land required to enable the disposal of dredged or excavated material for the assistance activities. The Corps will not generally credit the value of LERRDs provided by the non-Federal sponsor towards any required non-Federal cash contribution for an assistance activity. If more advantageous to the Federal government, the Corps, at the discretion of the responsible district commander, may assume responsibility for the provision of borrow and disposal areas required for an assistance activity. The scope and duration of easements and rights-of-way required for an assistance activity will be determined by the responsible district commander based on a review of the requirements for the assistance activity. Requirements that continue for as long as a non-Federal FRM project, or other public work constructed by the Corps or benefited by an assistance activity, remains operational generally warrant the provision of permanent easements and rights-of-way.

(b) *Hold and save clause.* This obligation serves as legal protection for the United States. Where land required for an assistance activity is under tenancy, both the property owner and the tenant should acknowledge the non-Federal sponsor's signed CA.

(c) *Operate and maintain clause.* This obligation protects the investment of Federal resources by requiring the non-Federal sponsor for an assistance activity to operate and maintain non-Federal FRM projects and other public works constructed by the Corps or benefited by the provision of assistance by the Corps. This obligation extends to all interrelated features of the non-Federal FRM project or other public work benefited by the provision of assistance by the Corps.

(d) *Removal of temporary works.* The non-Federal sponsor is responsible for the removal of all temporary flood risk management structures and similar works constructed or installed by the Corps during the provision of flood response, post flood response, advance measures, or other assistance. This includes the removal of sandbags. The non-Federal sponsor must initiate action to remove the temporary works within 30 days after the flood threat has passed.

(e) *Equipment.* The non-Federal sponsor must operate, fuel, and

maintain any leased or loaned equipment, and return the leased or loaned equipment in a fully maintained condition to the Corps within a reasonable timeframe after the emergency situation is resolved.

(f) *Adequacy of local cooperation.* In determining the adequacy of the pledge of local cooperation, responsible district commander must consider the non-Federal sponsor's performance capability, considering any shortcomings in meeting prior commitments. Non-Federal sponsors should make provisions to establish and provide resources for a ''Contingency Fund'' to meet future maintenance requirements if apparent inadequacies of protective works indicate maintenance costs will be unusually high. Non-Federal sponsors should make provisions to establish and provide resources for a ''Capital Improvement Fund'' to meet future costs of capital improvement projects such as replacement of culverts in levees, pump station equipment, etc.

(g) *Eligibility under other federal programs.* The CA must be worded to allow the non-Federal sponsor to accept funding from other Federal programs to meet non-Federal obligations. For example, removal of temporary works will be without cost to the Corps under Public Law 84–99 assistance but may not be at no cost to the United States. Use of another Federal agency's funds is contingent upon that agency providing the Corps a written determination that such usage is specifically authorized by law.

§ 203.113 Funds and cost sharing.

In addition to the standard non-Federal obligations for an assistance activity that requires execution of a CA, non-Federal contributions to the assistance activity may be in the form of cash or in-kind contributions. The final terms agreed upon will be documented in writing and made a part of the CA before commencement of the assistance activity.

(a) *Provision of in-kind contributions.* The non-Federal sponsor may minimize the amount of any required non-Federal cash contribution for an assistance activity by providing materials or services in-kind. In-kind contributions are generally subject to the requirements in 2 CFR 200.306, Cost sharing or matching. In-kind contributions for assistance activities may be in the form of labor, equipment, supplies, and/or services. Only in-kind contributions identified in a CA and carried out after execution of a CA are eligible to be accepted as part of the non-Federal share of the cost of an assistance activity. In-kind contributions do not include the provision of LERRDs.

(b) *Cost sharing.* (1) The Corps may assume up to 100 percent of eligible costs for emergency repair, rehabilitation, and restoration of a Federal FRM or Federal CSRM project and up to 80 percent of eligible costs for emergency repair, rehabilitation, and restoration of a non-Federal FRM project.

(2) The non-Federal sponsor may elect to assume responsibility for a larger percentage of eligible costs for emergency repair, rehabilitation, and restoration of Federal or non-Federal FRM projects or Federal CSRM projects.

(3) The non-Federal sponsor will fund the cost to implement modifications of a FRM or Federal CSRM project. The cost to implement the modification is the difference between the cost to repair the project to it pre-flood event condition and the cost to repair the project with the requested modification.

(4) The Corps will normally provide 100 percent of the cost of advance measures. However, for those projects where a permanent construction standard (vice a temporary standard) is used, the non-Federal sponsor will normally be required to provide 35 percent of the total project cost.

(5) All costs for LERRDs and costs to repair, rehabilitate, or replace project components or features that the Corps has determined do not meet Corps guidelines are the responsibility of the non-Federal sponsor and will not be accepted as part of any required non-Federal cost share.

(6) The Corps will determine the dollar value of any in-kind contributions provided by the non-Federal sponsor.

(c) *Payment of Costs in Excess of Benefits for Emergency Repair, Rehabilitation, and Restoration Assistance.* The Corps may carry out emergency repair, rehabilitation, and restoration of a FRM or Federal CSRM project that is not economically justified if the non-Federal sponsor provide funds or in-kind contributions in an amount sufficient to result in a benefit cost ratio of unity or higher for the emergency repair, rehabilitation, and restoration activities. All of the following criteria must be satisfied:

(1) The non-Federal sponsor is willing to provide the necessary funds or in-kind contributions.

(2) Deferred maintenance, deficient maintenance, or negligent operation did not contribute to the damage.

(3) The proposed rehabilitation effort could benefit another water resources development project constructed by the Corps.

§ 203.114 Project partnership agreements.

(a) Prior to the provision of assistance for, or at the location of, a Federal FRM or Federal CSRM project, the Corps will review the existing Project Partnership Agreement (PPA), Project Cooperation Agreement (PCA) or Local Cooperation Agreement (LCA) to determine if the PPA, PCA or LCA sufficiently protects the interests of the United States and the non-Federal sponsor.

(b) If the existing PPA, PCA, or LCA is sufficient, in lieu of executing a CA, the responsible Corps district commander will notify the non-Federal sponsor in writing of the determination. The notification will identify any known cost share requirements and the requirements contained in § 203.112. The notification will also advise the non-Federal sponsor that the terms of the executed PPA, specifically including the hold and save clause and the operation, maintenance, repair, replacement, and rehabilitation obligation, remain in full effect and apply as well to the work that will be undertaken pursuant to Public Law 84–99. Prior to the provision of assistance, the non-Federal sponsor must confirm in writing these responsibilities and acknowledge that it will be providing all required LERRDs.

(c) If the responsible Corps district commander determines that the existing PPA, PCA, or LCA is insufficient to protect the interests of the United States and the non-Federal sponsor, the non-Federal sponsor must execute a CA in accordance with this subpart.

§ 203.115 Procedures and responsibilities upon completion of emergency repair, rehabilitation, and restoration work.

The non-Federal sponsor is responsible for the future operation, maintenance, repair, replacement, and rehabilitation of all emergency repair, rehabilitation, and restoration work carried out by the Corps under Public Law 84–99.

[FR Doc. 2022–24543 Filed 11–14–22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0837; FRL–10294–01–R9]

Air Plan Approval; California; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs) from architectural coating operations. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before December 15, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0837 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For 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.* 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Arnold Lazarus, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3204 or by email at *lazarus.arnold@epa.gov.*

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

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted/ amended/ revised	Submitted
VCAPCD	74.2	Architectural Coatings	11/10/2020	7/26/2021

On January 26, 2022, the submittal for VCAPCD Rule 74.2 was deemed complete by operation of law.

B. Are there other versions of this rule?

We approved an earlier version of Rule 74.2 into the SIP on July 6, 2011 (76 FR 39303). The VCAPCD adopted revisions to Rule 74.2 on November 10, 2020. CARB submitted the amended rule to the EPA on July 26, 2021, as an attachment to a letter of the same date. If we take final action to approve the November 10, 2020 version of Rule 74.2, it will replace the previously-approved version of the rule in the VCAPCD portion of the applicable California SIP.

C. What is the purpose of the submitted rule revision?

Emissions of VOCs contribute to the production of ground-level ozone, smog and particulate matter (PM), which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Architectural coatings are coatings that are applied to stationary structures and their accessories. They include house paints, stains, industrial maintenance coatings, traffic coatings, and many other products. VOCs are emitted from the coatings during application and curing, and from the associated solvents used for thinning and clean-up.

VCAPCD Rule 74.2 regulates VOC emissions from architectural coatings. The rule was updated to conform to CARB's Suggested Control Measures (SCM) for Architectural Coatings, May 2019. More specifically, to conform with CARB's 2019 update of the SCM for architectural coatings, VCAPCD added new categories of coatings, tightened VOC limits for certain other categories of coatings, added new limits for colorants, updated test methods, and clarified and tightened certain definitions and administrative requirements. VCAPCD estimates that aligning Rule 74.2 with the CARB 2019 SCM for architectural coatings will reduce VOC emissions by 22.12 tons per year (*i.e.,* approximately 0.06 tons per day (tpd)) in Ventura County.[1] In addition, the Ventura County 2016 Air Quality Management Plan includes revisions to Rule 74.2 as one of the control measures in the plan.[2] While not needed to meet CAA requirements for the 2008 ozone national ambient air quality standard (NAAQS), revisions to Rule 74.2 are intended to provide emissions reductions for the 2015 ozone NAAQS and to fulfill State air quality requirements.[3] The EPA's technical support document (TSD) has more information about this rule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater

[1] VCAPCD, Staff Report ''Proposed Amendments to Rule 74.2, Architectural Coatings,'' August 2020, page 3.

[2] VCAPCD, Final 2016 Ventura County Air Quality Management Plan, February 14, 2017, pp. 33–35.

[3] 84 FR 70109, at 70117 (December 20, 2019).

emissions reductions (see CAA section 193).

Generally, SIP rules must require reasonably available control technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of VOCs in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)). The VCAPCD regulates an ozone nonattainment area classified as Serious nonattainment for the 2008 and 2015 8-hour ozone National Ambient Air Quality Standards (40 CFR 81.305). Because there is no relevant EPA CTG document for architectural coatings and because there are no major architectural coating sources within Ventura County, architectural coatings are not subject to RACT requirements. However, as a nonattainment area for ozone, Ventura County is subject to the requirement to implement all reasonably available control measures (RACM) as needed to attain the 2008 and 2015 ozone NAAQS by the applicable attainment dates.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. National Volatile Organic Compound Emission Standards for Architectural Coatings, 40 CFR 59, Subpart D.
5. California Air Resources Board (CARB) Suggested Control Measure for Architectural Coatings, May 2019.

B. Does the rule meet the evaluation criteria?

We have evaluated the enforceability of submitted VCAPCD Rule 74.2 with respect to applicability and exemptions; standard of conduct and compliance dates; sunset provisions; discretionary provisions; and test methods, recordkeeping and reporting, and have concluded that the rule continues to be enforceable for the purposes of CAA section 110(a)(2)(A).

We have also determined that the submitted rule implements RACM-level controls for this particular area source because the VOC content limits are more stringent than the corresponding federal requirements in Table 1 to Subpart D of 40 CFR part 59, ''Content Limits for Architectural Coatings,'' and are consistent with CARB's 2019 SCM.

Third, we have found that, because the submitted rule tightens VOC content limits for certain coating categories and restricts certain existing exemptions, it would not interfere with any applicable requirement concerning attainment or reasonable further progress (RFP) or any other requirement of the CAA, and as such, may be approved under CAA sections 110(l) and 193. The TSD has more information on our evaluation.

C. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, and for the reasons given above, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until December 15, 2022. If finalized as proposed, this action would incorporate the submitted architectural coatings rule into the federally enforceable SIP, and the submitted rule would replace the corresponding existing SIP version of the rule in the VCAPCD portion of the California SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the November 10, 2020 version of VCAPCD Rule 74.2, listed in Table 1 of this preamble, which regulates emissions of VOCs from architectural coating operations. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

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 proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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 Clean Air Act.

In addition, the state did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of Executive Order 12898 (59 FR 7629, February 16, 1994) of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: November 4, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–24613 Filed 11–14–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2021–0802; FRL–9401–01–R6]

Air Plan Approval; Texas; Control of Air Pollution From Visible Emissions and Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve a revision to the Texas State Implementation Plan (SIP) submitted by the State of Texas to EPA on October 22, 2021, that pertains to particulate matter standards and outdoor burning regulations. The revision allows volunteer firefighters to fulfill supervision requirements for the burning of trees, grass, leaves, branch trimmings, or other plant growth generated from specific residential properties at designated sites for consolidated burning of waste located outside of a municipality and within a county with a population of less than 50,000.

DATES: Written comments must be received on or before December 15, 2022.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2021–0802, at *https://www.regulations.gov* or via email to *pitre.randy@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *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, please contact Randy Pitre, (214) 665–7299, *pitre.randy@epa.gov.* For 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.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Randy Pitre, EPA Region 6 Office, Infrastructure and Ozone Section, (214) 665–7299, *pitre.randy@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov,* as there will be a delay in processing mail and no courier or hand deliveries will be accepted. 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,'' or ''our'' means the EPA.

I. Background

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that air quality meets the EPA's National Ambient Air Quality Standards (NAAQS). These NAAQS are established under CAA section 109, and they currently address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter (PM), and sulfur dioxide. Each state is responsible for developing SIPs to demonstrate how the NAAQS will be achieved, maintained, and enforced. The SIP must be submitted to EPA for approval and any changes a state makes to the approved SIP must also be submitted to the EPA for approval.

The EPA approved SIP for Texas includes Title 30 of the Texas Administrative Code (30 TAC), Chapter 111 (Control of Air Pollution from Visible Emissions and Particulate Matter), Subchapter B (Outdoor Burning). EPA approved Texas regulation 30 TAC 111.209(5) allows, under certain conditions, outdoor burning of waste at a site that is (1) designated for consolidated burning of waste generated from specific residential properties and (2) located outside of a municipality and within a county with a population of less than 50,000. Among the conditions is that (1) burning at the designated site is supervised by an employee of a fire department who is part of the fire protection personnel and (2) the fire department employee must notify the Texas Commission on Environmental Quality (TCEQ) 24 hours in advance of any scheduled supervised burn (30 TAC 111.209(5)(F)). Only trees, grass, leaves, branch trimmings, or other plant growth may be burned under this provision.

In response to Texas House Bill 2386 (85th Texas Legislature, 2017), TCEQ amended 30 TAC 111.209(5), to include volunteer firefighters, acting within the scope of their duties, to fulfill the supervision requirements for the burning of waste at these sites. EPA received the amendment as a SIP revision on October 22, 2021.

II. The EPA's Evaluation

CAA section 110(l) provides that EPA shall not approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. The outdoor burning allowed under 30 TAC 111.209(5) applies at designated sites for consolidated burning of waste generated from specific residential properties which are located outside of a municipality and within a county with a population of less than 50,000.

El Paso County is the only Texas county designated as nonattainment for PM. However, the outdoor burning allowed under 30 TAC 111.209(5) would not be allowed in El Paso County, because the county's population is greater than 50,000.[1] Allowing volunteer firefighters, in addition to fire department employees, to supervise the burning and meet the supervision requirements at these sites is not expected to result in a change in emissions or ambient concentrations of a criteria pollutant or its precursors. Thus, the revision would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

III. Proposed Action

We are proposing to approve revisions to the Texas SIP that pertain to particulate matter standards and

[1] *See https://www.census.gov/quickfacts/fact/table/elpasocountytexas,US/PST045221* for the 2020 and 2021 population estimates for El Paso County.

outdoor burning regulations. The revision allows volunteer firefighters to fulfill supervision requirements for the burning of specific types of waste at designated sites for consolidated burning of wastes generated from specific residential properties located outside of a municipality and within a county with a population of less than 50,000. Specifically, we are proposing to approve a revision of 30 TAC 111.209(5) submitted on October 22, 2021.

IV. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Texas regulations as described in Section III Proposed Action of this document. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and in hard copy at the EPA Region 6 office.

V. Environmental Justice Considerations

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' [2] The EPA is providing additional analysis of environmental justice associated with this action for the purpose of providing information to the public.

The EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within Texas.[3] The EPA then compared the data to the national average for each of the demographic groups. The results of the demographic analysis indicate that, for populations within Texas, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is significantly higher than the national average (62.4 percent versus 43.1 percent). Within people of color, the percent of the population that is Hispanic or Latino is higher than the national averages (40.2 percent versus 18.9 percent). The percentage of people living in poverty in Texas is higher than the national average (13.4 percent versus 11.6 percent). The percentage of people aged 25 and over with a high school diploma in Texas is slightly below the national average (84.4 percent versus 88.5 percent) and for the same age group, the percentage with a bachelor's degree or higher education is slightly lower than the national average (30.7 percent versus 32.9 percent).

Particulate matter contains microscopic solids or liquid droplets that are so small that when inhaled can cause serious health problems. Short and/or long-term exposure to elevated concentrations of PM emissions may contribute to the development of asthma and may potentially increase susceptibility to respiratory infections. People with asthma, as well as children and the elderly are generally at greater risk for the health effects of PM. As discussed in Section II of this action, the EPA proposes to approve the request to allow volunteer firefighters, in addition to fire department employees to supervise the burning and to meet the supervision requirement at the burn site. The PM emissions are not expected to result in impacts to the PM NAAQS because the emissions are temporary and the requirements limit the burn site area location to areas that do not show problems attaining or maintaining air quality with regard to PM emissions. Therefore, we believe that these existing open burning regulations and resulting emissions will not lead to disproportionately high or adverse human health or environmental health effects on communities with environmental justice concerns.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 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 CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 proposed 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).

[2] *See https://www.epa.gov/environmentaljustice/learn-about-environmental-justice.*

[3] *See* the United States Census Bureau's QuickFacts on Texas at *https://www.census.gov/quickfacts/fact/table/TX,US/PST045221.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

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

Dated: November 8, 2022.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2022–24747 Filed 11–14–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2022–0866; FRL–10415–01–R1]

Air Plan Approval; New Hampshire; Approval of Single Source Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision establishes reasonably available control technology (RACT) requirements for Fujifilm Dimatix Incorporated located in Lebanon, NH. The intended effect of this action is to propose approval of the state's order for this facility. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before December 15, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2022–0866 at *https://www.regulations.gov,* or via email to *kosin.michele@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For 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.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Michele Kosin, Physical Scientist, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05–02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109–3912; (617) 918–1175; *kosin.michele@epa.gov.*

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

Table of Contents

I. Background and Purpose
II. Description and Review of Submittals
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I. Background and Purpose

On August 26, 2021, the New Hampshire Air Resources Division (ARD) submitted a revision to its State Implementation Plan. The revision consists of an order establishing reasonably available control technology (RACT) requirements for Fujifilm Dimatix, Inc.

II. Description and Review of Submittals

On August 26, 2021, the New Hampshire ARD submitted to EPA as a SIP revision request order RO–0006 establishing RACT requirements to limit emissions of volatile organic compounds (VOCs) for Fujifilm Dimatix, Inc. located in Lebanon, New Hampshire. Fujifilm Dimatix, Inc. requested a source specific RACT order for VOCs for an adhesive process as well as the use of emission reduction credits (ERCs) to offset the gap between future actual emissions and allowable emissions. Fujifilm Dimatix, Inc. uses adhesives that bond metal to metal substrates to produce piezoelectric ink jet print heads and printing systems. The request included a technical justification and an evaluation of capture and control device technologies that were evaluated. Fujifilm Dimatix, Inc. evaluated the feasibility of using an alternative adhesive and add-on controls but could not find a suitable alternative coating or cost-effective, technically feasible control technology. New Hampshire reviewed and concurred with the facility's request, and on July 8, 2021, issued Order No. RO–0006 to the Fujifilm Dimatix, Inc. Order No. RO–0006 includes a 12.2 tons per year cap for VOC emissions, a VOC content limit for adhesives used by the facility, requirements for how the adhesives shall be applied, work practice standards, and recordkeeping and reporting requirements. Fujifilm Dimatix, Inc. will continue to investigate alternative spray equipment technology and employ good operating practices in order to minimize air emissions. We are proposing approval of the order into the New Hampshire SIP because it is consistent with CAA requirements for VOC RACT and with New Hampshire's Env-A 1200, VOCs RACT regulation.

III. Proposed Action

EPA is proposing to approve the New Hampshire SIP revision requests as described above. The SIP revisions meet section 110(l) of the CAA because the revisions will not interfere with any applicable requirement concerning attainment and reasonable further process, or any other applicable requirement of the CAA. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference RACT Order RO–0006, dated July 8, 2021, which establishes RACT requirements for Fujifilm Dimatix, Inc. The EPA has made, and will continue to make, these documents generally

available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. 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. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed 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 proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders12866 (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 Clean Air Act; 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).

List of Subjects in 40 CFR Part 52

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

Dated: November 7, 2022.

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2022–24683 Filed 11–14–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 541

[Docket No. FMC–2022–0066]

RIN 3072–AC90

Demurrage and Detention Billing Requirements

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; finding of no significant impact.

SUMMARY: This document announces the availability of the Federal Maritime Commission's (Commission's) draft Finding of No Significant Impact (FONSI) related to the proposed regulations on Demurrage and Detention Billing Requirements.

DATES: Petitions for review of the Commission's FONSI under NEPA must be submitted on or before November 25, 2022.

ADDRESSES: You may submit petitions for review by using the Federal eRulemaking Portal at *www.regulations.gov,* under Docket No. FMC–2022–0066, Demurrage and Detention Billing Requirements.

FOR FURTHER INFORMATION CONTACT: William Cody, Secretary; Phone: (202) 523–5908; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION: On October 14, 2022, the Commission issued a notice of proposed rulemaking for new regulations on demurrage and detention billing requirements.[1] In the NPRM, the Commission determined that the proposed rule did not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.,* and that preparation of an environmental impact statement is not required.[2] The Commission also noted that the FONSI and environmental assessment would be available for inspection on the docket at *https://www.regulations.gov.*

The Commission is issuing this document to notify the public that the FONSI is now available on the docket. This Finding of No Significant Impact would become final within 10 days of publication of this document in the **Federal Register** unless a petition for review is filed by using the Federal eRulemaking Portal at *www.regulations.gov.*

By the Commission.

JoAnne O'Bryant,

Program Analyst.

[FR Doc. 2022–24362 Filed 11–14–22; 8:45 am]

BILLING CODE 6730–02–P

[1] 87 FR 62341 (Oct. 14, 2022) (NPRM).

[2] 87 FR at 62356.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 12–375, FCC 22–76; FR ID 111465]

Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks to obtain detailed comment to enable it to make further progress toward ensuring that the rates, charges, and practices for and in connection with interstate and international inmate calling services meet applicable statutory standard. In this document FCC 22–76, the Commission seeks comment on whether to adopt a form of enterprise registration for IP CTS, whether to increase inmate services providers' TRS-related access obligations to include providing access to advanced forms of TRS in jurisdictions with an average daily population of less than 50 incarcerated persons, and whether inmate calling services providers should disclose their charges in an accessible format for disabled incarcerated people. The Commission also seeks comment on whether it should refine its rules concerning the treatment of unused

funds in accounts that consumers use to pay for interstate and international inmate calling services and related ancillary services charges, on how it might improve its consumer disclosure rules, and on how the Commission should use the responses to the Third Mandatory Data Collection to establish reasonable, permanent caps on rates and ancillary service charges for interstate and international calling services for incarcerated people. The Commission seeks further comment on whether to allow inmate calling services providers to offer pilot programs that offer consumers the ability to purchase inmate calling services under alternative pricing structures. Last, the Commission also seeks comment on whether it should expand its definitions of ''Jail'' and ''Prison'' and on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

DATES: Comments are due on or before December 15, 2022; and reply comments are due on or before January 17, 2023.

ADDRESSES: You may submit comments, identified by WC Docket No. 12–375, by either of the following methods:

- *Federal Communications Commission's Website: https://www.fcc.gov/ecfs/filings.* Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. Currently, the Commission does not accept any hand delivered or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the Commission's Sixth Further Notice of Proposed Rulemaking, FCC 22–76 at: *https://docs.fcc.gov/public/attachments/FCC-22-76A1.pdf.*

FOR FURTHER INFORMATION CONTACT: Michael Scott, Disability Rights Office of the Consumer and Governmental Affairs Bureau, at (202) 418–1264 or via email at *michael.scott@fcc.gov* regarding portions of the Sixth Further Notice of Proposed Rulemaking relating specifically to the provision of communications services for incarcerated people with hearing and speech disabilities and Jennifer Best Vickers, Pricing Policy Division of the Wireline Communications Bureau, at (202) 418–1526 or via email at *jennifer.vickers@fcc.gov* regarding other portions of the Sixth Further Notice of Proposed Rulemaking.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Sixth Further Notice of Proposed Rulemaking, document FCC 22–76, released September 30, 2022. This summary is based on the public redacted version of document FCC 22–76, the full text of which can be obtained from the following internet address: *https://docs.fcc.gov/public/attachments/FCC-22-76A1.pdf.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov,* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Synopsis

1. The ability to make telephone calls is essential to allowing incarcerated people to stay connected to their family and loved ones, clergy, counsel, and other critical support systems. While unreasonable rates, charges, and practices associated with calling services present significant barriers to all incarcerated people, the obstacles are much larger for those who are deaf, hard of hearing, deaf-blind, or who have a speech disability. The Commission refers to this class of people generally as incarcerated people with communication disabilities. Because functionally equivalent means of communication with the outside world are often unavailable to incarcerated people with communication disabilities, they are effectively trapped in a prison within a prison. Consistent with the Commission's statutory obligations, in document FCC 22–76, the Commission takes strides to improve access to communications services for incarcerated people with communication disabilities.

2. The Commission has an obligation under section 225 of the Communications Act of 1934, as amended (the Act), to ensure those with communication disabilities receive service that is functionally equivalent to that received by those without such disabilities. This obligation supplements and focuses the Commission's obligation under section 201(b) of the Act to ensure all people, including incarcerated people, have access to calling services under just and reasonable rates, terms, and practices. In May 2021, the Commission reaffirmed its commitment to ensure that incarcerated people with disabilities have access to functionally equivalent telecommunications services. That Order also lowered, on an interim basis, the Commission's caps on the amounts inmate calling services (ICS) providers serving prisons or jails with 1,000 or more incarcerated people may charge for interstate calls and capped, for the first time, the providers' charges for international calls. To enable the Commission to set permanent, cost-based interstate and international rate caps for facilities of all sizes and to, if appropriate, adjust its caps on ancillary services fees, that Order required all

calling services providers to submit detailed cost data based on prescribed allocation methodologies. The Commission also issued an accompanying document proposing to expand access to all eligible relay services for incarcerated people with communication disabilities and seeking comment on a number of other issues, including the methodology to be used in setting permanent interstate and international rate caps, the need for periodic data collections, and additional reforms to the ancillary service charge rules.

3. The Commission seeks comment on various matters to build on the actions it takes today and to obtain additional stakeholder input required to implement further reforms for incarcerated people with communication disabilities. The Commission seeks additional comment on whether to allow enterprise registration for internet Protocol Captioned Telephone Service (IP CTS) in carceral settings and how to address the special circumstances faced by some inmate calling services providers in jurisdictions with average daily populations of fewer than 50 incarcerated persons. IP CTS is a captioned telephone service in which captions are delivered via the internet to an internet Protocol-enabled device.

4. The Commission also seeks additional evidence and comment from stakeholders to enable further reforms concerning providers' rates, charges, and practices in connection with interstate and international inmate calling services. First, the Commission seeks comment on refining the rules adopted today concerning the treatment of balances in inactive accounts. Second, it seeks comment on expanding the breadth and scope of the Commission's existing consumer disclosure requirements. Third, it asks the stakeholders to update the record on certain issues in light of the providers' data collection responses. Specifically, the Commission seeks comment on how the Commission should use the data to establish just and reasonable permanent caps on interstate and international rates and associated ancillary service charges consistent with the statute. The Commission invites further comment on allowing inmate calling services providers to offer pilot programs allowing consumers to purchase calling services under alternative pricing structures. Finally, the Commission seeks comment on whether it should expand the definitions of ''Jail'' and ''Prison'' to ensure that they capture the full universe of confinement facilities with residents who may access interstate and international communications services, and on how its proposals may promote or inhibit digital equity and inclusion.

5. The Commission expects these actions will bring much-needed relief to incarcerated people with communication disabilities by easing the obstacles these individuals face in communicating with loved ones. At the same time, the Commission expects its other reforms aimed at reducing certain charges and curtailing abusive practices to benefit all incarcerated people by easing the financial burdens that such charges and practices place on the incarcerated and those they call.

Background

6. The impact that unjust and unreasonable rates, fees, and practices have on incarcerated people, as well as the Commission's efforts to ameliorate that impact, are well-documented, and need not be repeated here.

7. *Communication Disabilities and Calling Services for Incarcerated People.* Telecommunications Relay Services (TRS) are telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind or who has a speech disability to engage in communication by wire or radio in a manner that is functionally equivalent to the ability of a hearing person who does not have a speech disability to communicate using voice communication services. In 2013, the Commission clarified that section 225 of the Act and the Commission's implementing regulations prohibit inmate calling services providers from assessing an additional charge for a TRS call, in excess of the charge for an equivalent voice inmate calling services call. In 2015, the Commission went further, amending its rules to prohibit inmate calling services providers from levying or collecting any charge at all for a TRS call placed by an incarcerated individual using a text telephone (TTY) device. The Commission reasoned that, by exempting TRS calls from the fair compensation mandate of section 276 of the Act, Congress indicated an intent that such calls be provided for no charge.

8. In 2015, the Commission affirmed that the general obligation of common carriers to ensure the availability of ''mandatory'' forms of TRS—TTY-based TRS and speech-to-speech relay service (STS)—applies to inmate calling services providers. TTY-based TRS allows an individual with a communication disability to communicate by telephone with another party, such as a hearing individual, by using a TTY device to send text to a communications assistant (CA) over a circuit-switched telephone network. To connect a hearing individual as the other party to the call, the CA establishes a separate voice service link with the hearing party and converts the TTY user's text to speech. The CA listens to the hearing party's voice response and converts that speech to text for the TTY user. A TTY is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system. STS allows individuals with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by that person. This obligation to ensure the availability of TRS also applies to providers of interconnected Voice over internet Protocol (VoIP) services. However, the Commission did not require those providers to provide access to other relay services—Video Relay Service (VRS), Captioned Telephone Service (CTS), IP CTS, and internet Protocol Relay Service (IP Relay). VRS is a form of TRS that allows people with hearing and speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the CA to view and interpret the party's signed conversation and relay the conversation back and forth with a voice caller. CTS is used by persons who can speak but who have difficulty hearing over the telephone. Placing a telephone call from a screen-equipped telephone, the user can simultaneously listen to the other party to the call and read captions of what the other party is saying. IP Relay is a form of TRS that permits an individual with a hearing or a speech disability to communicate in text using an internet Protocol-enabled device via the internet. For consumers who are deaf-blind, IP Relay service is often the sole or primary means of communicating via telephone. The Commission reasoned that, because it had not required that all common carriers provide access to these services, it was not able to require inmate calling services providers to do so. In 2015, the Commission sought additional comment on the implications of video calling and video visitation services for incarcerated individuals who are deaf or hard of hearing. In 2020, the Commission sought comment on whether additional forms of TRS should be made available to incarcerated individuals, and what the Commission could do to facilitate such access.

9. In 2021, after reviewing the record of this proceeding, and noting that there is far more demand for ''non-mandatory'' relay services, such as VRS and IP CTS, than for ''mandatory'' TTY-based relay service, the Commission found that access to commonly used, widely available relay services, such as VRS and IP CTS, is equally or more important for incarcerated people with communication disabilities than it is for the general population. Therefore, to ensure that such individuals have functionally equivalent access to communications, the Commission proposed to amend its rules to require that inmate calling services providers give access wherever feasible to all relay services eligible for TRS Fund support. The Commission also sought comment on whether changes to its TRS rules would be necessary in conjunction with expanded TRS access for incarcerated people, and the Commission proposed to amend section 64.6040 of its rules to clarify that the prohibition on inmate calling services providers charging for TRS calls applies to all forms of TRS, and that such charges must not be assessed on any party to a TRS call for either the relay service itself or the device used. In addition, the Commission also sought comment on whether to require inmate calling services providers to give access to direct, or point-to-point, video communication for eligible incarcerated individuals wherever they provide access to VRS, and whether to limit the charges that may be assessed for such point-to-point video service. Point-to-point video service enables two or more ASL users to place and receive video calls without the assistance of a CA. *See* 47 CFR 64.601(a)(32). In a 2021 document, the Commission primarily used the term direct video to refer to such calls. While the Commission considers direct and point-to-point to be synonymous in this context, the Commission uses the term point-to-point in this Order and its final rules, to avoid any risk that some parties might assume this service could only be provided by a Qualified Direct Video Entity pursuant to section 64.613(c) of its rules. Finally, the Commission sought comment on whether to extend its reporting requirements from just TTY service to all other forms of TRS.

Additional Calling Services Reforms

10. *Rate and Ancillary Services Fee Caps.* Beyond the disability context, in the 2021 ICS document, the Commission took a number of actions that warrant specific attention here. Structurally, that Order applied separate rate caps to prisons, jails having average daily populations of 1,000 or more incarcerated people, and jails with lower average daily populations. Additionally, the Commission established interim interstate and international rate caps for prisons and for jails having average daily populations of 1,000 or more. Those rate caps are interim because flaws in the data submitted in response to the Second Mandatory Data Collection prevented the Commission from setting permanent caps for interstate and international inmate calling services and associated ancillary services that accurately reflect the costs of providing those services.

11. To account for this problem, the Commission directed the Wireline Competition Bureau (WCB) and Office of Economics and Analytics (OEA) to develop an additional data collection—the Third Mandatory Data Collection—to enable the Commission to set permanent rate caps for interstate and international inmate calling services that accurately reflect the providers' costs of providing those services, and to inform the evaluation and potential revision of the Commission's caps on ancillary service charges. After seeking public comment, WCB and OEA issued an Order requiring each inmate calling services provider to submit, among other information, detailed information regarding its inmate calling services operations, costs, revenues, site commission payments, security services, and ancillary services costs and practices. The providers' data collection responses were due June 30, 2022. The Commission has received responses from 14 providers, and WCB and OEA are analyzing those responses.

12. Looking forward, in 2021 the Commission sought comment on the methodology the Commission should use to adopt permanent per-minute rate caps for interstate and international inmate calling services, including seeking comment on certain aspects of reported costs, such as on site commission costs and other site commission reforms for facilities of all sizes, and on the costs of providing calling services to jails with average daily populations of fewer than 1,000 incarcerated people.

13. *Ancillary Services Fee Caps and Practices.* Building on the ancillary services charge rules that the Commission had adopted in 2015, in 2021 the Commission capped, on an interim basis, the third-party fees inmate calling services providers may pass through to consumers for single-call services and third-party financial transactions at $6.95 per transaction. The rules adopted in 2015 limited permissible ancillary services charges to only five types and capped the charges for each: (1) Fees for Single Call and Related Services—billing arrangements whereby an incarcerated person's collect calls are billed through a third party on a per-call basis, where the called party does not have an account with the inmate calling services provider or does not want to establish an account; (2) Automated Payment Fees—credit card payment, debit card payment, and bill processing fees, including fees for payments made by interactive voice response, web, or kiosk; (3) Third-Party Financial Transaction Fees—the exact fees, with no markup, that providers of calling services used by incarcerated people are charged by third parties to transfer money or process financial transactions to facilitate a consumer's ability to make account payments via a third party; (4) Live Agent Fees—fees associated with the optional use of a live operator to complete inmate calling services transactions; and (5) Paper Bill/Statement Fees—fees associated with providing customers of inmate calling services an optional paper billing statement. The Commission also sought comment on the relationship between these two ancillary services, and on reducing the caps for single-call services fees and third-party financial transactions fees for automated transactions to $3.00 and the cap for live agent fees to $5.95.

14. *Consumer Disclosures.* In 2021, the Commission adopted three new consumer disclosure requirements to promote transparency regarding the total rates charged consumers of inmate calling services. First, the Commission required providers to clearly, accurately, and conspicuously disclose any separate charge (*i.e.,* any rate component) for terminating international calls to each country where they terminate international calls on their websites or in another reasonable manner readily available to consumers. Second, the Commission required providers to clearly label any site commission fees they charged consumers as separate line items on consumer bills and set standards for determining when the fees would be considered clearly labeled. Finally, the Commission required providers to clearly label all charges for international calls, as separate line items on consumer bills.

15. *Other Relevant Topics.* In the 2021 ICS document, the Commission invited comment regarding several additional issues on which it takes action today. The Commission expressed concern about providers' practices regarding unused funds in inactive accounts and

invited comment on whether the Commission should require refunds after a certain period of inactivity. The Commission proposed to amend the definitions of ''Jail'' and ''Prison'' in its rules by, among other actions, explicitly including facilities of the U.S. Immigration and Customs Enforcement (ICE) and the Federal Bureau of Prisons (BOP), whether operated by the law enforcement agency or pursuant to a contract, in its definition of ''Jail,'' and by adding the terms ''juvenile detention facilities'' and ''secure mental health facilities'' to that definition. The Commission also highlighted record evidence that some providers of inmate calling services may have been imposing duplicate transaction costs on the same payments, such as charging both an automated payment fee when a consumer makes an automated payment to fund its account, as well as charging a third-party financial transaction fee to cover credit/debit card processing costs on the same transaction. The Commission sought comment on whether providers engaged in such ''double dipping,'' as had been alleged in the record, and whether the Commission's rules clearly prohibit assessing multiple ancillary service charges per transaction or should be amended to implement such a prohibition. The Commission similarly sought comment on whether the credit card processing fees encompassed in the automated payment fee are the same credit card processing fees referred to in the third-party financial transaction fee.

16. Finally, the Commission sought comment in the 2021 ICS document on whether alternative pricing structures (*i.e.,* those that are independent of per-minute usage pricing) would benefit incarcerated people and their families. The Commission asked commenters to address the relative merits of different pricing structures, such as one under which an incarcerated person would have a specified—or unlimited—number of monthly minutes of use for a predetermined monthly charge. The Commission also asked whether it should allow providers to offer different optional pricing structures as long as one of their options would ensure that all consumers of inmate calling services have the ability to choose a plan subject to the Commission's prescribed rate caps. Relatedly, in response to a proposal from Securus, the Commission sought comment on whether the Commission should adopt a process for waiving the per-minute rate requirement to allow for the development of alternative pricing structures.

Disability Access Requirements for Calling Services Providers

17. *Enterprise Registration for IP CTS.* The Commission seeks comment on whether to adopt a form of enterprise registration for IP CTS, limited to the correctional context, as advocated by some commenters to simplify the commencement of service to eligible incarcerated users. Do the modifications made in the accompanying Order to the Commission's registration requirements sufficiently address any registration-related barriers to the use of IP CTS in the incarceration context? Are there significant difficulties with individual registration that an enterprise registration option could overcome? If needed, how could an enterprise registration option be crafted to protect against waste, fraud, and abuse? What are the costs and benefits of allowing enterprise registration for IP CTS in the incarceration context?

18. *Expanding the Scope of Inmate Calling Services Providers' TRS-Related Access Obligations.* The Commission proposes to extend inmate calling services providers' TRS-related access obligations to require that access to advanced forms of TRS—VRS, IP Relay, and IP CTS as well as ASL point-to-point video calling, where broadband is available, and CTS where broadband is not available—be provided in jurisdictions with an average daily population of less than 50 incarcerated persons. The Commission seeks comment on this proposal. The Commission explains in the Order, to ensure that TRS and ASL point-to-point video are available to incarcerated persons to the fullest extent possible, the Commission believe the TRS-related access requirements of inmate calling services providers should be at least coextensive with those of correctional authorities—which are not subject to any population size limitation. As noted above, to justify less than full compliance with the Department of Justice's regulations implementing Title II of the ADA, a correctional authority has the burden of proving that compliance with this subpart would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

19. In the Order, the Commission set an average daily population of 50 as an initial threshold for the obligation to provide access to additional forms of TRS and ASL point-to-point video calling. Have video visitation systems continued to proliferate, or have other factors changed, such that broadband connections and video devices are now routinely provided to a broader range of city or county facilities?

20. What additional factors may determine the feasibility of providing access to internet-based forms of TRS? What specific additional costs, for devices or other resources, are incurred by correctional authorities in jurisdictions of this size in making internet-based TRS available? The Commission seeks additional information, for example, on the cost of tablets and other user devices suitable for allowing incarcerated individuals to access internet-based forms of TRS. What is the range of monthly inmate calling services revenue typically generated by city or county jails housing a daily population of fewer than 50 incarcerated people?

21. Is an average daily population of 50 the appropriate threshold for requiring access to all forms of TRS and point-to-point video service, or is a different threshold warranted? If the Commission adopts a lower threshold, how long a period should the Commission allow for providers to comply? Should the Commission require that an inmate calling services provider serving a smaller jurisdiction ensure that, to the maximum extent possible, individuals with disabilities have access to appropriate forms of TRS?

22. *Disclosure of Charges in Accessible Formats.* The Commission believes that providers of inmate calling services are subject to the same obligations as providers of telecommunications services and advanced communications services to provide information and documentation in a manner that is accessible to individuals with disabilities. To help ensure individuals with disabilities are fully informed about the costs of inmate calling services, the Commission proposes that any charges for inmate calling services, whether for voice, TRS, TTY-to-TTY, or point-to-point video, be disclosed to current and potential consumers of inmate calling services with disabilities in accessible formats. Accessible formats include, but are not limited to, large print, Braille, videos in American Sign Language and that are captioned and video described, emails, and printed materials. The Commission seeks comment on this proposal and belief.

Refining the Rules for the Treatment of Balances in Inactive Accounts

23. The Commission seeks comment on whether it should refine the rules it adopt today concerning the treatment of unused funds in accounts that consumers use to pay for interstate and

international inmate calling services and related ancillary services charges, including on whether the Commission should take any further steps to protect consumers from unjust and unreasonable practices regarding those funds. In the Order, the Commission exercises its authority under section 201(b) of the Act and prohibits providers of inmate calling services from seizing or otherwise disposing of unused funds in any account used to pay for interstate or international inmate calling services—except through a full refund to the account holder—until the account has been inactive for at least 180 consecutive days. At that point, the provider must make reasonable efforts to refund the balance in the account to the account holder and, if those efforts fail, must treat any remaining funds in accordance with applicable state law requirements. Should the Commission refine these rules to increase consumer protection? Why or why not? Should the Commission create exceptions to these rules? If so, what exceptions should the Commission allow? Are there additional requirements the Commission should adopt concerning the disposition of balances in inactive accounts? If so, what additional requirements do commenters recommend and why? Are there situations where refunds are impractical, impossible, or otherwise unduly burdensome, and, if so, what rules should apply in those situations?

24. *Inactive Period.* In the Order, the Commission adopts a rule requiring 180 days to pass before a provider may determine that an account has become inactive. Is this an appropriate time frame? Why or why not? The Commission also requires that the 180-day inactivity period be continuous, with any of the following actions by a consumer or an incarcerated person being sufficient to demonstrate activity: (i) depositing, crediting, or otherwise adding funds to an account; (ii) withdrawing, spending, debiting, transferring, or otherwise removing funds from an account; or (iii) expressing an interest in retaining, receiving, or transferring the funds in an account, or otherwise attempting to exert or exerting ownership or control over the account or the funds held within the account. The Commission seeks comment on what other actions should constitute expressing an interest in the deposited funds. Similarly, how would an account holder or incarcerated person exert control over the account? Are there other events that the Commission has not already identified that should demonstrate activity and cause the 180-day clock to restart? If so, what are they?

25. *Timing of Refunds.* The Commission's rules require that a provider must make reasonable efforts to refund the balance in the account to the account holder. Should the Commission require providers to issue refunds within a specified period of time after an account becomes inactive? Should the Commission consider a different period of time after some other event, such as release from incarceration? If so, what period would give providers sufficient time to process the refunds while ensuring that consumers receive their money in a timely manner? If the account holder requests a refund before the account becomes inactive, what is a reasonable time frame in which to issue such refund? Do providers need time to process a refund request after they receive the request? If so, what is that time frame? Do providers have the ability to issue a refund immediately upon request in some circumstances? If so, what would those circumstances be? Are there situations that should lead providers to immediately refund remaining amounts to account holders, even if the account has not been inactive for 180 days? If so, what are they? In particular, should the Commission require automatic refunds when the incarcerated person is released or transferred to a facility served by another provider? If so, should the situation vary if the account is held by a consumer other than the incarcerated person and can still be used by another incarcerated person? If not, what steps, if any, should the Commission take to ensure that the account holder has the opportunity to make an informed choice regarding whether to receive a refund?

26. Are there circumstances in which Commission intervention is unnecessary or an automatic refund would be impracticable or inappropriate? For example, Securus argues that the process for deactivating, and making refunds from, debit accounts when an incarcerated person is released or transferred is largely controlled by the facility and that the Commission should seek more information about such refunds. How, if at all, should the Commission refine its refund rules to recognize a facility's role in the refund process? Similarly, are there situations where a provider may not be aware that an incarcerated person has been released or transferred? If so, how can the Commission ensure that account holders have an opportunity to request refunds in those situations, or in other situations where an automatic refund is not feasible or sensible? Should the account holder be required to request a refund in writing, either by mail or email? Or would a telephonic request or some other type of request be preferable? What information would a provider need in order to verify the legitimacy of a refund request?

27. *Release and Transfer Processes.* The Commission seeks comment on the release and transfer processes to better understand the need for rules addressing those areas. Do providers receive notice when an incarcerated person is released or transferred and, if so, does the notice include the incarcerated person's future contact information? If not, what steps would be needed to ensure that providers receive all needed information about a release or transfer on a timely basis in order to efficiently refund money?

28. *Contact Information.* The Commission next invites comment on whether providers routinely receive the type of contact information they would need to notify account holders about inactive accounts and to refund unused balances to account holders. Should the Commission require providers to collect such information? What information is necessary to ensure that a notification actually reaches an account holder? Are the account holder's email address, physical mail address, or phone number each sufficient? Does the necessary information vary depending on whether the account holder is an incarcerated person who at some point will be released from incarceration, as opposed to a person who maintains an account for the incarcerated person's use? If so, how does the necessary information differ in those circumstances, and what information would be necessary in the different circumstances?

29. *Notice to Account Holders.* The Commission seeks comment on the need for rules addressing the manner in which providers notify consumers regarding matters affecting their accounts, as well as the content of any such notices. Should the Commission require providers to notify account holders regarding their inactive account and refund policies, and the status of their accounts, including when the accounts have been deemed inactive? If so, when and how should those notices be provided, and what information beyond the account balance and the account holder's right to a refund should the Commission require to be disclosed? What sort of notice, if any, should the Commission require providers to give account holders in situations where refunds are not automatic or where attempts to provide a refund have been ineffective? Should

these notices include an explanation of any state unclaimed property laws, or other state laws, that may apply to the funds in their accounts? Should the Commission require providers to notify the incarcerated person in addition to the account holder? Should the Commission require providers to send additional notices to account holders who do not respond to the initial notices? Should the Commission specify the timing, content, and mode of dissemination of any additional notices? How should the subsequent notices inform the account holder that if they do not respond, their account may be subject to state unclaimed property law, or such other law affecting the account holder's rights to the balance?

30. *Refund Mechanisms.* The Commission seeks comment on the different methods providers can use to refund unused funds and on the relative benefits and burdens of each method. For instance, are providers able to refund payments made by credit card or from a bank account directly to the card or account? What other refund methods are available to the providers? When the account holder is an incarcerated person who has been released, how should the provider send a refund? Should it send a prepaid debit card or check to the person's forwarding address? What requirements should the Commission adopt to ensure providers quickly send refunds to recently released account holders? When the account holder is not the incarcerated person, would mailing a prepaid debit card or check to the account holder's billing address suffice? Why or why not? Which refund mechanisms are the most effective in returning funds to account holders while also minimizing the burdens on providers?

31. *Controlling Judicial or Administrative Mandate.* The Commission's rule regarding the disposition of funds in inactive accounts does not apply where a provider is acting in accordance with a controlling judicial or administrative mandate. The Commission proposes to retain this exception. The Commission also proposes to continue to treat as a controlling judicial mandate any court order requiring the incarcerated person to pay restitution, any fine imposed as part of a criminal sentence, and any fee imposed in connection with a criminal conviction to the extent these payments are made from the same account used to pay for calling services. The Commission invites comment on these proposals. Do they capture the full universe of judicial actions that a court may impose on an incarcerated person? If not, what language should the Commission incorporate into its rules to capture that universe?

32. The Commission also invites comment on whether it should consider a controlling judicial or administrative mandate to include a court or administrative agency order allowing or requiring the provider to act in a manner that would otherwise violate the Commission's rules regarding the disposition of funds in inactive accounts. The Commission's rule does not apply to the extent a court or administrative agency determines that a contract the provider and the account holder entered into prior to the release of today's Order allows or requires a different outcome. Is this the correct approach? Or should the Commission instead preclude enforcement of any such contract as contrary to section 201(b) of the Act's prohibition against unjust and unreasonable practices in connection with the provision of inmate calling services? Conversely, should the Commission allow account holders to knowingly and voluntarily waive any protections the Commission's rules provide regarding the disposition of funds in inactive accounts? If so, what notice and record keeping requirements, if any, should the Commission adopt to ensure that it will be able to determine whether account holders are fully informed of, and voluntarily waive, their rights under the Commission's rules?

33. *Ultimate Disposition of Unclaimed Funds.* The Commission invites comment on the ultimate disposition of unclaimed funds in a debit calling or prepaid calling account in circumstances where a provider's refund efforts fail and state law does not affirmatively require any particular disposition. What legal authority does the Commission have to act in this regard? Should the Commission adopt rules addressing that situation and, if so, what should those rules require? Are there any elements of state law, including state unclaimed property law, or provisions of the Uniform Unclaimed Property Act that the Commission should incorporate into the Commission's rules? Are there any state laws that provide inmate calling services-specific exceptions to otherwise applicable state unclaimed property? If so, what states have such laws and what do those laws say? Are there other types of consumer protection laws regarding the distribution or retention of balances in inactive accounts that the Commission should consider? If so, commenters should cite these other types of laws and explain their potential applicability in the inmate calling services context.

Reforming the Consumer Disclosure Requirements

34. The Commission seeks comment on how it might improve its consumer disclosure rules, including extending the scope of those rules to reach more inmate calling services consumers. Specifically, the Commission proposes to build on prior reforms by requiring inmate calling services providers to make the same required disclosures of information available to all consumers, regardless of whether they receive an actual bill from a provider. The Commission seeks comment on a number of questions regarding how providers presently disseminate information regarding inmate calling services accounts to consumers and on whether it should make additional changes to its consumer disclosure rules. The reforms the Commission contemplates will help ensure that incarcerated people and those they call will receive clear and transparent information about providers' charges and fees that inmate calling service consumers need to make informed choices regarding their calling services options.

35. *Background.* Transparency regarding the charges and fees for inmate calling services and associated ancillary services is critical because it ensures that incarcerated persons and their families understand the prices they are, or will be, charged for the services they use, enabling them to make informed decisions when purchasing those services. The Commission's inmate calling services rules require a variety of consumer disclosures designed to improve transparency. The Commission first adopted inmate calling services consumer disclosure rules in 1998, requiring providers to make certain oral disclosures prior to the completion of interstate inmate calling services calls. The Commission also required that, prior to connecting a call, providers of inmate operator services are required to disclose orally the total cost of the call, including any surcharges or premise-imposed fees that may apply to the call, as well as methods by which to make complaints concerning the charges or collection practices upon request. Since that time, the Commission has expanded its inmate calling services rules, including the scope of the required consumer disclosures. In 2015, the Commission required calling services providers to clearly, accurately, and conspicuously disclose their rates and ancillary service charges to consumers on their websites or in another reasonable manner readily available to consumers.

36. As described above, in 2021, the Commission imposed two additional consumer disclosure requirements pertaining to consumer bills: (i) requiring providers to clearly label any site commission fees they charged consumers as separate line items on consumer bills and set standards for determining when the fees would be considered clearly labeled, and (ii) requiring providers to clearly label all charges for international calls, as separate line items on consumer bills. The Commission found these two requirements—the consumer billing rules—necessary to provide consumers with the ability to evaluate their bills and monitor whether they are receiving the protections of the Commission rate caps to which they are entitled. Since the Commission adopted these additional requirements, it has learned that consumers of inmate calling services often do not receive ''bills'' from their providers given the nature of their calling arrangements. As one party points out, an incarcerated individual using a debit or commissary account to pay for inmate calling services does not receive a ''bill'' from an inmate calling services provider. Indeed, many such consumers may not receive a statement of any kind after having paid for their calls. As a result, the information the Commission deems important regarding separate site commission rate components and international call charges may not be received by many calling service consumers.

37. *Disclosures for Consumers Who Do Not Receive Bills.* The Commission proposes to expand its consumer disclosure rules to cover consumers who do not receive bills from their inmate calling services providers. The Commission invites comment on this proposal and ask for detailed comment on how providers might implement it. The Commission also seeks comment on the timing and frequency of disclosures that are not included directly on consumers' bills. How should consumers be made aware of the availability of the information if it is not automatically provided? Should the information be disclosed to consumers automatically and on an ongoing basis, for example on any online account statement available to that consumer? Alternatively, would including the information on the providers' websites for each facility suffice to inform interested consumers? Or should such information be provided only upon request? If so, upon receiving a consumer request, how quickly should a provider be required to supply the consumer with the requested information? Would three to five business days be sufficient or do consumers need more timely receipt of the disclosures in order to manage their accounts effectively? Are inmate calling services providers able to respond to requests for charges for site commissions and international calls within three to five business days? If not, why not? Do consumers who do not receive bills currently receive disclosures regarding providers' charges for site commissions and international calls in some other way? When, if at all, do providers disseminate such information outside the billing context and how frequently is such information updated? Is it available today only upon request?

38. *Who Should Receive Disclosures?* The Commission seeks comment on whether account holders should receive disclosures from inmate calling services providers. The Commission's rules define a ''consumer'' as the party that pays for the inmate calling services. Should the Commission extend its consumer disclosure rules to include incarcerated persons who use inmate calling services accounts that others fund on the incarcerated persons' behalf? Should both the account holder and the incarcerated person have access to the bill or be able to obtain account-related information from the provider when the incarcerated person is not the account holder? Who should be permitted to request the disclosures in such circumstances, the account holder, the incarcerated person, or both? The Commission seeks comment on whether anyone other than consumers and incarcerated persons should have access to the required disclosures. Are there other parties who should have access to any required disclosures? The Commission proposes to require providers to make information about their rates, terms, and conditions of service, including information about site commissions and international rate components, available generally to the public through either the provider's website or other publicly available source. Making this information publicly available provides maximum transparency and helps ensure that prospective consumers and other interested parties have visibility into the inmate calling service rates and charges at each facility. Do commenters agree? Why or why not?

39. *Statements of Account.* The Commission seeks detailed information about how consumers who do not receive traditional bills access information regarding their accounts. Do all such consumers receive a ''statement of account'' or other account summary setting forth, among other information, the account balance and the charges they have incurred? If so, how are statements of account or similar documents provided to consumers? Are they provided in hard copy, electronically, or both? Are they available only upon request? How often are such statements or disclosures generated and updated? What type of hardware or software is required to produce these statements? Are they only available online such that consumers not having internet access are unable to retrieve them? Who has access to them, the incarcerated person, the consumer, or both? The Commission proposes to require that consumers of inmate calling services and/or incarcerated individuals must have available to them statements of account or similar disclosures if they do not receive bills. To the extent providers do not presently provide statements of account or other account summaries, how costly would it be to make them available? Would the cost be outweighed by the public interest benefits of such statements?

40. To the extent that consumers receive statements of account or other account summaries, the Commission seeks comment on what information, including inmate calling services-related expenditures, is disclosed in them. Is the information provided in an itemized list or only as a total amount charged? If the information is currently provided only on an aggregate basis, how burdensome would it be to provide an itemized statement? How burdensome would it be to add information regarding providers' charges for site commissions and international calls to statements of account or other account summaries?

41. What are the advantages and disadvantages of using statements of account or other account summaries to provide information to consumers rather than statements with itemized disclosures? What challenges do consumers currently face in accessing their account information, including specifically the information required by the Commission's consumer disclosure rules? Are there other challenges the Commission should consider in deciding how best to increase transparency in providers' charges and fees? How else can the Commission improve consumers' access to relevant information through changes to the Commission's consumer disclosure rules?

42. *Reasonableness.* The Commission seeks comment on what factors it should consider in assessing the reasonableness of different disclosure mechanisms. Are the Commission's

current rules effective in providing information regarding rates, charges, and fees to people who are deaf, hard of hearing, deaf-blind, or have a speech disability? If not, how should the Commission revise those rules to make sure that its disclosure requirements are effective for all consumers? The Commission asks commenters to include details as to what form disclosures should take, how often they should be generated, how they could be accessed, and any other details needed to better inform its understanding. The Commission proposes that all disclosures, including those regarding reporting requirements and charges, be made in an accessible format for incarcerated persons with disabilities and invite comment on what steps it should take to implement this proposal. The Commission also asks for detailed proposals on how it can address any deficiencies in the current disclosure mechanisms to ensure that all consumers receive the clear, accurate, and timely information they need to make calling decisions and manage their accounts.

43. *Methods of Dissemination.* The Commission seeks comment on the best methods for ensuring that required disclosures reach consumers who do not receive bills. What are the differences in cost between providing disclosures on bills versus other methods? What other methods are available to providers and consumers? Do providers presently use paper statements, kiosks, or other means? What other methods should the Commission consider and why? Which methods are most effective in providing consumers with clear, accurate, and timely information regarding their accounts?

44. If providers do not distribute paper bills, do they disclose account-related information through other means? If so, what means do they use? Should providers be permitted to make required disclosures using only electronic means, such as websites or email, rather than on printed documents? If so, what specific alternative methods do commenters suggest the Commission allow? Should the Commission's rules specify how consumers may request copies of their bills, statements of account, or similar disclosures; and if so, how should such a request be made? Commenters are encouraged to explain how a request system would work and to describe any alternative suggestions in detail.

45. The Commission seeks comment on how consumers who lack access to the internet can receive information about the charges to their accounts and their account balances if it is not provided on paper bills. Do consumers have reasonable access to information made available over the internet or via electronic means? What alternatives are used? How do consumers inform the provider that they do not have consistent or reliable internet access and, thus, need an alternative method to access their account information and any relevant disclosures? If the only alternative method available is a paper bill or statement, should the Commission require that the provider deliver it to the consumer without charge? Consumers should be entitled to receive their bills and account statements in some accessible format free of charge. What specific changes should the Commission make to its rule permitting providers to charge consumers $2.00 per use when they provide optional paper billing statements?

46. *Other Rule Changes.* The Commission seeks comment on other ways its consumer disclosure rules could be amended to more effectively and efficiently provide consumers information that would help them understand the charges for inmate calling services and associated ancillary services. What, if any, other changes should the Commission make to its rules, beyond those the Commission already describes in document 22–76? Should other line-item disclosures be required on bills or other account statements? If so, what should those items be? Should the Commission adopt new billing requirements? Should the Commission require that inmate calling services providers issue bills on a periodic basis to all consumers, such as every month? Would it be helpful to add definitions for ''bill,'' ''statement of account,'' or any other terms in the Commission's rules? If so, what definitions do commenters propose?

47. The Commission's rules require inmate calling services providers to break out in separate line items any site commission fees and international call charges. Are there other rates or fees that the Commission should require providers to disclose as separate line items? Is there other information that the Commission should require providers to disclose? If so, commenters should make specific suggestions. The Commission invites commenters to suggest other proposed actions, alternatives, and rule modifications that it should consider, and to describe issues arising from the foregoing matters. The Commission encourages commenters to address whether any disclosures it requires should be part of an aggregate statement of account that includes all charges and fees incurred at the facility, for example commissary or other non-telecom-related charges, or whether the Commission should require a separate statement limited solely to inmate calling services-related disclosures. The Commission encourages commenters to offer specific language concerning any conforming rule changes in relation to any of the foregoing proposals.

48. *Disclosing Rates and Charges.* Finally, the Commission's current rules require inmate calling services providers to clearly, accurately, and conspicuously disclose their rates and ancillary service charges on their websites or in another reasonable manner readily available to consumers. Inmate calling services providers that offer interstate toll service are required to post their rates on their websites, and, to the extent they offer inmate operator services, their live agents are already required to make certain notifications to customers. The Commission seeks comment on how effective these disclosures have been at providing consumers with the information they need. To what extent do providers use websites to provide this information? Are the website disclosures easy for consumers—particularly those with less technical expertise—to navigate? Are there ways that inmate calling services provider websites could be modified for easier accessibility? If so, what steps would providers need to take to make those modifications? Do any providers use non-website disclosure methods? If so, what are those methods and how effective are they? Should the Commission mandate disclosures via website to the extent providers maintain a website *and* in some other manner to ensure that all current or potential inmate calling service consumers can access the required disclosures?

Adopting Permanent Caps on Rates and Ancillary Service Charges

49. The Commission seeks further comment on how it should use the responses to the Third Mandatory Data Collection to establish reasonable, permanent caps on rates and ancillary service charges for interstate and international calling services for incarcerated people. That data collection required each inmate calling services provider to report, among other information, detailed company-wide and facility-specific data reflecting the costs they incurred in providing, and the revenues they received from providing, inmate calling services and associated ancillary services. In the 2021, the Commission sought comment on various issues relating to the establishment of such caps, and the

Commission renews its request for comment on these and additional issues to assist with deciding whether to establish rate caps and suggest additional changes to its rules.

50. *Mandatory Data Collection Responses.* The Commission begins by seeking comment on the providers' responses to the Third Mandatory Data Collection, because the Commission expects to rely on these responses when evaluating the appropriate changes to its rules. The Commission asks whether the information in those responses meets the standard that the Commission applied in the Rates for Interstate Inmate Calling Services, Final Rule, 86 FR 40682 (July 28, 2021) (*2021 ICS Order*), where it examined the providers' responses to the Second Mandatory Data Collection for completeness, internal consistency, and credibility, among other criteria. Do any of the responses deviate from the collection instructions in a way that undermines the value and usefulness of the information provided? If so, how should the Commission correct for such deviations in its evaluation of the information? Are any of the Mandatory Data Collection responses similarly incomplete in that they omit material information? If so, which ones and how are they incomplete? One commenter suggests that certain providers' Annual Reports state that the providers charge no ancillary service fees, when they actually do charge such fees. How should the Commission respond if any provider failed to file a response? Because providers have unique access to such information, what, if any, evidentiary presumptions should the Commission apply if providers failed to file required information?

51. The Commission also seeks comment on whether the data included in the responses appear accurate and reliable, and properly reflect the providers' actual costs of providing interstate and international inmate calling services and associated ancillary services. Are there deficiencies in the provided data, such that the Commission should remove apparent invalid or otherwise anomalous data from its analyses? Should the Commission exclude information submitted by providers that is materially deficient and use the responses from the remaining providers in a manner that, if practicable, compensates for the missing data to set permanent caps for all providers? If not, why not and what should the Commission do in the alternative?

52. Are there data for particular providers or facilities that appear so atypical or implausible as to warrant adjustment or exclusion? For example, if there are any providers whose reported annual total costs exceed their reported annual total revenues, should the Commission adjust the providers' reported costs by treating their reported revenues as an upper bound on those providers' actual costs? If the Commission makes such an adjustment, should it reduce the reported costs allocated to each facility by the same proportion by which reported annual total costs exceed reported annual total revenues? Similarly, if there are any facilities or contracts whose reported annual costs exceed their reported annual revenues, should the Commission treat the reported revenues as an upper bound on those facilities' or contracts' actual costs? If the Commission makes such an adjustment, how should it reallocate the difference among the remaining facilities or contracts? Conversely, is there any evidence that providers have reported costs at the facility level that exceed revenues during the early years of contracts, and proceed to make up the deficits during later years? If so, how should the Commission account for that? How else might the Commission adjust reported costs that exceed reported revenues?

53. Do any providers allocate costs in a manner that overstates costs for certain types of facilities and understates them for others, or otherwise misallocates costs? If so, would relying on those providers' cost allocations lead to rate caps that are unreasonably high for certain facility or contract types but unreasonably low for others? Should the Commission adjust reported costs in such instances, and if so, how?

54. *Allowable Costs.* The Commission invites comment on how it should ensure that providers' reported costs of providing inmate calling services and associated ancillary services reflect prudently incurred investments and expenses that are ''used and useful'' in the provision of those services. The Commission has historically treated costs as used and useful only to the extent they are necessary to the efficient conduct of a utility's business, presently or within a reasonable future period. Do the providers' reported costs meet this standard? In particular, are any provider's reported costs outside the range that a reasonably efficient provider would be expected to incur, given the types of facilities it serves? The DC Circuit did not foreclose an efficient provider approach, but in relevant part held only that the data on which the Commission had relied in developing the efficient provider approach that was before the court was flawed, and that the Commission had not adequately accounted for conflicting data. Precisely what adjustments, if any, should the Commission make to exclude costs that are not used and useful from its rate cap calculations?

55. Some commenters have suggested that certain types of expenditures, such as those for providers' security and surveillance services, should be excluded from providers' costs, as they are attributable to functions or services that are distinct from the provision of calling services. The Commission invites comment on this view. In particular, which of the security and surveillance costs that providers included in their filings relate to functions that meet the used and useful standard? Worth Rises suggests that any security or surveillance functions, beyond those that the Communications Assistance for Law Enforcement Act (CALEA) imposes on communications providers generally, are neither necessary for the provision of inmate calling services nor of services to consumers or the general public.

56. *Factors Affecting Costs.* The Commission also seeks further comment on factors that affect providers' costs and how it can practicably account for those factors in its analysis. Do the data support the size and facility tiers the Commission adopted in the *2021 ICS Order,* or do they lend themselves to other alternative tiers? Should the Commission consider eliminating tiers altogether in favor of a single interstate rate cap for all facilities, regardless of size? The Commission also seeks comment on whether average daily population, as opposed to another measure, is the best variable to use if it divides jails into tiers. Commenters should explain how use of alternatives to average daily population would be administratively feasible.

57. Certain commenters suggest that relying on a facility's average daily population fails to account for the additional costs rapid turnover imposes on providers at smaller facilities. Do the data collection responses show that variations in turnover rates, or similar measures such as accounts opened and closed or admissions and releases, result in variations in provider costs that the Commission should consider? Commenters identify certain additional factors, including the greater likelihood of damage to equipment and the need to rely on contract technicians rather than full-time employees, as cost drivers for providers serving smaller facilities. Do the data collection responses sufficiently capture these factors? Do those responses indicate that other

variables, such as geographic location or rurality, affect providers' costs of providing calling services and associated ancillary services? How can the Commission account for the various cost drivers in an administratively feasible way in setting permanent interstate and international rate caps?

58. *Permanent Rate Caps.* The Commission asks parties to present their own analyses of the data in providers' data collection responses and to suggest methodologies it might use to set reasonable interstate and international provider-related rate caps. The interim rate caps adopted in the *2021 ICS Order* have two components: a provider-related rate component, designed to allow providers to recover the costs they incur in providing interstate and international inmate calling services; and a facility-related rate component designed to compensate providers for certain site commission payments they are obligated to make to facilities. The *2021 ICS Order* employed a zone of reasonableness approach in setting separate interim provider-related rate caps, a process that involved three distinct steps. The Commission first used the cost data that providers had submitted in response to the Second Mandatory Data Collection to establish the maximum upper bounds of providers' reported costs to set interstate provider-related rate caps for prisons and larger jails. Because the data the Commission used in setting the upper bounds may have overstated the providers' prudently incurred and used and useful costs of providing inmate calling services, the Commission then made reasonable, conservative adjustments to the reported data and used the adjusted data to establish the lower bounds of its zones of reasonableness. Finally, the Commission relied on its analysis of the record evidence and on the Commission's agency expertise to pick, from within those zones, reasonable interim interstate rate caps for prisons and larger jails.

59. Should the Commission similarly employ a zone of reasonableness approach in setting permanent provider-related rate caps? If so, what data should the Commission use to set the upper and lower bounds of each zone of reasonableness? In the *2021 ICS Order,* the Commission set the upper bounds of the zones of reasonableness using industry-wide mean contract costs per minute, plus one standard deviation relative to that mean. The Commission set the lower bounds relying on widely accepted statistical tools, including the *k*-nearest neighbor method, to adjust for deficiencies in the provided data. If not, what alternative should the Commission use instead? If the Commission continues to employ a zone of reasonableness approach, is it necessary or appropriate to retain the one standard deviation above and below industry-wide mean costs in setting the upper and lower bounds of each zone? Alternatively, should the Commission simply establish its upper and lower bounds based on industry-wide mean costs, and develop an alternative process to ensure an opportunity for cost recovery for high-cost providers? If so, what should that process be? Or should the Commission use another measure to set the bounds instead, such as the interquartile range statistical methodology that one commenter suggests? Should the Commission disregard providers, contracts, or facilities with costs that vary significantly from the costs of other similarly situated providers, contracts, or facilities in setting its upper and lower bounds? How should the Commission determine whether this significant variation reflects costs that are prudently incurred and used and useful in the provision of inmate calling services? What adjustments should the Commission make to exclude reported costs that were not prudently incurred or are not used and useful from its rate cap calculations?

60. The Commission seeks comment on the appropriate permanent rate caps given providers' responses to the Third Mandatory Data Collection. If the Commission employs a zone of reasonableness approach, what factors should the Commission consider in selecting permanent rate caps from within the zone for each rate tier? In particular, how should the Commission ensure that each provider is fairly compensated for its prudently incurred costs that are used and useful in the provision of inmate calling services and ensure that consumers are charged just and reasonable interstate and international rates? Should the Commission set rate caps that would ensure that the majority of providers, contracts, and facilities are able to recover their prudently incurred, used and useful costs, while avoiding overcompensation, and use a separate process to address outliers? If so, what process should the Commission use to ensure that the outliers are not compensated for their inefficiencies? For example, should the Commission separate providers, contracts, or facilities according to factors that drive costs such as size, turnover, or other factors, and then conclude that providers, contracts, or facilities within each group should have largely similar costs? Should such an approach also account for possible differences in providers' cost allocation methodologies, as set forth in their reported costs? Would it be appropriate to establish separate rate caps for each provider, or groups of providers? Would this similarly allow for cost recovery without the need to include a buffer? Would that change in approach distort the bidding market by, for example, giving providers with higher rate caps an advantage in seeking new or renewed contracts? Would it raise other new concerns, such as a heightened risk of abuse in providers' future cost reporting?

61. The Commission also seeks comment on how the collected data should affect its resolution of other issues relating to its rate cap calculations. The Commission seeks comment on the benefits, issues, and obstacles of analyzing the collected data at the contract or company-wide level, as opposed to the facility level. Would analyzing the data at the contract level help to develop cost allocations that better reflect commercial reality? Alternatively, would a focus on contract-level costs increase the likelihood of widespread overcompensation? Could the Commission segregate contracts according to size, inmate turnover, composition of facilities, or other factors that drive costs? If the Commission's rate caps were to allow every provider to fully recover its allowable costs at the contract or the company-wide level, would there be any concern that the costs allocated to some facilities would exceed the provider's revenues from those facilities? Or would it suffice, in those circumstances, if the provider's revenues from each facility equaled the portion of its allowable costs directly assigned or directly attributed to the facility plus an additional amount to offset a portion of the provider's other costs?

62. *Treatment of Ancillary Services.* The Commission seeks comment on how it should use the responses to the Mandatory Data Collection to reevaluate and, if appropriate, revise its ancillary services rules and fee caps. The Commission's current rules permit providers to charge fees for ancillary services in addition to the per-minute fees they charge consumers for interstate and international calls. Do the reported data provide a reasonable allocation of costs between inmate calling services and various ancillary services? If so, do those data demonstrate that the current ancillary services fee caps are commensurate with the reasonable costs

of those services? If not, how can the Commission cap ancillary service charges to levels that more accurately reflect costs?

63. Some commenters suggest the Commission should remove costs related to ancillary services from its calculations of its per-minute rate caps. Should the Commission take that approach? Alternatively, are some or all of these services an inherent part of providing inmate calling services, and consequently should the Commission include those costs in its per-minute rate cap calculations and eliminate some or all charges for ancillary services? For instance, would it be reasonable for the Commission to include all costs that providers incur in processing credit and debit card payments in the Commission's per-minute rate cap calculations and preclude providers from imposing separate charges in connection with those payments? Would it make sense for providers to recover all their billing costs through per-minute charges, rather than splitting that recovery among calling services and the providers' ancillary services? Should the Commission instead analyze both sets of services together, and require that total revenues from both inmate calling services and permissible ancillary services not exceed the combined reasonable costs of both service types? Which approach would provide the best overall rate structure?

64. Under what circumstances should the Commission continue to permit separate ancillary service fees? For example, should the Commission do so where the service is only supplied at the customer's discretion? For ancillary services that commenters recommend that the Commission continues to separate fees, the Commission seeks comment on whether it should adjust the current caps. The Commission asks commenters to present their own analyses of ancillary services cost and revenue data and to suggest methodologies it might use to adjust the ancillary services fee caps. Should the Commission develop separate zones of reasonableness for each type of permissible ancillary service? If so, how should the Commission calculate the upper and lower bounds of each service, and what factors should the Commission consider in picking a new cap from within the zone? If not, why not and what alternative approach should the Commission use?

65. The Commission seeks further comment on whether the reported data reveal a need for additional revisions to its ancillary service charges rules. In 2021, the Commission highlighted record evidence concerning the assessment of duplicate transaction costs on the same payments, and it sought comment on whether the credit card processing fees encompassed in the automated payment fee are the same credit card processing fees referred to in the third-party financial transaction fee. The Commission sought comment on whether providers engaged in such ''double dipping,'' as alleged in the record, and whether the Commission's rules clearly prohibit assessing multiple ancillary service charges per transaction or should be amended to implement such a prohibition. In response, PPI urges the Commission to prohibit inmate calling services providers from charging both automated fee payments and third-party transaction fees arising from the same transaction because, carriers are recouping payment-card processing costs twice over. PPI contends that when carriers impose the $3 fee allowed under 47 CFR 64.6020(b)(1) while also making customers pay the carrier's card processing costs under 47 CFR 64.6020(b)(5), this constitutes an unreasonable charge, unjust enrichment, and circumvention of the Commission's stated purpose in promulgating ICS rules. Similarly, NCIC asks the Commission to prohibit third-party transaction fees which lead to double billing of inmate calling services customers. Several parties also argue that including credit card processing fees as part of the third-party pass-through allowance was a mistake and has led to abuse. Securus agrees that such double recovery, if it is occurring, would be inappropriate and the Commission should clarify that a credit card processing fee may only be imposed once for the same transaction or payment. On the other hand, Securus claims that it may impose an automated payment fee that recovers the internal costs in managing accounts and may also impose a third-party credit card processing fee to cover the costs imposed on Securus by a third-party credit card payment processing company if a credit card is used to fund a prepaid account. Securus agrees that a straightforward requirement barring duplication of the same charges for the same transaction or payment would be appropriate, but contends that it should be entitled to recover that third-party cost. Securus and GTL also argue that the Commission should not assume that the assessment of more than one transaction fee for a single transaction means that double recovery is taking place. Similarly, GTL asserts that the Commission consistently has maintained a distinction between Automated Payment Fees assessed by an inmate calling services provider on a qualifying transaction and the attendant Third-Party Financial Transaction Fees a provider may pass through to the consumer to facilitate the completion of that transaction.

66. The Commission invites comment on these issues related to transactions that involve credit card processing, including whether the data show that providers assess multiple ancillary services charges for a single transaction. Do the data from the Third Mandatory Data Collection demonstrate that providers are recovering payment card processing costs twice? If so, which data show this double recovery? Do commenters agree with NCIC and PPI that the inclusion of credit card processing in connection with third-party financial transaction fees was a mistake? Why or why not? Should the Commission clarify that payment card processing fees may not be imposed multiple times for a single transaction or payment, but still allow providers to charge both an automated payment fee as well as a third-party financial transaction fee for a single transaction, in order to recover costs imposed by a third-party credit card payment processing company, as Securus suggests? Or should the Commission disallow the inclusion of payment card processing costs in connection with third-party financial transaction fees?

67. Do the data show evidence of other forms of potentially duplicative charges with respect to ancillary service charges? The Commission likewise seeks comment on whether there are scenarios in which the imposition of more than one ancillary service charge may be appropriate. If so, which data? NCIC offers documentation that certain inmate calling services providers may be imposing additional ancillary fees on inmate calling services consumers in contravention of the Commission's rules. NCIC alleges that the imposition of additional transactional fees has grown to be a significant revenue generator for certain inmate calling services providers and provides evidence that certain providers may be tacking on additional fees for online deposits. For example, in one instance, a provider appears to have charged a $3.00 transaction fee and a 6% credit card processing fee (among other fees) on a $10 deposit. The Commission invites comment on these purported practices, and whether these fees recover valid costs or are leading to double recovery for providers.

68. The Commission seeks comment on further reforms it should make to

fees for single-call services and third-party financial transaction fees to ensure that charges are just and reasonable. As an initial matter, in the Order, the Commission lowers the caps on fees for single-call services and third-party financial transaction fees to $3.00 for automated payment transactions and $5.95 for live agent transactions. PPI suggests that the Commission should impose even lower caps after the conclusion of the data collection. Do the data from the Third Mandatory Data Collection support lowering these caps, as PPI suggests? If so, to what levels? Securus on the other hand asserts that the automated payment fee recovers the internal costs in managing accounts. What are the costs associated with managing accounts? Should those costs be recoverable through the automated payment fee? Or should those costs be factored into the per-minute inmate calling services rates? Commenters should be as specific as possible identifying circumstances under which any such costs should be factored into the per-minute inmate calling services rates.

69. Some commenters argue that live agents may not be available in single-call services. Do other commenters agree with this assessment? One commenter suggests that the fee for single-call services should be no more than $0.25 to cover credit card transaction fees. The Commission seeks comment on this cap. Should the Commission consider prohibiting inmate calling services providers from imposing anticipated taxes on consumers at the time of a deposit? NCIC suggests that without knowing each call's end point, the provider cannot determine the actual tax obligation arising from a call, resulting in overcollection by the provider. How should the Commission ensure that consumers are not overcharged by providers for anticipated federal, state, or local taxes?

70. PPI asserts that single-call services are losing popularity and are becoming uncommon in the industry, given that, by definition, they require third-party billing. PPI contends that carriers still commonly allow or encourage customers to pay for calls on a one-off basis, but billing is typically done directly by the carrier without the involvement of a third party. Do commenters agree? How prevalent are single-call services? For those who are newly incarcerated, are single calls the only way to make initial contact with loved ones outside of the correctional facility? If not, what other options are available? How do providers bill for single-call services? If a provider uses a third party to bill for single-call services, and also assesses an automated payment fee on consumers who elect to pay by credit card, should the Commission allow providers to assess both a third-party payment fee and an automated payment fee for the same transaction? Relatedly, the Commission is concerned that consumers without a credit or debit card may be unable to pay for single calls from an incarcerated individual because payment using a credit or debit card appears to be the only option for consumers to pay for such calls at the time the call is made. NCIC conducted test calls and discovered that a consumer without an account or enough funds to pay for a call could either pay using a payment card or decline the call. Do commenters agree that consumers must use a payment card to pay for single calls? If not, how can consumers pay for single calls if they do not have a credit or debit card? How can the Commission ensure that incarcerated people are able to successfully initiate communication using single-call products? Should the Commission prohibit any transaction fees on single calls?

71. Finally, the Commission seeks comment on how its ancillary service charges caps should be adjusted to better reflect the actual cost of providing particular ancillary services, in light of the data from the Third Mandatory Data Collection. In 2021, the Commission sought comment on proposals to reduce its ancillary service charge caps and whether it should adjust the caps based on the data from the Third Mandatory Data Collection. In response, PPI supports lowering the caps on third-party financial transaction fees, fees for single-call services, automated payment fees, and live-agent fees, following completion of the Third Mandatory Data Collection. Do the data from the Third Mandatory Data Collection support reductions of these fees? If so, to what levels? Commenters should provide their own analyses of the reported data in support of any proposed caps. NCIC argues that certain ancillary costs have increased. NCIC points to the fact that credit card processing fees have not decreased in the past six years, but certain compliance requirements such as Payment Card Industry Certification requires more rigorous network intrusion testing than what was required six years ago when the ancillary caps were first adopted. NCIC also posits that labor costs have increased by at least 20% in the past 6 years. Do commenters agree with these assertions? Do the data from the Third Mandatory Data Collection support a conclusion that ancillary services costs have increased? If so, how? To account for increasing costs, NCIC suggests that there should be a process for the Commission's ancillary fee caps to be adjusted to account for inflation and labor costs. Do commenters support this proposal? If so, what mechanism could the Commission adopt to implement such a proposal and how could that mechanism be incorporated into its rules?

Potential Pilot Programs Offering Alternative Pricing Structures

72. The Commission seeks further comment on whether to allow inmate calling services providers to offer optional pilot programs that offer consumers the ability to purchase inmate calling services under alternative pricing structures, in addition to the traditional per-minute pricing model required by its rules. The Commission invites comment on whether, as several parties suggest, pilot programs offering alternative pricing structures, generally, would benefit incarcerated people and their families by lowering calling costs and increasing connectivity. The Commission also invites commenters to elaborate on the specific elements and attributes it should require of any pilot it might allow, and how it can ensure that providers structure such pilot offerings in a manner that does not harm consumers. In particular, the Commission seeks comment on how to ensure that any such pilot programs would not undermine its caps on interstate and international rates and ancillary services charges. In addition, the Commission seeks comment on whether it should permit any such pilot programs only subject to certain specified conditions.

73. *Background.* The Commission's rules prohibit inmate calling service providers from charging for calls on a per-call or per-connection basis and require the providers to price their interstate, international, and jurisdictionally indeterminate calling services at or below specific per-minute rate caps. For convenience, the Commission refers to 47 CFR 64.6030, 64.6080, 64.6090 as the pricing structure rules. Separately, the Commission's rules allow inmate calling service providers to charge consumers for any of five specified types of ancillary services charges, each subject to their own respective caps. This structure results in incarcerated persons and their families paying for their interstate and international phone calls on a per-minute basis. Outside of correctional facilities, however, most phone users no longer pay per-minute rates for the phone calls they place.

74. In document FCC 22–76, the Commission sought comment on alternative pricing structures that depart from traditional per-minute pricing. Among other questions, the Commission asked whether it should allow providers to offer different optional pricing structures subject to the Commission's prescribed rate caps and whether the Commission should adopt a process for waiving the per-minute rate requirement to allow for the development of alternative pricing structures. Shortly after the release of the *2021 ICS Order,* Securus filed a petition asking the Commission to waive its pricing structure rules to allow Securus and other providers to offer alternative rate options. According to the Petition, Securus had offered pilot programs at certain facilities that gave consumers the option to purchase intrastate inmate calling services pursuant to subscription pricing plans. The correctional institution determined the maximum amount of time available for each call, and the maximum call duration typically varied between 15 and 30 minutes. For a flat fee, consumers who elected to participate could buy packages of 25 telephone calls per week or 100 calls per month. This flat rate consists of a base rate plus a charge for the recovery of site commissions if applicable. Securus also charged a $3.00 automated payment fee upon enrolling in or renewing a subscription plan. Securus explains that the effective price of these packages ranged from $0.02 to $0.07 per minute for consumers who used every available minute, lower than the rate caps applicable to interstate calls made from the same facilities. If consumers used less than half of their available calling minutes, Securus asserts that the effective per-minute price increased to a range of $0.03 to $0.13 per minute. Securus notes, however, that because many of the calls made using the subscription plans were to wireless phones whose exact physical location was difficult to determine, it had to treat potentially in-state but jurisdictionally indeterminate calls as interstate calls whose rates are limited to per-minute charges, jeopardizing the development and availability of flat-rate subscription plans for multiple calls. WCB sought comment on Securus's Petition. Although the Commission does not resolve Securus's Petition in document FCC 22–76, it does seek further comment on the benefits of the subscription calling pilot program as described therein, and on other pilot programs that providers may offer under the Commission's rules.

75. Although several commenters recognized the potential benefits of pilot programs, such as the ones Securus has offered, other commenters sought more information about the company's pilot programs and expressed concerns that incarcerated people and their families may not have received enough information to make informed decisions about whether the programs would meet their needs. Specifically, commenters ask that Securus be required to provide consumers with more complete disclosures regarding prices, fees, call metrics, and the terms and conditions relating to renewal and cancellation of its alternative calling plans. Commenters also urge the Commission to require any pilot program to adhere to certain pricing, disclosure, and other conditions to protect incarcerated persons and their families from abuse.

76. *Potential Pilot Programs.* The Commission seeks comment on whether it should amend its rules to permit providers—subject to certain conditions—to offer pilot programs for inmate calling services that use pricing structures other than per-minute rates. The Commission seeks comment on the types of alternative programs that would be most beneficial to incarcerated people and on the reasons why such programs would be superior to the current per-minute pricing structure. Would a flat-rate package, such as a single price for an allotment of minutes, offer the most benefits? The Commission encourages commenters to fully explain how any pricing model would operate, how it would benefit consumers, and how the Commission can ensure that it would not harm consumers. The Commission encourages commenters to describe potential pilot programs in detail, including both the pricing and other operational features of any program.

77. What would be the costs and benefits of various types of alternative pricing structures? Would certain alternative pricing structures offer incarcerated people and their families more predictable, reliable, or affordable calling rates than others? If so, which rate structures would be most advantageous to consumers and why? Which types of offerings would give providers greater certainty regarding their inmate calling services revenues or offer other benefits tied to predictability? What type of consumer outreach or education would be needed to ensure that consumers are able to choose the pricing structure that best meets their needs?

78. *Potential Conditions.* The Commission seeks comment on whether and how it could ensure that all pilot programs offer rates that, on a per-minute basis, are less than its current per-minute rate caps. What measures, if any, would be needed to protect consumers against unreasonably high interstate and international rates in connection with pilot programs? How should the Commission determine whether the rate offered under any proposed alternative pricing structure is, on a per-minute basis, less than its rate caps? Should the Commission take the total price of the pilot program offering and divide it by the total amount of minutes available under that program? How else might the Commission determine whether a specific alternative pricing structure results in higher effective rates for consumers than what they would pay under the applicable per-minute caps? Should the Commission provide for true-up procedures, under which providers would be required to refund any revenues exceeding those permitted under its rules? The Commission encourages commenters to be specific and to demonstrate how any given structure would be consistent with its caps. Should the Commission assume that each consumer will use every call and minute available under an alternative pricing program? Or should the Commission require that the consumer's actual usage be taken into account? If the Commission takes the latter approach, how should the Commission assess whether a pilot program's pricing is consistent with its caps? Should the Commission require that any alternative plan offer consumers a discount compared to what they would pay for the same usage under its existing per-minute rate caps? If so, what should the minimum discount be? Finally, how should the Commission treat plans that offer an unlimited number of minutes or have indefinite terms?

79. The Commission seeks further comment on whether all pilot programs should be optional, so that incarcerated people and their families always are able to choose to purchase interstate and international calling services at per-minute prices that do not exceed its rate caps. If so, how should the Commission implement this condition for different types of pilot programs? The Commission also seeks comment on whether there are specific policies it should adopt to protect consumers and on whether there are specific features or attributes that different pilot programs should include. Should the Commission require providers to offer a set minimum number of calls or minutes per month, or other time period? Should the

Commission require providers to allow consumers to roll over any unused minutes into each successive subscription period? Are there other specific parameters the Commission should require? Should providers be required to provide credits or otherwise make consumers whole for any calls that are not completed or that are dropped? If a pilot program offers calling services on a periodic subscription basis, should consumers be able to opt out of automatic renewals of their subscriptions? Should providers be required to provide more than one opt-out method? Should consumers be permitted to cancel a subscription before the end of the subscription period? If so, should providers be required to offer refunds? If providers are required to offer refunds, how should they provide such refunds in the event of cancellation prior to the end of a subscription term?

80. *Disclosures and Consumer Awareness.* The Commission invites comment on what rules, if any, it should adopt to ensure that providers clearly, accurately, and conspicuously disclose the details of any alternative pricing plans, while at the same time clearly conveying to consumers the continued availability of per-minute calling plans. Since providers may implement different types of alternative pricing structures, it is critical that incarcerated people and their families understand their provider's alternative offerings and how they differ from per-minute usage. The Commission seeks comment on what information consumers would need about providers' pilot programs to help them make informed choices between a pilot program and traditional per-minute pricing. Should the Commission require providers to inform consumers how a pilot program's prices translate on a per-minute basis, to enable consumers to make an informed decision between the program and the traditional per-minute pricing model? If not based on an equivalent per-minute price, how should any price comparison be made? More generally, how should providers present the prices under alternative plans, and what specific elements should be itemized? What sort of terms and conditions would help consumers understand what a given plan entails? Various terms and conditions could include, but are not limited to: pilot program costs, ancillary service charges, automatic renewal terms, cancellation policies, and refund policies. Should the Commission adopt additional rules governing how providers should disclose to consumers the rates, terms, and conditions associated with any pilot program? If so, what specific information should providers be required to disclose? Should the Commission require a written or electronic disclosure, or otherwise specify the manner in which providers must make any required disclosures?

81. The Commission seeks comment on these potential conditions, and on any other conditions that might be necessary in order to preserve the protections for incarcerated people under its rules. Should the Commission require providers to inform it of their intent to offer a pilot program and the details of that program, or require other notification steps? Are there any other constraints or requirements the Commission should adopt? Conversely, are there other rules the Commission might need to waive in order for pilot programs using alternative pricing structures to be commercially viable?

82. *Pilot Period.* The Commission seeks comment on whether it should authorize pilot programs for a limited period, for example two years. Would such a time period provide sufficient time to allow incarcerated people and their families to adjust to the offerings and for the Commission to more fully evaluate the costs and benefits of any individual program? Would two years allow the market to adjust to any new offerings? Should the Commission adopt a longer or shorter period? Why or why not? Are there relevant performance metrics, such as rate of adoption or usage, that will be most affected by the duration it chooses? When should any period commence?

83. *Program Continuance.* The Commission invites comment on what factors it should consider in deciding whether to extend a pilot program beyond the initial permitted period to make that program permanent. What information should the Commission focus on in evaluating the efficacy of such programs? What, if any, information should the Commission require providers to submit regarding their pilot programs so that the Commission can make an informed judgement on extending the pilot programs or amending its rules to allow them to continue permanently?

84. *Burden of Demonstrating Compliance with Existing Rate Caps.* Finally, the Commission seeks comment on whether to require providers to bear the burden of demonstrating that any pilot programs comply with its inmate calling service rate and ancillary services fee caps. If the Commission does adopt such a requirement, what should the consequences be if the provider fails to meet that burden? Should the consumer then be entitled to a refund of the charges over and above those that would have been assessed on a per-minute basis? What would the appropriate period be for determining whether a pilot program has complied with the Commission's rate caps, and how can this burden be met for calling plans that are not dependent upon a given period (such as a fixed fee for a number of calls)? For example, should the Commission evaluate compliance with its rate and ancillary fee caps on a three-month basis to account for normal variations in calling patterns that on average would end up complying with the Commission's rate caps if calls had been billed on a per-minute basis over the three-month period? Should the Commission adopt a shorter or longer period and, if so, why? What other factors should the Commission consider regarding the burden of proof?

Definitions of ''Jail'' and ''Prison''

85. The Commission seeks comment on whether it should expand its definitions of ''Jail'' and ''Prison'' to ensure that they capture the full universe of confinement facilities with residents who access interstate or international communications services. Specifically, the Commission invites comment on whether it should include in those definitions civil commitment facilities, residential facilities, group facilities, and nursing facilities in which people with disabilities, substance abuse problems, or other conditions are routinely detained. The Commission asks that commenters address in detail whether residents of such facilities are able to access voice and other communications services through providers of their own choice, as opposed to being limited to the providers selected by third parties. The Commission seeks comment on its authority to apply its inmate calling services rules, including those addressing communication disabilities, to these facilities. Does that authority, if any, vary depending on whether a facility is a non-governmental, as opposed to governmental, facility? The Commission also seeks comment on the costs and benefits of applying its rules to these facilities and on any practical problems that such application might create. The Commission asks, in addition, whether it should tailor any of its non-definitional rules to address the specific circumstances of these facilities and, if so, how it can best ensure that their residents have access to interstate and international voice and other communications services at rates, and

on terms and conditions, that are just and reasonable.

Digital Equity and Inclusion

86. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed in document 22–76. Section 1 of the Act provides that the FCC regulates interstate and foreign commerce in communication by wire and radio so as to make such service available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex. The term ''equity'' is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. Specifically, the Commission seeks comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

Initial Regulatory Flexibility Analysis

87. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in document FCC 22–76. The Commission requests written public comments on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in the Dates section of document 22–76. The Commission will send a copy of the document, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Need for, and Objectives of, the Proposed Rules

88. In document FCC 22–76 the Commission seeks additional comment on whether to allow a simplified form of registration for using IP CTS in correctional facilities, similar to enterprise phone registration currently allowed for VRS. The Commission seeks comment on whether it should require inmate calling services providers to provide access to additional forms of TRS in jurisdictions with average daily populations of fewer than 50 incarcerated people. The Commission also proposes and seeks comment on requiring that charges for inmate calling services be disclosed in accessible formats.

89. The Commission also seeks additional evidence and comment from stakeholders to enable further reforms concerning providers' rates, charges, and practices. First, the Commission seeks comment on refining the rules adopted in document 22–76 concerning the treatment of balances in inactive accounts. Second, the Commission seeks comment on expanding the breadth and scope of existing consumer disclosure requirements. Third, the Commission addresses certain issues that arose from the providers' 2022 data collection responses. Specifically, the Commission seeks comment on how data collected by the Commission should be used to establish just and reasonable permanent caps on interstate and international rates and associated ancillary service charges consistent with the statute. The Commission seeks comment on whether to allow inmate calling services providers to offer pilot programs allowing consumers to purchase calling services under alternative pricing structures. Finally, the Commission seeks comment on revisions to its definitions of ''Prison'' and ''Jail,'' and on how the proposals in document 22–76 may promote or inhibit digital equity and inclusion.

Legal Basis

90. The legal basis for any action that may be taken pursuant to document 22–76 is contained in sections 1, 2, 4(i)–(j), 201(b), 218, 220, 225, 255, 276, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201(b), 218, 220, 225, 255, 276, and 403.

91. The types of entities affected are: wired telecommunications carriers; local exchange carriers; incumbent local exchange carriers; competitive local exchange carriers; interexchange carriers; local resellers; toll resellers; other toll carriers; payphone service providers; TRS providers; and other telecommunications.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

92. *Compliance with Requirements to Provide Access and Expanded Registration Requirements.* The Commission seeks comment on whether to allow enterprise registration for IP CTS use, limited to the correctional context. If adopted, IP CTS providers would have an alternative registration method for incarcerated people with communication disabilities to access TRS. The Commission also seeks further comment on whether to modify the scope of inmate calling services providers' TRS obligations as determined in document 22–76. In particular, the Commission seeks comment on requiring those providers to provide access to additional forms of TRS (VRS, IP Relay, IP CTS, and CTS) when they serve facilities in a jurisdiction with average daily populations of fewer than 50 inmates. If adopted, inmate calling services providers that do not all already provide these additional forms of TRS to smaller facilities may have additional data to report as a part of the Commission's Annual Reporting and Certification Requirement to comply with requirements adopted in the Report and Order portion of document FCC 22–76. The Commission also proposes to require that charges for inmate calling services be disclosed in accessible formats. If adopted, inmate calling services providers that do not all already provide such information in accessible formats would need to do so.

93. *Other Potential Requirements.* The Commission seeks comment on refining the rules adopted in document 22–76 concerning the treatment of unused funds in accounts consumers use to pay for interstate and international inmate calling services and related ancillary services charges, as well as on amendments to those rules which aim at protecting inmate calling services account holders against unreasonable practices in related to those funds. The Commission also seeks comment on the appropriate permanent interstate and international rate and ancillary services fee caps given providers' responses to the Third Mandatory Data Collection, as well as on other amendments to its ancillary services rules.

94. The Commission seeks comment on how amending its current consumer disclosure rules could improve and expand the current rules and reach more inmate calling services consumers. The potential changes include mandating

that all inmate calling services providers to make the same required disclosures of information available to all consumers, regardless of whether they receive an actual bill from a provider. The Commission invites comment on whether to allow inmate calling services providers to supplement traditional per-minute pricing and develop optional pilot programs that offer consumers the ability to purchase inmate calling services under alternative pricing structures. The Commission invites comment on whether it should authorize such programs subject to certain specified conditions, including conditions protecting against unreasonably high charges for interstate and international calling services. The Commission seeks comment on whether it should expand its definitions of ''Jail'' and ''Prison'' to ensure that they capture any confinement facilities with residents who may access interstate and international communications services, and on how its proposals may promote or inhibit digital equity and inclusion.

Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

95. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities. The Commission will consider all of these factors when it receives substantive comment from the public and potentially affected small entities. In particular, the Commission will consider the economic impact on small entities, as identified in comments filed in response to Document FCC 22–76 and the IRFA, in reaching its final conclusions and promulgating rules in this proceeding.

96. The Commission seeks comment on allowing enterprise registration for IP CTS so that incarcerated people with communication disabilities can access TRS. If adopted, this alternative form of registration could reduce the burden on IP CTS providers by allowing providers to register the relay service at a facility that maintains a list of users. The Commission also seeks further comment on requiring inmate calling services providers to provide access to all forms of TRS in a jurisdiction with an average daily population of fewer than 50 incarcerated people. The request for comment includes asking for cost data to assist the Commission with its analysis of the issue. The cost data will help the Commission ensure it is achieving its statutory obligation of ensuring TRS are available to extent possible, while appropriately considering the burden on affected entities.

97. The comments that stakeholders submit in response to the Commission's requests for comment on refining its rules on the treatment of funds in inactive inmate calling services accounts, the appropriate permanent interstate and international rate and ancillary services fee caps, and other potential amendments to its ancillary services rules, will supplement comments previously filed in this proceeding. Collectively, these comments will help the Commission meet its statutory obligation to ensure that providers' rates, terms, and practices for interstate and international inmate calling services are reasonable. Small entities can provide input in these areas addressing whether, among other considerations, the Commission should adjust its rules to address any particular financial or implementation challenges faced by small entities.

98. Similarly, the Commission's requests for comment regarding possible amendments to its consumer disclosure rules, regarding potential pilot programs for inmate calling services that use pricing structures other than per-minute rates, regarding possible amendments to its definitions of ''Jail'' and ''Prison,'' and regarding digital equity and inclusion will provide an opportunity for small entities, as well as other stakeholders, to voice any concerns they may have. The Commission will consider any comments small entities file regarding these matters as part of its efforts to ensure that consumers of calling services for incarcerated people have the information they need to make informed purchasing decisions. In particular, it will consider whether any concerns small entities raise regarding possible changes to the consumer disclose rules and the potential pilot programs as part of its overall evaluation of these areas.

99. The Commission will consider the economic impact on small entities, as identified in comments filed in response to document FCC 22–76 and the IRFA, in reaching its final conclusions and promulgating rules in this proceeding.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

100. None.

101. *Initial Paperwork Reduction Act of 1995 Analysis.* The Sixth Notice of Proposed Rulemaking may contain modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). If the Commission adopts any modified information collection requirements, the Commission will publish another document in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act. Public Law 104–13; 44 U.S.C. 3501–3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–24597 Filed 11–14–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 22–376; RM–11934; DA 22–1132; FR ID 112240]

Television Broadcasting Services Norwell, Massachusetts

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by RNN Boston License Co., LLC (Petitioner), the licensee of WWDP, channel 10, Norwell, Massachusetts. The Petitioner requests the substitution of channel 36 for channel 10 at Norwell in the Table of Allotments.

DATES: Comments must be filed on or before December 15, 2022 and reply comments on or before December 30, 2022.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Christine A. Burrow, Esq. Cooley, LLP, 1299 Pennsylvania Avenue, Washington, DC 20004–2400.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202)

418–1647; or Joyce Bernstein, Media Bureau, at *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: In support of its channel substitution request, the Petitioner states that the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service According to the Petitioner, it has received many complaints from viewers unable to receive a reliable signal on channel 10 and that its channel sharing partner, WMFP(TV), Foxborough, Massachusetts, which is also owned by RNN, has similarly received complaints and would benefit from the proposed channel change. While an analysis using the Commission's TVStudy software indicates that WWDP's proposed channel substitution is predicted to create areas where viewers may lose service, all viewers in the loss area will continue to be served by at least five other full power television stations and no viewers will lose service from one of the four major television networks.

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 22–376; RM–11934; DA 22–1132, adopted October 27, 2022, and released October 27, 2022. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in Section 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See Sections 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—Radio Broadcast Service

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

§ 73.622 Table of allotments.

■ 2. In § 73.622 in paragraph (j), amend the Table of Allotments under Massachusetts by revising the entry for Norwell to read as follows:

* * * * *

(j) Table of TV Allotments.

Community	Channel No.
* * * * *	
MASSACHUSETTS	
* * * * *	
Norwell	36
* * * * *	

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[FR Doc. 2022–24753 Filed 11–14–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 350

[Docket No. FMCSA–2022–0079]

State Inspection Programs for Passenger-Carrier Vehicles

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Confirmation of withdrawn advance notice of proposed rulemaking.

SUMMARY: FMCSA confirms its May 1, 2017, decision to withdraw its April 27, 2016, advance notice of proposed rulemaking (ANPRM) concerning the establishment of requirements for States to implement annual inspection programs for commercial motor vehicles (CMVs) designed or used to transport passengers (passenger-carrying CMVs). On November 15, 2021, the Infrastructure Investment and Jobs Act (IIJA) was enacted, directing FMCSA to solicit additional comment on the 2016 ANPRM. The Agency solicited additional comments for 30 days, ending June 9, 2022. After reviewing the additional public comments received, FMCSA has determined there is not enough data and information available to support moving forward with a rulemaking action.

DATES: FMCSA confirms the withdrawal of the ANPRM as of November 15, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Stella, Chief, Regulatory Development Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 493–0192, *Sarah.Stella@dot.gov.* If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 2016, in accordance with section 32710 of the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141, 126 Stat. 405, 815), FMCSA published in the **Federal Register**, an ANPRM titled ''State Inspection Programs for Passenger-Carrier Vehicles'' (Docket No. FMCSA–2014–0470, 81 FR 24769). The ANPRM announced that FMCSA was considering a requirement that States establish a program for annual inspections of passenger-carrying CMVs. FMCSA requested information from all interested parties that would enable the Agency to assess the risks associated with improperly maintained or improperly inspected passenger-carrying CMVs. The ANPRM also sought public comments concerning the effectiveness of the current FMCSA annual inspection standards, and data on the potential costs and benefits of a Federal requirement for each State to implement a mandatory inspection program. FMCSA inquired about how the Agency might incentivize States to adopt such programs.

The comment period closed on June 27, 2016, and 22 comments were received, with a plurality (10 of 22) of commenters expressing general opposition to the mandatory State inspection requirement discussed in the ANPRM. After reviewing all the public comments, FMCSA determined there was not enough data and information available to support moving forward

with a rulemaking action. As a result, on May 1, 2017, the Agency withdrew the ANPRM.[1] (82 FR 20311)

On November 15, 2021, the IIJA was enacted, Public Law 117–58, 135 Stat. 429 (H.R. 3684, Nov. 15, 2021). Section 23008(a) directed the Agency, within 1 year after the date of enactment, to solicit additional comments on the ANPRM to determine if data and information exist to support moving forward with a rulemaking. The Agency published the request for additional comments on May 10, 2022. (87 FR 29781) The comment period closed on June 9, 2022.

Discussion of Comments

The Agency received 21 public comments, with 9 commenters expressing general opposition to the mandatory State inspection requirement discussed in the 2016 ANPRM. Four commenters supported the establishment of such a requirement and the remaining commenters neither wholly supported nor opposed a possible requirement. Many commenters indicated that the existing standards for annual inspections prescribed in the Federal Motor Carrier Safety Regulations, or their own programs, were sufficient. Commenters also indicated that current standards are effective at mitigating risk when properly enforced. Several commenters made their support contingent on factors such as uniformity in inspection standards, standardization of inspector training, a self-inspection option, and required reciprocity, whereby States would be required to recognize inspections conducted outside their States.

Many commenters, including State agencies in Arizona, Kentucky, Minnesota, Montana, New York, Virginia, and Wisconsin, addressed questions aimed at measuring the effectiveness of inspection programs. However, none of these commenters was able to determine whether the establishment of an inspection program reduced the number of safety violations detected.

Several commenters suggested that FMCSA incentivize States to establish mandatory inspection programs by providing Federal funding. The American Association of Motor Vehicle Administrators, the Commercial Vehicle Safety Alliance, and the Kentucky Transportation Cabinet noted that a mandate would be a strain on States' resources, particularly considering the ongoing financial challenges associated with the coronavirus disease 2019 pandemic.

FMCSA Decision

After considering all the comments, FMCSA has concluded that the rationale for withdrawal of the 2016 ANPRM remains sound. The Agency is not aware of any new data or information that supports the development of a notice of proposed rulemaking to require the States to establish mandatory annual inspection programs for passenger-carrying vehicles. FMCSA therefore confirms withdrawal of the 2016 ANPRM referenced above. The concerns and recommendations of all the commenters will be considered if any new proposed regulations regarding annual inspections of passenger-carrying CMVs are developed.

Issued under authority delegated in 49 CFR 1.87.

Robin Hutcheson,

Administrator.

[FR Doc. 2022–24708 Filed 11–14–22; 8:45 am]

BILLING CODE 4910–EX–P

[1] The ANPRM and the ANPRM withdrawal are available in the docket for this action.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 221103–0231; RTID 0648–XC422]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2023 Bluefish Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the 2023 Atlantic bluefish fishery, as recommended by the Mid-Atlantic Fishery Management Council. This action is necessary to establish allowable harvest levels for the stock that will prevent overfishing and promote rebuilding, using the best scientific information available. This rule is intended to inform the public of the proposed fishery specifications and provide an opportunity for comment on the proposed action.

DATES: Comments must be received by November 30, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2022–0102, by the following method:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *https://www.regulations.gov,* and enter ''NOAA–NMFS–2022–0102'' in the Search box;

2. Click the ''Comment'' icon, complete the required fields; and

3. Enter or attach your comments.

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

Copies of the Supplemental Information Report (SIR) and other supporting documents for this action are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the internet at *https://www.mafmc.org/action-archive.*

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Policy Analyst, (978) 281–9180.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) jointly manage the Atlantic Bluefish Fishery Management Plan (FMP). The FMP requires the specification of annual regulatory limits for up to three years at a time, including: an acceptable biological catch (ABC), commercial and recreational annual catch limits (ACL), commercial and recreational annual catch targets (ACT), a commercial quota, a recreational harvest limit (RHL), and other management measures. This action proposes adjusted bluefish specifications for the 2023 fishing year, based on Council and Commission recommendations.

The bluefish fishery is operating under multi-year specifications for

fishing years 2022 and 2023 (87 FR 5739; February 2, 2022), which were based on a 2021 assessment update and Amendment 7 to the Bluefish FMP (86 FR 66977; November 24, 2021). Upon review of a 2022 data update and recent catch information, the Council's Scientific and Statistical Committee (SSC) and the Council's Bluefish Monitoring Committee agreed that no changes are necessary to the previously projected ABC, subsequent ACLs and ACTs, or any limits in the commercial sector. Prior to two adjustments described below, these 2023 specifications would have resulted in a 21-percent increase to the projected commercial quota and a 59-percent increase to the projected RHL. However, the 2022 data update indicated that the initial projection of recreational discards (4.19 million lb, 1,901 mt) did not fully account for expected discards, so the Monitoring Committee recommended an adjustment to the recreational total allowable landings (TAL) to account for higher than expected discards (6.64 million lb, 3,012 mt). There was also a 5.59 million-lb (2,536-mt) overage of the fishery ACL caused by recreational catch in 2021. Because the bluefish fishery is overfished, the accountability measure (AM) required by the FMP at 50 CFR 648.163(d)(1) is a pound-for-pound payback of the overage against the soonest possible year's recreational ACT as a single-year adjustment. The 2021 overage would be applied to the 2023 specifications in this action. No changes were recommended to recreational management measures because the adjusted RHL remains slightly higher than the current RHL in 2022, and there was no compelling reason found to change existing measures.

The Council and the Commission's Bluefish Management Board (Board) approved bluefish catch specifications for fishing year 2023 at a joint meeting in August 2022, as recommended by the SSC and Monitoring Committee. The Council and Board did not recommend changes to any regulations in place for bluefish. Therefore, all other commercial and recreational management measures would remain unchanged for the 2023 fishing year.

Proposed Specifications

This action proposes the Council's recommendations for 2023 bluefish catch specifications, which are consistent with the recommendations of the SSC and Monitoring Committee (Table 1). Although ACLs in both the commercial and recreational sectors would still increase by 21 percent as projected, the proposed RHL is adjusted and would only increase 1.6 percent from 2022, rather than 59 percent as originally projected.

TABLE 1—COMPARISON OF CURRENT 2022, PREVIOUSLY PROJECTED 2023, AND PROPOSED ADJUSTED 2023 BLUEFISH SPECIFICATIONS *

	Current 2022		Projected 2023		Proposed 2023	
	Million lb	Metric tons	Million lb	Metric tons	Million lb	Metric tons
Overfishing Limit	40.56	18,399	45.17	20,490	45.17	20,490
ABC	25.26	11,460	30.62	13,890	30.62	13,890
Commercial ACL = Commercial ACT	3.54	1,604	4.29	1,945	4.29	1,945
Recreational ACL = Recreational ACT	21.73	9,856	26.34	11,945	26.34	11,945
Recreational AM	3.65	1,656	0	0	5.59	2,536
Recreational Discards	4.19	1,901	4.19	1,901	6.64	3,012
Commercial TAL	3.54	1,604	4.29	1,945	4.29	1,945
Recreational TAL	13.89	6,298	22.14	10,044	14.11	6,400
Sector Transfer	0	0	0	0	0	0
Commercial Quota	3.54	1,604	4.29	1,945	4.29	1,945
RHL	13.89	6,298	22.14	10,044	14.11	6,400

* Specifications are derived from the ABC in metric tons (mt). When values are converted to millions of pounds the numbers may slightly shift due to rounding. The conversion factor used is 1 mt = 2204.6226 lb.

The coastwide commercial quota is allocated to coastal states from Maine to Florida based on percent shares specified in the FMP. These proposed state allocations for 2023 (Table 2) are unchanged from what was previously projected, as this action makes no changes to the commercial sector or the final coastwide commercial quota. In addition, no states exceeded their allocated quota in 2021, or are projected to do so in 2022; therefore, no AMs for the commercial fishery are required for the 2023 fishing year based on the data available at this time.

TABLE 2—PROPOSED 2023 BLUEFISH STATE COMMERCIAL QUOTA ALLOCATIONS

State	Percent share	Quota (lb)	Quota (kg)
Maine	0.51	21,807	9,892
New Hampshire	0.36	15,331	6,954
Massachusetts	7.69	329,578	149,494
Rhode Island	7.61	326,165	147,946
Connecticut	1.22	52,094	23,629
New York	13.06	560,031	254,026
New Jersey	14.54	623,295	282,722
Delaware	1.48	63,572	28,836
Maryland	2.69	115,409	52,349
Virginia	10.16	435,625	197,596
North Carolina	32.05	1,374,077	623,271
South Carolina	0.05	2,344	1,063
Georgia	0.04	1,544	700

TABLE 2—PROPOSED 2023 BLUEFISH STATE COMMERCIAL QUOTA ALLOCATIONS—Continued

State	Percent share	Quota (lb)	Quota (kg)
Florida	8.55	366,585	166,280
Total	100.01	4,287,109	1,944,600

No changes were recommended to recreational management measures as a part of these specifications. Therefore, all management measures, including the recreational daily bag limit of three fish per person for private anglers and five fish per person for for-hire (charter/party) vessels, would remain unchanged for 2023.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This action is exempt from review under E.O. 12866 because it contains no implementing regulations.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

The Councils conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with a SIR. There are no proposed regulatory changes in this bluefish action, so none are considered in the evaluation. The proposed action would implement the previously projected 2023 bluefish specifications, with an adjusted RHL to account for a recreational overage in 2021 and updated recreational discard data. Compared to the 2022 specifications, the coastwide commercial quota would increase 21 percent to 4.29 million lb (1,945 mt), and the RHL would increase 1.6 percent to 14.11 million lb (6,400 mt).

This proposed action would affect entities that hold federal for-hire (party/charter) recreational fishing permits for bluefish. Vessels may hold multiple fishing permits and some entities own multiple vessels and/or permits. According to the Northeast Fisheries Science Center commercial ownership database, 384 for-hire affiliate firms generated revenues from recreational fishing for various species during the 2019–2021 period (the most recent and complete data available). All of those business affiliates are categorized as small businesses, but it is not possible to derive the proportion of overall revenues for these for-hire firms resulting from fishing activities for an individual species such as bluefish. Nevertheless, given the popularity of bluefish as a recreational species in the Mid-Atlantic and New England, it is likely that revenues generated from bluefish may be somewhat important for many of these firms at certain times of the year. Although this action wouldn't affect the commercial sector beyond what was considered in the prior specifications action (providing an increase in fishing opportunity), 526 commercial fishing affiliate firms landed bluefish during this data period, with 521 of those commercial entities categorized as small businesses, and 5 categorized as large businesses. Analyses indicate that bluefish revenues contributed approximately 0.46 percent of the total gross receipts for these small entities.

The proposed specifications are expected to provide similar fishing opportunities in the recreational sector when compared to the previous year, as the RHL is increasing by less than two percent, and because the management measures (bag limit, season, etc.) would remain unchanged. As noted in the prior specifications action, entities issued a commercial bluefish permit may experience a slight positive impact related to potentially higher landings throughout the course of the entire year. However, because state allocations are changing in accordance with Amendment 7, there may be different amounts of quota available regionally compared to past years. Often fishing behavior and short-term landings are based on market conditions, which are not expected to substantially change as a result of these specifications. As such, this proposed action is not expected to have an impact on the way the fishery operates or the revenue of small entities.

Overall, analyses indicate that the proposed specifications will not substantially change fishing effort, the risk of overfishing, prices/revenues, or fishery behavior. Therefore, the Council concluded, and NMFS agrees, that this action would not have a significant adverse impact on a substantial number of small businesses. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This action would not establish any new reporting or record-keeping requirements.

This proposed rule contains no new information collection requirements under the Paperwork Reduction Act of 1995.

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

Dated: November 3, 2022.

Samuel D. Rauch, III,

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

[FR Doc. 2022–24490 Filed 11–14–22; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 87, No. 219
Tuesday, November 15, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0063]

Notice of Request for Revision To and Extension of Approval of an Information Collection; Domestic Quarantine Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the domestic quarantine regulations for preventing the spread of plant pests and diseases within the United States.

DATES: We will consider all comments that we receive on or before January 17, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2022–0063 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–2022–0063, 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 *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: For information regarding the domestic quarantine regulations, contact Ms. Tracy Svalina, Critical Issues Specialist, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 160, Riverdale, MD 20737; (301) 851–2208; email: *tracy.l.svalina@usda.gov.* For information on the information collection process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator; (301) 851–2483; email: *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Domestic Quarantine Regulations.

OMB Control Number: 0579–0088.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or the dissemination of a plant pest into the United States.

The Animal and Plant Health Inspection Service's (APHIS') regulations in 7 CFR part 301, ''Domestic Quarantine Notices,'' are necessary to regulate the movement of certain articles from infested areas to noninfested areas to prevent the spread of plant pests. These measures help prevent the pests from spreading from quarantined areas to noninfested areas of the United States.

Administering these regulations requires APHIS to collect information from a variety of individuals who are involved in growing, packing, handling, and transporting plants and plant products. The information serves as supporting documentation required for the issuance of forms and documents that authorize the movement of regulated plants and plant products and is vital to help prevent the spread of injurious plant pests within the United States. Collecting this information requires APHIS to use a number of forms and documents, including permits and certificates; applications; compliance and cooperative agreements; workplans and petitions; requests for inspection; labeling, notices, and reports; emergency action notifications and reports of violation; warnings, cancellations, and appeals; and recordkeeping.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.28 hours per response.

Respondents: State, Local, and Tribal government agricultural representatives, agricultural business representatives, and private citizens.

Estimated annual number of respondents: 8,821.

Estimated annual number of responses per respondent: 108.

Estimated annual number of responses: 948,507.

Estimated total annual burden on respondents: 261,393 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 8th day of November 2022.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–24733 Filed 11–14–22; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Rural Business-Cooperative Service

[Docket No. RBS–22–BUSINESS–0006]

Higher Blends Infrastructure Incentive Program (HBIIP); Correction

AGENCY: Commodity Credit Corporation and the Rural Business-Cooperative Service, Department of Agriculture (USDA).

ACTION: Notice; correction.

SUMMARY: The Commodity Credit Corporation (CCC) and the Rural Business-Cooperative Service (RBCS or the Agency) published a Funding Opportunity Announcement (FOA) in the **Federal Register** of August 23, 2022, entitled Higher Blends Infrastructure Incentive Program (HBIIP) to announce that it was accepting applications for fiscal year 2022 (FY 22) and the availability of approximately $100 million in competitive grants. In addition, the FOA defined requirements that are determined at the time a funding announcement is published, as outlined in the regulation. The FOA omitted clarifying information regarding eligible applicants for the funding. The Eligible Applicants section is being updated to clarify that hybrid applications, or those including transportation fueling facility implementation activities and fuel distribution facilities implementation activities, are ineligible. This Notice clarifies that applicants can only apply for one of the two applicant types and those successful applicants will only receive the funding associated with one applicant type.

FOR FURTHER INFORMATION CONTACT: Jeff Carpenter, email *HigherBlendsGrants-access@usda.gov,* telephone: (402) 318–8195.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of August 23, 2022 in FR Doc. 2022–18123 on page 51642 in the third column, under III. Eligibility Information, correct the *A. Eligible Applicants.* caption to read:

A. Eligible Applicants

Owners of transportation fueling facilities and owners of fuel distribution facilities located in the United States and its territories may apply for this program. Eligible entities include: fueling stations, convenience stores, hypermarket retailer fueling stations, fleet facilities (including automotive, freight, rail and marine), and similar entities with equivalent capital investments, as well as fuel/biodiesel terminal operations, midstream operations, and heating oil distribution facilities or equivalent entities.

Applicants must include all proposed activity under a single application. Applicants must own or have the legal right to control all site locations included in their application. Applicants may apply for and will only receive funding associated with implementation activities for one or more transportation fueling facilities or one or more fuel distribution facilities. Applications including combinations of transportation fueling facility implementation activities and fuel distribution facilities implementation activities are ineligible. Application requirements and other important information is available on the HBIIP web page: *https://www.rd.usda.gov/hbiip.*

Zach Ducheneaux,

Executive Vice President, Commodity Credit Corporation.

Karama Neal,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2022–24797 Filed 11–14–22; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[9/22/2022 through 11/09/2022]

Firm name	Firm address	Date received by EDA	Date accepted for investigation	Product(s)
G.A.M.E. Sportswear, Ltd	1401 Front Street, Yorktown Heights, NY 10598.	6/29/2022	10/11/2022	The firm manufacturers apparel.
Mason Jars Company, LLC	1001 State Street, Erie, PA 16501	6/30/2022	11/1/2022	The firm manufactures plastic lids for mason jars.
Balboa Manufacturing Company, LLC.	9401 Waples Street, San Diego, CA 92121.	6/30/2022	11/8/2022	The firm manufactures headwear, including masks and balaclavas.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are

received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.8 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Bryan Borlik,

Director.

[FR Doc. 2022–24866 Filed 11–14–22; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–822]

Welded Line Pipe From the Republic of Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Cimtas Boru Imalatlari ve Ticaret, Ltd. Sti. (Cimtas) had no shipments of subject merchandise during the period of review (POR), December 1, 2020, through November 30, 2021.

DATES: Applicable November 15, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4161.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 2022, Commerce published its preliminary determination of no shipments with respect to Cimtas in the **Federal Register** and invited comments from interested parties.[1] No interested party submitted comments. Accordingly, no decision memorandum accompanies this **Federal Register** notice. Commerce conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the order are circular welded carbon and alloy steel (other than stainless steel) pipe of a kind used for oil or gas pipelines (welded line pipe), not more than 24 inches in nominal outside diameter, regardless of wall thickness, length, surface finish, end finish, or stenciling. Welded line pipe is normally produced to the American Petroleum Institute (API) specification 5L, but can be produced to comparable foreign specifications, to proprietary grades, or can be non-graded material. All pipe meeting the physical description set forth above, including multiple-stenciled pipe with an API or comparable foreign specification line pipe stencil is covered by the scope of this order.

The welded line pipe that is subject to the order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.5000, 7305.12.1030, 7305.12.5000, 7305.19.1030, 7305.19.5000, 7306.19.1010, 7306.19.1050, 7306.19.5110, and 7306.19.5150. The subject merchandise may also enter in HTSUS 7305.11.1060 and 7305.12.1060. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Final Determination of No Shipments

In the *Preliminary Results,* Commerce determined that the sole respondent in this administrative review, Cimtas, had no shipments and, therefore, no reviewable entries, of subject merchandise during the POR.[2] This determination was based on a response of the U.S. Customs and Border Protection (CBP) to Commerce's no-shipment inquiry, as well as certifications and supporting documentation provided by Cimtas.[3] We received no comments from interested parties with respect to this record information or the preliminary finding of no shipments for Cimtas. Therefore, because the record indicates that this company did not export subject merchandise to the United States during the POR, we continue to find that Cimtas had no reviewable transactions during the POR.

Assessment Rates

Consistent with Commerce's practice, we intend to instruct CBP to liquidate any existing entries of merchandise produced by Cimtas, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.[4]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

Because we find that Cimtas had no shipments during the POR, there will be no change to the existing cash deposit requirements. Accordingly, Cimtas's current cash deposit requirements 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 and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations

[1] *See Welded Line Pipe from the Republic of Turkey: Preliminary Determination of No Shipments and Partial Rescission of the Antidumping Duty Administrative Review; 2020–2021,* 87 FR 52911 (August 30, 2022) (*Preliminary Results*). In the *Preliminary Results,* we also rescinded this review with respect to 18 companies for which the request for review was withdrawn; thus, Cimtas is the sole remaining respondent.

[2] *Id.,* 87 FR at 52912.

[3] *Id.*

[4] *See, e.g., Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213(h).

Dated: November 8, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–24841 Filed 11–14–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC543]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Thursday, December 1, 2022, beginning at 12:30 p.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/3900671858064240652.*

ADDRESSES:

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Advisory Panel will discuss Framework Adjustment 65/Specifications & Management Measures which include draft alternatives and draft impacts analysis, and make recommendations to the Groundfish Committee for final action to include: status determination criteria, rebuilding plan for Gulf of Maine (GOM) cod, FY2023–FY2024 US/CA total allowable catches, FY2023–FY2024 specifications: Georges Bank (GB) yellowtail flounder and GB cod (including a catch target for the recreational fishery), FY2023–FY2025 specifications for 14 stocks, additional measures to promote stock rebuilding for GB cod and GOM cod, and revised acceptable biological catch (ABC) control rules, in consultation with the Scientific and Statistical Committee.

The panel will discuss the development of a draft white paper on potential approaches to allocate ''Georges Bank cod'' to the recreational fishery delivered in 2022 to inform the 2023 priorities discussion and make recommendations to the Groundfish Committee. They will also discuss other business as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: November 9, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–24829 Filed 11–14–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Meeting of the Science Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for the meeting of the Science Advisory Board (SAB). The members will discuss issues outlined in the section on Matters to be Considered.

DATES: The meeting is scheduled for Wednesday, November 30, 2022, 10 a.m.–5 p.m. eastern standard time (EST) and Thursday, December 1, 2022, 8:30 a.m.–12:30 p.m. eastern standard time (EST). The time and the agenda topics described below are subject to change. For the latest agenda, please refer to the SAB website: *https://sab.noaa.gov/index.php/current-meetings/.*

ADDRESSES: The November 30–December 1, 2022 meeting will be held at the DoubleTree by Hilton Silver Spring Washington, DC North, 8777 Georgia Ave., Silver Spring, MD. The link for the webinar registration for the November 30–December 1, 2022 meeting may be found here: *https://sab.noaa.gov/index.php/current-meetings/.*

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, SSMC3, Room 11230, 1315 East-West Hwy., Silver Spring, MD 20910; Phone Number: 202–936–5847; Email: *Cynthia.Decker@noaa.gov;* or visit the SAB website at *https://sab.noaa.gov/index.php/current-meetings/.*

SUPPLEMENTARY INFORMATION: The NOAA Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Status: The November 30–December 1, 2022 meeting will be open to public participation with a 15-minute public comment period at 4:45 p.m. eastern standard time (EST) on Wednesday, November 30, 2022. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three minutes. Written comments for the November 30–December 1, 2022 meeting should be received in the SAB Executive Director's Office by November 15, 2022 to provide sufficient time for

SAB review. Written comments received by the SAB Executive Director after this date will be distributed to the SAB, but may not be reviewed prior to the meeting date.

Special Accommodations: This meeting is physically accessible to people with disabilities. Requests for special accommodations may be directed to the Executive Director no later than 12 p.m. on November 15, 2022.

Matters to be Considered: The meeting on November 30–December 1, 2022 will include the (1) NOAA Update; (2) NOAA Science Update; (3) NOAA Response to the SAB Priorities for Weather Research Report; (4) SAB Data Archiving and Access Requirements Working Group (DAARWG) Report on the NESDIS Common Cloud Framework (NCCF); (5) NOAA Response to the Quadrennial Report from the Tsunami Science and Technology Advisory Panel (TSTAP); (6) SAB Ecosystem and Sciences Management Working Group (ESMWG) Report on the Rapidly Changing Marine Environment; (7) SAB Report on Open Science and Open Data; (8) Updates on SAB Work Plan; (9) SAB Working Group Updates. Meeting materials, including work products, will be made available on the SAB website: *https://sab.noaa.gov/index.php/current-meetings/*

David Holst,

Chief Financial Officer and Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2022–24807 Filed 11–14–22; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability for Public Comments of the National Sea Grant Office

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of availability for public comments.

SUMMARY: NOAA has prepared a draft programmatic environmental assessment (PEA) for NOAA's proposal to fund aquaculture research and development projects through existing federal financial assistance award programs. We are making the programmatic environmental assessment available to the public for review and comment.

DATES: Written comments must be submitted on or before December 18, 2022.

ADDRESSES: The Draft PEA may be downloaded or viewed at: *https://seagrant.noaa.gov/Our-Work/Aquaculture.* You are encouraged to use the comment form spreadsheet provided on the same website to submit your comments. However, comments will also be accepted in word, pdf, or email body. Please submit public comments via email to *oar.sg-feedback@noaa.gov* with the subject line ''Public Comment on Draft PEA Aquaculture Research and Development.'' No business proprietary information, copyrighted information, or personally identifiable information should be submitted in response to this request. Please be aware that comments submitted may be posted on a federal website or otherwise released publicly. Clearly indicate which section, page number, and line number, if applicable, submitted comments pertain to. All comments must be provided in English. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca Briggs, Scientific Program Manager, National Sea Grant Office (Phone Number: (302) 927–2351) (Email:*rebecca.briggs@noaa.gov*).

SUPPLEMENTARY INFORMATION: This Programmatic Environmental Assessment (PEA) serves as a framework to analyze the potential impacts on the natural and human environment from aquaculture research and development projects funded by federal financial assistance award programs in the Office of Oceanic and Atmospheric Research (OAR) and the National Marine Fisheries Service (NMFS). The overall goal of NOAA's aquaculture research and development federal financial assistance award programs is to provide opportunities to public, private, and tribal entities to obtain scientific knowledge that will inform NOAA's regulatory and resource management decisions and foster innovative and sustainable approaches to aquaculture that will benefit NOAA's trust resources. NOAA proposes to further these efforts in domestic marine and freshwater aquaculture research and development in accordance with the statutory authorities described in this PEA. Existing federal financial assistance award programs for aquaculture research and development projects that are discussed in this PEA include: The National Sea Grant College Program (Sea Grant), the Small Business Innovation Research Program (SBIR) and programs administered by the Office of Aquaculture (OAQ).

Projects analyzed as part of this PEA are broadly described as falling under one of the following five main research and development categories: outreach, education, and planning; data analysis and social science research; laboratory and rearing science and research on finfish and shellfish; field research and assessments; and, shellfish aquaculture restoration. Aquaculture research and development federal awards are needed to gain scientific knowledge and develop a trained workforce to address critical issues including: supporting a healthy coastal economy; addressing the demand for domestic seafood products; and enhancing wild stock populations (for commercial purposes). The federal financial assistance award programs described provide a unique opportunity within NOAA to partner with external researchers and institutions, engage in private sector, tribal, and public collaborations, and facilitate aquaculture research and development to meet these needs. NOAA intends for this PEA to create efficiencies by establishing a framework that can be used for ''tiering'' when appropriately applied to future aquaculture research and development awards. As financial assistance awards are proposed, to the extent additional NEPA analysis is required, environmental review will rely on the analysis set forth in this PEA.

This document has been prepared in compliance with the National Environmental Policy Act of 1969 (NEPA), the 1978 Council on Environmental Quality (CEQ) Regulations (40 Code of Federal Regulations [CFR] 1500–1508), and NOAA policy and procedures (NOAA Administrative Order 216–6A (NAO 216–6A and its Companion Manual (CM)).

David Holst,

Chief Financial Officer and Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2022–24742 Filed 11–14–22; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC546]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public webinar of its Scallop Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, December 1, 2022, at 1 p.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/4891148759124928l6.*

ADDRESSES:

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Committee plans to discuss Framework 36 (FW36): Review specifications alternatives in FW36 and select final preferred alternatives. FW36 will set specifications including the overfishing limit (OFL), acceptable biological catch/annual catch limit (ABC/ACLs), days-at-sea (DAS), access area allocations for Limited Access (LA) vessels, quota and access area trip allocation to the Limited Access General Category (LAGC) Individual Fishing Quota (IFQ) component, Total Allowable Landings (TAL) for Northern Gulf of Maine (NGOM) management area, a target-TAC for LAGC incidental catch and set-asides for the observer and research programs for fishing year 2023, and default specifications for fishing year 2024. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: November 9, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–24832 Filed 11–14–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC335]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental To Replacement of Pier 302 at Naval Base Point Loma, San Diego, California

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the U.S. Navy for authorization to take marine mammals incidental to the replacement of Pier 302 at Naval Base Point Loma in San Diego Bay, San Diego, CA. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than December 15, 2022.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.jessicataylor@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jessica Taylor, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on

the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On July 27, 2022, NMFS received a request from the U.S. Navy for an IHA to take marine mammals incidental to construction activities associated with replacing Pier 302 at Naval Base Point Loma (NBPL), San Diego, CA. Following NMFS' review of the application, the U.S. Navy submitted a revised version on September 22, 2022. The application was deemed adequate and complete on October 27, 2022. The U.S. Navy's request is for take of six species of marine mammals by Level B harassment only. Neither the U.S. Navy nor NMFS expect serious injury or mortality to result from this activity, therefore, an IHA is appropriate.

NMFS has previously issued IHAs to the U.S. Navy for similar work over the past 9 years at NBPL in San Diego Bay (Bay), including IHAs issued effective from September 1, 2013, through August 31, 2014 (78 FR 44539, July 24, 2013; Year 1 Project), October 8, 2014 through October 7, 2015 (79 FR 65378, November 4, 2014; Year 2 Project), October 8, 2015 through October 7, 2016 (80 FR 62032, October 15, 2015; Year 3 Project), October 8, 2016 through October 7, 2017 (81 FR 66628, September 28, 2016; Year 4 Project), October 8, 2017 through October 7, 2018 (82 FR 45811, October 2, 2017; Year 5 Project), September 15, 2020 through September 14, 2021 (85 FR 33129, June 1, 2020; Floating Dry Dock Project), October 1, 2021 through September 30, 2022 (86 FR 7993, February 3, 2021; Pier 6 Replacement Project), and January 15, 2022 through January 14, 2023 (86 FR 48986, September 1, 2021; Fuel Pier Inboard Pile Removal Project). The U.S. Navy complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHA and information regarding their monitoring results specific to NBPL may be found in the Estimated Take section.

Description of Proposed Activity

Overview

The U.S. Navy plans to replace Pier 302 at the Naval Information Warfare Center (NIWC) Pacific Bayside Complex on NBPL. Pier 302 houses the U.S. Navy marine mammal pens and support vessels. As part of the proposed action, the U.S. Navy would use vibratory extraction to remove the existing components of marine mammal pens, and impact and vibratory hammers to install new pens. The purpose of the project is to provide the U.S. Navy's marine mammal program with adequate facilities to house its marine mammals and provide a safe working environment for personnel to support the U.S. Navy's overall mission to maintain, train, and equip combat ready Naval forces.

The Navy's proposed activity includes impact and vibratory pile driving, which may result in the incidental take of marine mammals, by harassment only. No Level A harassment is anticipated to occur, and none is proposed for authorization. Due to mitigation measures, only takes by Level B harassment are requested. NBPL is located along the mouth and northern edge of San Diego Bay, CA. The proposed action covers an area of 9,061 feet (ft.)^2 (842 meters (m)^2). Construction activities would begin on October 1, 2023 and last through September 30, 2024.

Dates and Duration

In-water construction activities would occur over 32 days within a 1 year window from October 1, 2023 to September 30, 2024. The Navy states that it will conduct work only in daylight hours. The proposed in-water work schedule is shown in Table 1. In-water work would consist of 18 days of pile removal, then 14 days of pile installation. Pile removal would occur at a rate of one to five piles per day, while pile installation would take place at a rate of one to four piles per day, depending upon the type of pile. It is assumed that pile removal and installation would occur on separate days. In addition to vibratory extraction, some piles may be removed by other methods, such as dead pull, hydraulic pile clipper, wire saw, underwater chainsaw, or high-pressure water jet (Table 1). However, these additional methods are not expected to result in take and are, therefore, not discussed further. In-water pile removal and pile driving is planned from October 1, 2023 through March 31, 2024 in order to avoid construction activities during the breeding and nesting season of the endangered California least tern.

TABLE 1—PROPOSED IN-WATER CONSTRUCTION ACTIVITY SCHEDULE

Pile type	Method	Number of piles	Piles/day	Estimated blow count per pile [3]	Estimated duration per pile (mm:ss) [3]	Total estimated days
Pile Removal Activities						
18″ octagonal concrete	Vibratory Extraction [1]	22	5	N/A	15:00	5
18″ round steel	Vibratory Extraction	3	1	N/A	15:00	3

TABLE 1—PROPOSED IN-WATER CONSTRUCTION ACTIVITY SCHEDULE—Continued

Pile type	Method	Number of piles	Piles/day	Estimated blow count per pile [3]	Estimated duration per pile (mm:ss) [3]	Total estimated days
14″ round timber	Dead pull	up to 10	1	N/A	N/A	10
Pile Installation Activities						
24″ octagonal concrete	Impact hammer [2]	30	4	500	N/A	8
14″ square concrete	Impact Hammer	2	1	250	N/A	2
6″ round steel	vibratory hammer	17	5	N/A	1:00	4

[1] While other methods of pile removal are possible, vibratory extraction is the most likely method that will be used to extract piles. No quantitative exposure analysis was conducted for other potential pile removal methods (hydraulic pile clipper, wire saw, underwater chainsaw, high-pressure water jet) as these methods are not expected to result in take.
[2] With or without high-pressure water jetting occurring simultaneously.
[3] Estimated durations and blow counts as provided by the construction contractor.

Specific Geographic Region

NBPL is located along the mouth and northern edge of San Diego Bay, California (Figure 1). San Diego Bay is a narrow, crescent-shaped natural embayment with an approximate length of 24 kilometers (km) and total area of approximately 11,000 acres (44.5 km^2) (Port of San Diego, 2007). Depths of the bay range from 23 meters (m) below mean lower low water (MLLW) to less than 1.2 m below MLLW at the southern end of the bay (Merkel & Associates, Inc., 2009). The majority of the bay is less than 15 m deep (Merkel & Associates, Inc., 2009). The bay also includes a main navigation channel, maintained at a depth of 14.3 m below MLLW. This channel is utilized for transit by private, commercial, and military vessels (NOAA, 2010). Water depth in the area of Pier 302 ranges from approximately 0–6 m below MLLW.

San Diego Bay experiences mixed diurnal and semi-diurnal tides with a tidal range of approximately 1.7 m. Water temperature in the bay typically ranges from 15.1 to 26.1 °C while salinities of the proposed project area are similar to those of the open ocean, 32.8 to 33 parts per thousand (ppt) (Tierra Data Inc., 2012). San Diego Bay is heavily used by commercial, recreational, and military vessels. Ship noise in the bay has the potential to mask underwater sound produced by the proposed project. Based upon recent measurements of underwater sound in San Diego Bay, the median ambient underwater sound pressure level (SPL) in areas of the bay that may experience project construction noise averages approximately 129.6 dB re 1 µPa.

Figure 1—Proposed Action Area

Detailed Description of Specific Activity

The purpose of this project is to replace the existing Pier 302 at NBPL to provide the Navy's marine mammal program with adequate facilities to house its marine mammals and provide a safe working environment for personnel supporting the Navy's overall mission to maintain, train, and equip combat ready Naval forces. Pier 302 currently house the U.S. Navy marine mammal pens and small program support vessels. The existing Pier 302 was built in 1937 and partially modified in 1987. Currently, the steam beams are in poor condition, concrete piles are corroded, and timber decking is deteriorated (Collins, 2018). The existing pier covers a slightly larger area of 1,800 ft.^{2} (1,003 m^2) than the proposed action would cover.

The Navy proposes to remove the marine mammal pens, gangways, and floating walkways from the area and demolish the existing pier. The Navy would remove 22 18″ concrete structural piles, 3 18″ steel pipe guide piles, and up to 10 14″ timber piles potentially through a variety of extraction methods, including vibratory extraction, dead pull, hydraulic pile clipper, wire saw, underwater chainsaw, or high-pressure water jet (Table 1). Existing concrete and steel piles would be removed using a vibratory extractor and pile clamp by latching on to the pile with the clamp, vibrating the pile to break surface tension, and applying upward pressure to extract the whole pile. The dead pull method may also be used to remove steel or timber piles by securing the piles above the water line and applying upwards pressure to the pile. The timber piles are remnant piles from the original 1937 construction, but the total number of piles and their placement in the pier footprint are unknown. Some of these piles were cut during the 1987 modifications, but it is unknown how many of them remain nor at what depth they were cut. In the case of removal by a hydraulic pile clipper, the hydraulic clipper would be placed over each pile and lowered to 1 foot (0.3 m) below the mudline, where it would be cut. The pile below would remain in place. Diver assistance may or may not be required during this specific pile removal activity. Underwater chainsaws or wire saws operated by a diver may also be used to remove piles at the mudline. Once the piles are removed or cut, a crane would remove the pile and set it onto a barge for transport. Ultimately, the contractor would decide on the use one of the above described methods depending on which proves to be most efficient. Once extracted, the piles will be loaded onto a support barge for eventual offloading. For purposes of analysis, the Navy assumes that all steel and concrete piles would be removed via vibratory extraction. Removal of timber piles is assumed to occur via methods that are not anticipated to result in take of marine mammals.

After demolition of the existing pier, the Navy would construct a new cement pier and gangways through the installation of 30 24″ (0.6 m) structural concrete piles, 2 14″ (0.4 m) concrete guide piles, and 17 6″ (0.2 m) steel pipe guide piles. The piles would be installed either through the use of an impact hammer, with our without water jetting, or vibratory hammer. Floating walkways, gangways, and marine mammal pens would be reinstalled to the north and south of the newly constructed pier. The newly constructed Pier 302 would have a similar footprint to the original Pier 302.

Shore side improvements would include the construction of a new storm drain outlet and revetment under the base of the new pier. Shore side improvement, removal and installation of floating walkways, gangways, and marine mammal pens, and extraction methods such as dead pull, hydraulic pile clipper, wire saw, underwater chainsaw, or high-pressure water jet are not expected to result in take of marine mammals and are, therefore, not discussed further.

The Navy's previous work in the portion of San Diego Bay closest to the location of this proposed work was the Fuel Pier Replacement project, which occurred over 5 years from 2013 to 2018. We reference observational data obtained during monitoring required through IHAs issued to the Navy in association with this project in the following sections. Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is expected to occur, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

There are six marine mammal species that are potentially expected to be present during all or a portion of the in-water work associated with this project in San Diego Bay, including the California sea lion (*Zalophus californianus*), the northern elephant seal (*Mirounga angustirostris*), the harbor seal (*Phoca vitulina*), the bottlenose dolphin (*Tursiops truncatus*), the Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and the common dolphin (*Delphinus delphis*). The Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/*) recently determined both the long-beaked and short-beaked common dolphin belong in the same species and we adopt this taxonomy. However, the SARs still describe the two as separate stocks, and that stock information is presented in Table 2. Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates. For some species, this geographic area may extend beyond U.S. waters. All stocks managed under the MMPA in this region are assessed in NMFS' U.S. Pacific 2021 SARs. All values presented in Table 2 are the most recent available at the time of publication and are available online at: *www.fisheries.noaa.gov/national/*

marine-mammal-protection/marine-mammal-stock-assessments).

TABLE 2—MARINE MAMMAL SPECIES[4] LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N)[1]	Stock abundance (CV, N_{min}, most recent abundance survey)[2]	PBR	Annual M/SI[3]
Order Artiodactyla—Infraorder Cetacea—Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Bottlenose dolphin	*Tursiops truncatus*	California Coastal	-, -, N	453 (0.06, 346, 2011)	2.7	≥2.0
Short-beaked common dolphin.	*Delphinus delphis delphis*	California/Oregon/Washington	-, -, N	1,056,308 (0.21, 888,971, 2018).	8889	≥30.5
Long-beaked common dolphin.	*Delphinus delphis capensis*	California	-, -, N	83,379 (0.216, 69,636, 2018).	668	≥29.7
Pacific white-sided dolphin	*Lagenorhynchus obliquidens*	California/Oregon/Washington	-, -, N	34,999 (0.222, 29,090, 2018).	279	7
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S.	-, -, N	257,606 (N/A,233,515, 2014).	14011	>320
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulana*	California	-, -, N	30,968 (N/A, 27,348, 2012).	1641	43
Northern elephant seal	*Mirounga angustirostris*	California breeding	-, -, N	187,386 (N/A, 85,369, 2013).	5122	13.7

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy *(https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/;* Committee on Taxonomy (2022)).

As indicated above, all six species (with seven managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. While gray whales, Risso's dolphins, and Steller sea lions have been sighted around California coastal waters in the past, these species' general spatial occurrence is such that take is not expected to occur as they typically occur more offshore, and they are not discussed further beyond the explanation provided here.

Specifically, gray whales may be observed in San Diego Bay sporadically during their January southbound migratory periods (Naval Facilities Engineering Command, Southwest and Port of San Diego Bay, 2013), and have previously been included in take authorizations for past projects and IHAs relating to NBPL (refer back to the Year 1–5 IHAs cited above). However, a recent Monitoring Report from October 8, 2017 to January 25, 2018 (NAVFAC SW, 2018b) at NBPL, indicated no sightings occurred for gray whales. Only two gray whales were spotted in the October 8, 2016 to April 30, 2017 (NAVFAC SW, 2017) Monitoring Report by the Navy. During another recent pier replacement project at Naval Base San Diego, south of the proposed project area, gray whales also were not sighted during monitoring (NAVFAC SW, 2022).

Risso's dolphins have not been seen in San Diego Bay but are known to be common in southern California coastal waters (Campbell *et al.,* 2010). While take of Risso's dolphins have been authorized in three of the past IHAs for NBPL (see Year 3 IHA at 80 FR 62032, October 15, 2015; Year 4 IHA at 81 FR 66628, September 28, 2016; and Year 5 IHA at 82 FR 45811, October 2, 2017, for examples), no Risso's dolphins were sighted during any of those projects.

Furthermore, other species that occur in the Southern California Bight may have the potential for isolated occurrence within San Diego Bay or just offshore. In particular, a short-finned pilot whale (*Globicephala macrorhynchus*) was observed off Ballast Point, and a Steller sea lion (*Eumetopias jubatus monteriensis*) was seen in the project area during the Year 2 project at NBPL (79 FR 65378, November 4, 2014). However, these species are not typically observed near the project area and, we it is unlikely that they will occur during this proposed action. Given the unlikelihood of their exposure to the sounds generated from the project, these species are not considered further.

Bottlenose Dolphin

The California coastal stock of bottlenose dolphin is distinct from the offshore population (Perrin *et al.,* 2011; Lowther-Thielking *et al.,* 2015) and occurs in the immediate (within 1 km of shore) coastal waters, primarily between Point Conception, California, and San Quintin, Mexico (Hansen, 1990; Carretta *et al.,* 1998; Carretta *et al.,* 2022). California coastal bottlenose dolphins show little site fidelity and likely move within their home range in response to patchy concentrations of nearshore prey (Defran and Weller, 1999; Bearzi *et al.,* 2009). After finding concentrations of prey, animals may then forage within a more limited spatial extent to take advantage of this local accumulation until such time that prey abundance is reduced, likely then shifting location once again and possibly covering larger distances. Oceanographic events may influence the distribution and residency patterns of dolphins (Hansen and Defran, 1990; Wells *et al.,* 1990). Along the California coast, bottlenose dolphin distribution and movements may be linked to prey distribution (Defran and

Weller, 1999; Bearzi *et al.,* 2009). In San Diego Bay, bottlenose dolphins may be observed foraging on a variety of fish species, including croaker, mackerel, grunts, and mullet (Defran *et al.,* 1986).

In southern California, coastal bottlenose dolphins are typically found within 250 m of the shoreline (Hansen and Defran, 1993). Coastal bottlenose dolphins occur sporadically and in highly variable numbers and locations in San Diego Bay. Navy surveys indicated that bottlenose dolphins were most commonly sighted in April, and more dolphins were observed during El Niño years. Navy surveys frequently result in no observations of bottlenose dolphins, and sightings have ranged from 0–8 groups observed (0–40 individuals). Approximately 67 individual bottlenose dolphins were observed during the fourth year of the NBPL Fuel Pier Replacement project over 152 days of monitoring. Approximately 13 individual bottlenose dolphins were observed over 49 days of monitoring during Year 5 of the NBPL fuel pier replacement project in San Diego Bay (NAVFAC SW, 2017b; 2018b).

Common Dolphin (Short-Beaked and Long-Beaked)

Short-beaked common dolphins are the most abundant cetacean off California and are widely distributed between the coast and approximately 300 nautical miles (nmi; 555.6 km) offshore. In contrast, long-beaked common dolphins generally occur within 50 nmi (92.6 km) offshore. Both stocks may shift their distributions seasonally and annually in response to oceanographic conditions and prey availability (Carretta *et al.,* 2022). Long-beaked common dolphins tend to prefer shallower, warmer waters as compared to the short-beaked common dolphin (Perrin, 2009), yet both stocks appear to be more abundant in coastal waters during warm-water months (Bearzi, 2005). Within San Diego Bay, these two stocks' share overlapping distributions, although they are likely long-beaked (as described by the stranding of this species from San Diego Bay to the U.S.-Mexico border (Danil and St. Leger, 2011). However, it is unlikely that observers would be able to differentiate the specific species in the field.

Common dolphins are often found in large groups of hundreds or even thousands. Within San Diego Bay, sightings of common dolphins are intermittent and most likely during the late spring and early summer when bait fish arrive in the bay. Common dolphins have primarily been observed in the north and north central Bay in groups of 6 to less than 100 animals. The groups typically move rather quickly through the area in tight alignment and have been occasionally observed riding the bow wave of large ships.

Several sightings of common dolphins occurred in the bay during the previous fuel pier demolition and construction project in 2014 and the second period of the previous fuel pier replacement project in 2015. Of the course of 100 days of monitoring, 850 common dolphins were observed in San Diego Bay in 2015 (NAVFAC SW, 2015). Since it is unlikely for the two species to be distinguished in the field, the same estimate of individuals is used as a combined estimate for both species.

Pacific White-Sided Dolphin

Pacific white-sided dolphins are endemic to temperate waters of the North Pacific Ocean, and are common both on the high seas and along the continental margins (Brownell *et al.,* 1999; Carretta *et al.,* 2022). Off the U.S. west coast, Pacific white-sided dolphins occur primarily in shelf and slope waters. Sighting patterns from aerial and shipboard surveys conducted in California, Oregon and Washington suggest seasonal north-south movements, with animals found primarily off California during the colder water months and shifting northward into Oregon and Washington as water temperatures increase in late spring and summer (Green *et al.,* 1992; 1993; Forney and Barlow, 1998; Barlow, 2016; Carretta *et al.,* 2022). Pacific white-sided dolphins are highly social and commonly occur in groups of less than a hundred, although groups of several thousands of individuals have been observed. They often associate with Risso's dolphins and short-beaked common dolphins, and occasionally feed in association with California sea lions and mixed species aggregations of seabirds.

Pacific white-sided dolphins are uncommon in San Diego Bay, but observations of this species has increased during El Niño years. Given the lack of observations during the fourth year of the NBPL Fuel Pier Replacement project, the Navy believes the monitoring data from the second year of this project represent the most conservative numbers of Pacific white-sided dolphins that are likely to occur (NAVFAC SW, 2015).

California Sea Lion

The California sea lion is the most common pinniped species in the vicinity of NBPL and northern San Diego Bay. California sea lions regularly occur on piers and buoys within and leading into San Diego Bay (Merkel & Associates, Inc., 2008). In San Diego Bay, California sea lions may also occur on rocks and bait barges.

Habitat use and distribution varies with sex and reproductive stage. Adult males may haul out on land to breed and defend territory from mid-May through late July. During August and September, adult males migrate to feeding areas as far north as Puget Sound, WA and British Columbia (Lowry *et al.,* 1991). Females and immature California sea lions remain near the rookeries for most of the year. Most births occur from mid-June to mid-July. Different age classes of California sea lions are found in the San Diego region throughout the year (Lowry *et al.,* 1992). Navy surveys indicate that the local population in San Diego Bay comprises mainly adult females and sub-adult males and females. Based upon Navy marine mammal surveys conducted throughout the north San Diego Bay project area (Merkel & Associates, Inc., 2008; Johnson, 2010; Lerma, 2012, 2014), many animals are typically hauled out within the vicinity of the proposed action area. Adult males and females are known to haul out more often during warm-water months.

The closest potential haul-out locations to Pier 302 are docks associated with Pier 160, approximately 100 m (333 ft) to the north, and docks at the end of Pier 99, approximately 550 m (1,804 ft) to the south. However, these docks are in constant use for Navy operations and training activities. California sea lions may haul-out at those locations but are unlikely to remain for very long due to the high levels of activity. California sea lions also haul-out at barges associated with the Everingham Brothers Bait Barge Company that are from 700 to 1,000 m (0.4 to 0.5 nmi) southeast of the proposed action area. Beyond these man-made structures, there are no known natural haul-out locations in the vicinity of the proposed action area.

Harbor Seal

Pacific harbor seals range from Baja California to the eastern Aleutian Islands. Harbor seals do not make extensive pelagic migrations, but may travel hundreds of kilometers to find food or suitable breeding areas (Herder, 1986; Harvey and Goley, 2011; Carretta *et al.,* 2022). Grigg *et al.* (2009) reported seasonal shifts in harbor seal movements based on prey availability.

Harbor seals may haul out on rocks, buoys, or other structures and are relatively uncommon in San Diego Bay, although harbor seals have been observed during several past Navy

projects near Ballast Point (Tierra Data Inc., 2012; Jenkins, 2012), Pier 122 (Jenkins, 2012; Bowman, 2014), along the NBPL shoreline (Lerma, 2014) and near the Naval Mine and Anti-Submarine Warfare Comman (NMAWC) (McConchie, 2014). During the fourth year of the NBPL fuel pier replacement project, 88 individual harbor seals were observed over a 152 day monitoring period (NAVFAC SW, 2017; 2018a).

Elephant Seal

Northern elephant seals breed and give birth in California and Baja California, mainly on offshore islands during the months of December to March (Stewart and Huber, 1993; Stewart *et al.,* 1994; Carretta *et al.,* 2022). Molting season takes place from March to August. In between the spring/summer molting season and winter breeding season, northern elephant seals migrate to feeding grounds (Carretta *et al.,* 2022). Males and females exhibit spatial segregation in foraging areas with males feeding on benthic prey along the continental shelf near the Gulf of Alaska and western Aleutian Islands, and females feeding on pelagic prey in pelagic areas near the Gulf of Alaska and central North Pacific (Le Boeuf *et al.,* 2000).

Northern elephant seal populations in the U.S. and Mexico have recovered after being reduced to near extinction by hunting (Stewart *et al.,* 1994) and undergoing a severe population bottleneck and loss of genetic diversity that resulted in the population being reduced to only an estimated 10–30 individuals (Hoelzel *et al.,* 2002; Carretta *et al.,* 2022). The northern elephant seal population is estimated to have grown at 3.8 percent annually since 1988 (Lowry *et al.,* 2014). There are two distinct populations of northern elephant seals, including a breeding population in Baja California, Mexico and a breeding population on U.S. islands off California. Northern elephant seals in the San Diego region could be from either population (Carretta *et al.,* 2021).

Northern elephant seals occur in the southern California bight, and have the potential to occur in San Diego Bay (NAVFAC SW and POSD, 2013). The most recent documented occurrences of northern elephant seals near the proposed project area was in 2015. A single distressed juvenile was observed hauled out on the beach to the west of Pier 99 and approximately 0.6 km south of the proposed project area during the second year of work on the Fuel Pier Replacement project at NBPL (NAVFAC SW, 2015). In addition, a second juvenile was observed near the NBPL Harbor Drive Annex, approximately 3 km north of the proposed project area (McConchie, personal communication). Given the continuing, long-term increase in the population of northern elephant seals (Lowry *et al.,* 2014), there is an increasing possibility of occurrence in the project area.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may affect marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through

effects on annual rates of recruitment or survival.

Acoustic effects on marine mammals during the specified activities can occur from impact pile driving and vibratory driving and removal. The effects of underwater noise from the Navy's proposed activities have the potential to result in Level A or Level B harassment of marine mammals in the action area.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far (ANSI, 1995). The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 decibels (dB) from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activities may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact and vibratory pile driving and removal. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998; NMFS, 2018). Non-impulsive sounds (*e.g.,* machinery operations such as drilling or dredging, vibratory pile driving, underwater chainsaws, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI, 1995; NIOSH, 1998; NMFS, 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997).

Two types of hammers would be used on this project, impact and vibratory. Impact hammers operate by repeatedly dropping and/or pushing a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is considered impulsive. Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce non-impulsive, continuous sounds. Vibratory hammering generally produces SPLs 10 to 20 dB lower than impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

The likely or possible impacts of the Navy's proposed activities on marine mammals could be generated from both non-acoustic and acoustic stressors. Potential non-acoustic stressors include the physical presence of the equipment, vessels, and personnel; however, we expect that any animals that approach the project site(s) close enough to be harassed due to the presence of equipment or personnel would be within the Level B harassment zones from pile driving and would already be subject to harassment from the in-water activities. Therefore, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors are generated by heavy equipment operation during pile installation and removal (*i.e.,* impact and vibratory pile driving and removal).

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving equipment is the primary means by which marine mammals may be harassed from the Navy's specified activities. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). Generally, exposure to pile driving and removal and other construction noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses, such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions, such as communication and predator and prey detection. The effects of pile driving and demolition noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mother with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat. No physiological effects other than permanent threshold shift (PTS) are anticipated or proposed to be authorized, and therefore are not discussed further.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent,

irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward, 1960; Kryter *et al.,* 1966; Miller, 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, because there are limited empirical data measuring PTS in marine mammals (*e.g.,* Kastak *et al.,* 2008), largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2016), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower $SEL_{cum,}$ the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum}, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*), and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (*i.e.,* a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.,* 2019a, 2019b, 2020a, 2020b). In addition, TTS can accumulate across multiple exposures, but the resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Finneran *et al.,* 2010; Kastelein *et al.,* 2014; Kastelein *et al.,* 2015a; Mooney *et al.,* 2009). This means that TTS predictions based on the total, cumulative SEL will overestimate the amount of TTS from intermittent exposures such as sonars and impulsive sources.

The potential for TTS from impact pile driving exists. After exposure to playbacks of impact pile driving sounds (rate 2,760 strikes/hour) in captivity, mean TTS increased from 0 dB after 15 minute exposure to 5 dB after 360 minute exposure; recovery occurred within 60 minutes (Kastelein *et al.,* 2016). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. Nonetheless, what we considered is the best available science. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007, 2019), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018).

Installing piles for this project requires impact pile driving. There would likely be pauses in activities producing the sound during each day. Given these pauses and the fact that many marine mammals are likely moving through the project areas and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); or avoidance of areas where sound sources are located. Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010; Southall *et al.,* 2021). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans.

Please see Appendices B and C of Southall *et al.* (2007) as well as Nowacek *et al.* (2007); Ellison *et al.* (2012), and Gomez *et al.* (2016) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007; Melcón *et al.,* 2012). In addition, behavioral state of the animal plays a role in the type and severity of a behavioral response, such as disruption to foraging (*e.g.,* Sivle *et al.,* 2016; Wensveen *et al.,* 2017). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal (Goldbogen *et al.,* 2013).

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of these projects based on observations of marine mammals during previous, similar projects in the area.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). San Diego Bay is heavily used by commercial, recreational, and military vessels, and background sound levels in the area are already elevated. Due to the transient nature of marine mammals to move and avoid disturbance, masking is not likely to have long-term impacts on marine mammal species within the proposed project area.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For

instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would likely previously have been ''taken'' because of exposure to underwater sound above the behavioral harassment thresholds, which are generally larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

The Navy's proposed construction activities could have localized, temporary impacts on marine mammal habitat, including prey, by increasing in-water sound pressure levels and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project areas (see discussion below). During impact and vibratory pile driving or removal, elevated levels of underwater noise would ensonify the project area where both fishes and mammals occur, and could affect foraging success. Additionally, marine mammals may avoid the area during construction, however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations. Construction activities are expected to be of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound.

A temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the area where piles are installed or removed. In general, turbidity associated with pile installation is localized to about a 25-ft (7.6-m) radius around the pile (Everitt *et al.,* 1980). Turbidity monitoring during high-pressure water jetting to remove caissons for the fourth IHA of the Fuel Pier Replacement Project revealed relatively minor, if any, changes, with only localized decreases in water clarity that dissipated within 3 to 5 minutes (but up to 10) from the start of jetting (NAVFAC SW, 2018a). Cetaceans are not expected to be close enough to the pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Local currents are anticipated to disburse any additional suspended sediments produced by project activities at moderate to rapid rates depending on tidal stage. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat—The area likely impacted by the Pier 302 Replacement Project is relatively small compared to the total available habitat in San Diego Bay. The proposed project area is highly influenced by anthropogenic activities, and provides limited foraging habitat for marine mammals. Furthermore, pile driving and removal at the proposed project site would not obstruct long-term movements or migration of marine mammals.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish and marine mammal avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. Any behavioral avoidance by prey of the disturbed area would still leave significantly large areas of potential foraging habitat in the nearby vicinity.

In-water Construction Effects on Potential Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton, other marine mammals). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick and Mann, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish; several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Many studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). In response to pile driving, Pacific sardines and northern anchovies may exhibit an immediate startle response to individual strikes, but return to ''normal'' pre-strike behavior following the conclusion of pile driving with no evidence of injury as a result (Appendix C in NAVFAC SW, 2014). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Popper *et al.,* 2005).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The most likely impact to fishes from pile driving and removal and construction activities at the project area would be temporary behavioral avoidance of the area. The duration of

fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary. Further, it is anticipated that preparation activities for pile driving or removal (*i.e.,* positioning of the hammer, clipper or wire saw) and upon initial startup of devices would cause fish to move away from the affected area outside areas where injuries may occur. Therefore, relatively small portions of the proposed project area would be affected for short periods of time, and the potential for effects on fish to occur would be temporary and limited to the duration of sound-generating activities.

In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed actions are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Any behavioral avoidance by fish of the disturbed area would still leave significantly large potential areas fish and marine mammal foraging habitat in the nearby vicinity. Thus, we conclude that impacts of the specified activities are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to the acoustic sources. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* vibratory or impact pile driving and removal) discussed in detail below in the Proposed Mitigation section. Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

The Navy's proposed construction activities include the use of continuous (vibratory pile-driving) and impulsive (impact pile-driving) sources, and therefore the RMS SPL threshold of 160 dB re 1 μPa is applicable for impulsive noise. For continuous noise, the RMS SPL threshold of 129.6 dB re 1 μPa is applicable as a de facto harassment threshold, based upon measured noise data for San Diego Bay as referenced in the Description of Proposed Activity section.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Navy's proposed activity includes the use of impulsive (impact hammer) and non-impulsive (vibratory hammer) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/*

marine-mammal-protection/marine-mammal-acoustic-technical-guidance.

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{p,0\text{-pk,flat}}$: 219 dB; $L_{E,p,\ LF,24h}$: 183 dB	*Cell 2:* $L_{E,p,\ LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{p,0\text{-pk,flat}}$: 230 dB; $L_{E,p,\ MF,24h}$: 185 dB	*Cell 4:* $L_{E,p,\ MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{p,0\text{-pk,flat}}$: 202 dB; $L_{E,p,HF,24h}$: 155 dB	*Cell 6:* $L_{E,p,\ HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{p,0\text{-pk,flat}}$: 218 dB; $L_{E,p,PW,24h}$: 185 dB	*Cell 8:* $L_{E,p,\ PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{p,0\text{-pk,flat}}$: 232 dB; $L_{E,p,OW,24h}$: 203 dB	*Cell 10:* $L_{E,p,OW,24h}$: 219 dB.

* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0\text{-pk}}$) has a reference value of 1 µPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1µPa^{2}s. In this Table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO, 2017). The subscript ''flat'' is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.,* 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected by sound generated by the primary components of the project (*i.e.,* impact and vibratory pile driving).

In order to calculate distances to the Level A harassment and Level B harassment thresholds for the methods and piles being used in this project, the Navy used acoustic monitoring data from various similar locations to develop source levels for the different pile types, sizes, and methods proposed for use (Table 5).

TABLE 5—SOURCE LEVELS FOR PROPOSED REMOVAL AND INSTALLATION ACTIVITIES

Method	Pile size/type	Peak sound pressure (dB re 1µPa) [1]	Mean maximum RMS SPL (dB re 1 µPa) [1]	SEL (dB re 1µPa2 sec) [1]	Source
Pile Removal Activities					
Vibratory Extraction	18″ Octagonal Concrete [2]		[3] 162		NAVFAC SW, 2022.
	18″ Steel Pipe		[4] 156		Denes *et al.,* 2016.
Pile Installation Activities					
Impact Pile Driving	24″ Octagonal Concrete	188	176	166	Caltrans, 2020.
	14″ Square Concrete	183	166	154	Caltrans, 2020.
Vibratory Hammer	6″ Round Steel [5]	171	155	155	Illingworth and Rodkin, 2007.

[1] As measured, or calculated, at 10 m (33 ft).

[2] In the absence of information on vibratory extraction of 18-inch octagonal concrete piles, source data from 20-inch concrete square piles NAVFAC SW (2022) was used as a proxy source level.

[3] The maximum mean calculated source value for 20-inch square concrete piles (NAVFAC SW, 2022) was 162 dB RMS based on unpublished data from the Pier 6 Replacement Project.

[4] Table 20 in Denes *et al.* (2016) records a value of 152.4 dB RMS at 17 m (56 ft) for vibratory extraction. This data point, and a transmission loss of 15LogR, was used to back-calculate a value of 155.9 dB RMS at 10 m (33 ft) (rounded to 156 dB RMS).

[5] In the absence of information on vibratory installation of 6-inch round steel piles, source data from 12-inch round steel piles (Illingworth & Rodkin, 2017) was used as a proxy source level. Abbreviations: µPa = microPascal; dB = decibel; RMS = root mean square; SPL = sound pressure level; m = meters.

Level B Harassment Zones

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography.

The general formula for underwater TL is:

TL = B * Log10 (R1/R2), where

TL = transmission loss in dB

B = transmission loss coefficient; for practical spreading equals 15

R1 = the distance of the modeled SPL from the driven pile, and

R2 = the distance from the driven pile of the initial measurement

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for the Navy' proposed activities. The Level B harassment zones and areas of zones of

influence (ZOIs) for the Navy's proposed activities are shown in Table 6.

TABLE 6—DISTANCE TO LEVEL B HARASSMENT THRESHOLDS AND ZOI AREAS

Method	Pile size/type	Maximum RMS SPL (dB re 1 μPa) [1]	Projected radial distance to Level B harassment thresholds and ensonified area [1 2]	
			Distance m	Area km^2
Pile Removal Activities				
Vibratory Extraction	18″ Octagonal Concrete	162	1,445	3.13
	18″ Steel Pipe	156	575	0.68
Pile Installation Activities				
Impact Pile Driving [3]	24″ Octagonal Concrete	176	117	0.041
Impact Pile Driving	14″ Square Concrete	166	25	<0.01
Vibratory Hammer	6″ Round Steel	155	494	0.45

[1] The Level B ZOIs for continuous pile removal and installation activities are based on the distance for noise to decay to ambient levels (129.6 dB re 1μPa), while 160 dB was used for impulsive sound.
[2] Assumes Practical Spreading Loss.
[3] With or without High-pressure Water Jetting.
Abbreviations: dB re 1 μPa = decibels referenced to a pressure of 1 microPascal, km^2 = square kilometers, m = meters, ft = feet, RMS = root mean square, ZOI = Zone of Influence.

Level A Harassment Zones

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources, such as pile installation or removal, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. The isopleths generated by the User Spreadsheet used the same TL coefficient as the Level B harassment zone calculations (*i.e.,* the practical spreading value of 15). Inputs used in the User Spreadsheet (*e.g.,* number of piles per day, duration and/or strikes per pile) are presented in Table 1. The maximum RMS SPL/SEL SPL and resulting isopleths are reported below in Table 7. The maximum RMS SPL value was used to calculate Level A harassment isopleths for vibratory pile driving and extraction activities, while the single strike SEL SPL value was used to calculate Level A isopleths for impact pile driving activities.

TABLE 7—DISTANCES TO LEVEL A HARASSMENT THRESHOLDS

Method	Pile size/type	Maximum RMS SPL (dB re 1 μPa) [1]	Single strike SEL (dB re 1 μPa^2 sec) [1]	Duration (hrs/day)	Project distances to Level A thresholds (m)		
					MF	PW	OW
Pile Removal Activities							
Vibratory Extraction	18″ Octagonal Concrete [2]	162	N/A	1.25	0.8	5.6	0.4
	18″ Steel Pipe	[2] 156	N/A	0.25	0.1	0.8	0.1
Pile Installation Activities							
Impact Pile Driving	24″ Octagonal Concrete	176	166	1.33	4.1	[3] 62.4	4.5
	14″ Square Concrete	166	154	0.25	0.2	2.5	0.2
Vibratory Hammer	6″ Round Steel	155	155	0.07	0.0	0.3	0.0

[1] As measured at 10 m (33 ft.).
[2] Table 20 in Denes *et al.* (2016) records a value of 152.4 dB RMS at 17 m (56 ft.) for vibratory extraction. This data point, and a transmission loss of 15LogR, was used to back-calculate a value of 156 dB RMS at 10 m (33 ft.).
[3] Value is greater than the standard shutdown zone of 20 m (see Proposed Mitigation) and will be monitored as shutdown zone to ensure no Level A takes of harbor seals or northern elephant seals occur during impact pile driving of 24-inch octagonal concrete piles.
Abbreviations: RMS = root mean square, dB re 1 μPa = decibels referenced to a pressure of 1 microPascal, m = meters, ft = feet, MF = mid-frequency cetaceans, PW = phocid pinnipeds, OW = otariid pinnipeds.

Marine Mammal Occurrence

In this section, we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations. Unless otherwise specified, the term ''pile driving'' in this section, and all following sections, may refer to either pile installation or removal. NMFS has carefully reviewed the Navy's analysis and concludes that it represents an appropriate and accurate method for

estimating incidental take that may be caused by the Navy's activities.

Daily occurrence estimates of marine mammals in the proposed project area are based upon the Year 4 IHA monitoring report from the Fuel Pier Replacement Project (NAVFAC SW, 2017b). Year 4 is expected to be most representative of typical species occurrences as this monitoring period had the highest number of activity days and the highest average number of animals observed per day for the three most common species in the area (California sea lion, harbor seal, bottlenose dolphin), with the exception of Year 2. However, Year 2 was an El Niño year and not considered representative of typical species occurrences. The Year 2 monitoring report data was used for any species not observed in Year 4 (common dolphin, Pacific white-sided dolphin, northern elephant seal) (NAVFAC SW, 2015) (Table 8). Years 1, 3, and 5 included significantly less monitoring effort than Years 2 and 4, and may also not be representative of typical species richness and occurrences.

TABLE 8—TOTAL AND DAILY SPECIES OCCURRENCES DURING YEARS 2 AND 4 IHA MONITORING

Species	Year 2 IHA (100 monitoring days; El Nino year)		Year 4 IHA (152 monitoring days)	
	Total observed	Average per day	Total observed	Average per day
California sea lion	7,507	75.1	2,263	*14.9
Harbor seal	248	2.5	88	*0.6
Bottlenose dolphin	695	7	67	*0.4
Common dolphin	850	*8.5	N/a	N/a
Pacific white-sided dolphin	27	*0.3	N/a	N/a
Northern elephant seal	[1] 1	[1] 1	N/a	N/a

* Mean estimate used for daily occurrences for current analysis.
[1] Same individual hauled out each day.

Year 4 monitoring consisted of the longest effort of all 5 IHA years for the Navy Fuel Pier Replacement Project, and daily occurrence estimates for California sea lions, harbor seals, and bottlenose dolphins were selected from this year. Common dolphins, Pacific white-sided dolphins, and northern elephant seals were not sighted in Year 4; however, these species were sighted in Year 2 monitoring. Pacific white-sided dolphins were only sighted during this year. Daily occurrence estimates for common dolphins and Pacific white-sided dolphins were selected from Year 2. Only one northern elephant seal was sighted during the Year 2 monitoring, and the same individual was hauled out each day. Using a daily occurrence estimate from past monitoring was, therefore, not an accurate approach for estimating occurrence of northern elephant seals. Past monitoring efforts, including the one northern elephant seal sighted during Year 2 monitoring and a sighting north of the project area, (McConchie, 2015; NAVFAC SW, 2015) documented a total of two juvenile northern elephant seals in the proposed project area, as described earlier in the Description of Marine Mammals in Areas of Specified Activities section. Due to increasing stock numbers, there is a reasonable probability that this species could be sighted in the proposed project area during construction activities. Instead of using past monitoring data to estimate daily occurrence, it is expected that two northern elephant seals may be observed in the proposed project area during construction activities, based upon previous sighting data. The Navy added a buffer of five seals to this estimate for a total of seven expected elephant seals in the area during construction activities, and NMFS agrees with this approach.

Monitoring during Year 4 yielded an observation of 2,263 California sea lions over the course of the 152-day monitoring period. These observations equate to an average of 14.9 California sea lions observed per day, and approximately 15 California sea lions expected to be in the vicinity of Pier 302, when this estimate is rounded.

Based upon monitoring during Year 4, 88 harbor seals were observed over the course of the 152-day monitoring period. These observations equate to an average of 0.6 harbor seals observed per day, and approximately 1 seal per day expected to be in the vicinity of Pier 302 when this estimate is rounded.

Monitoring during Year 4 yielded an observation of 67 bottlenose dolphins in the proposed project area over the course of the 152-day monitoring period. This observation equates to an average of 0.4, or 1 if rounded, bottlenose dolphins expected to be in the vicinity of Pier 302 each day of the proposed construction activities.

During Year 2 monitoring, 850 common dolphins were sighted in the proposed project area over the course of the 152-day monitoring period. This equates to an average of 8.5 common dolphins observed per day. When rounded to the nearest whole number, 9.0 individuals are expected to be sighted per day in the vicinity of Pier 302.

Monitoring during Year 2 documented seven sightings of Pacific white-sided dolphins, comprising 27 individuals, with an average of 0.28 individuals sighted per day of monitoring. Rounding this estimate to the nearest whole number leads to 1.0 individual per day to be expected to be in the vicinity of Pier 302 during the proposed construction activities.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

Daily occurrence estimates were multiplied by the number of days of pile removal and installation (32 days) to calculate estimated take by Level B harassment of California sea lions, harbor seals, bottlenose dolphins, common dolphins, Pacific white-sided dolphins, and northern elephant seals (Table 9).

TABLE 9—PROPOSED TAKES BY LEVEL B HARASSMENT AND PERCENT OF STOCK PROPOSED TO BE AUTHORIZED FOR TAKE

Species	Expected daily average individuals	Proposed take by Level B harassment	Percentage of population proposed to be authorized for take
California sea lion [1]	15	480	0.19
Harbor seal [1]	1	32	0.10
Bottlenose dolphin [1]	1	32	7.1
Common dolphin (long and short beaked) [2]	9	288	* 0.35
Pacific white-sided dolphin [2]	1	32	0.09
Northern elephant seal	([3])	7	0.004

[1] Average daily counts based on observations during Year 4 Fuel Pier Replacement Project Monitoring (NAVFAC SW, 2017b).
[2] Average daily counts based on observations during Year 2 Fuel Pier Replacement Project Monitoring (NAVFAC SW, 2015).
[3] Expected potential of two northern elephant seals over the duration of project activity with a +5 buffer for Level B Take.
* Percent population calculated for each stock of common dolphins. Percentage in the table represents the percent of take of long-beaked common dolphins as this would be a greater percentage than if all take were attributed to short-beaked common dolphins (0.03 percent).

By using the sighting-based approach, take values are not affected by the estimated harassment distances from Tables 6 and 7. Given the very small Level A harassment isopleths for all species and proposed mitigation measures, no take by Level A harassment is anticipated or proposed for this authorization.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

Shutdown Zones

Before the commencement of in-water construction activities, the Navy would establish shutdown zones for all activities. The purpose of a shutdown zone is to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area. During all in-water construction activities, the Navy has proposed to implement a standard 20 m (66 ft) shutdown zone, with the exception of a 70 m (230 ft) zone for phocids during the use of impact pile driving for the 24″ octagonal concrete piles. These distances exceed the estimated Level A harassment distances (Table 10). During the impact installation of the 24-inch octagonal concrete piles, the shutdown zone for phocids will be buffered to 70 m (230 ft) to encompass the Level A harassment zone. Adherence to this expanded shutdown zone will avoid the potential for the take of phocids by Level A harassment during impact pile driving. If a marine mammal enters a buffered shutdown zone, in-water activities would be stopped until visual confirmation that the animal has left the zone or the animal is not sighted for 15 minutes.

All marine mammals will be monitored in the Level B harassment zones and throughout the area as far as visual monitoring can take place. If a marine mammal enters the Level B harassment zone, in-water activities will continue and the animal's presence within the estimated harassment zone will be documented.

The Navy would also establish shutdown zones for all marine mammals for which take has not been authorized or for which incidental take has been authorized but the authorized number of takes has been met. These zones are equivalent to the Level B harassment zones for each activity. If a marine mammal species not covered under this IHA enters the shutdown zone, all in-water activities will cease until the animal leaves the zone or has not been observed for at least 1 hour, and NMFS will be notified about species and precautions taken. Pile removal will proceed if the non-IHA species is observed to leave the Level B harassment zone or if 1 hour has passed since the last observation.

If shutdown and/or clearance procedures would result in an imminent safety concern, as determined by the Navy, the in-water activity will be allowed to continue until the safety concern has been addressed, and the animal will be continuously monitored. The Navy Point of Contact (POC) will be consulted before re-commencing activities.

TABLE 10—SHUTDOWN ZONES AND LEVEL B HARASSMENT ZONES

Method	Pile size/type	Shutdown zones m (ft)			Level B harassment zones m (ft)
		MF	PW	OW	
Pile Removal Activities					
Vibratory Extraction	18″ Octagonal Concrete	20 (66)	20 (66)	20 (66)	1,445 (4,742)
	18″Steel Pipe	20 (66)	20 (66)	20 (66)	575 (1,888)
Pile Installation Activities					
Impact Pile Driving	24″ Octagonal Concrete	20 (66)	[1] 70 (230)	20 (66)	117 (383)
	14″ Square Concrete	20 (66)	20 (66)	20 (66)	25 (82)
Vibratory Hammer	6″ Round Steel	20 (66)	20 (66)	20 (66)	494 (1,619)

[1] Level A ZOI buffered from 62.5 m up to 70 m.

Protected Species Observers

The placement of protected species observers (PSOs) during all pile driving activities (described in the Proposed Monitoring and Reporting section) would ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving would be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

Pre-Activity Monitoring

Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zones listed in Table 10, pile driving activity would be delayed or halted. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones would commence. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

Soft-Start Procedures

Soft-start procedures provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft-start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring during pile driving activities would be conducted by PSOs meeting NMFS' the following requirements:

- Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods would be used;
- At least one PSO would have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience; and
- Where a team of three or more PSOs is required, a lead observer or monitoring coordinator would be designated. The lead observer would be required to have prior experience

working as a marine mammal observer during construction.

PSOs would have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

The Navy would have at least two PSOs stationed at the best possible vantage points in the project area to monitor during all pile driving activities. If a PSO sights a marine mammal in the shutdown zone, the PSO should alert the ''command'' PSO to notify the equipment operator to shut down. If the ''command PSO'' does not respond, any PSO has the authority to notify the need for a shutdown. If the ''command'' PSO calls for a shutdown, the ''command'' PSO will let the contractor know when activities can re-commence. Additional PSOs may be employed during periods of low or obstructed visibility to ensure the entirety of the shutdown zones are monitored. A marine mammal monitoring plan will be developed and submitted to NMFS for approval prior to commencing in-water construction activities.

Reporting

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving activities, or 60 days prior to a requested date of issuance of any future IHAs for the project, or other projects at the same location, whichever comes first. The marine mammal report would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report would include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including: (a) How many and what type of piles were driven or removed and the method (*i.e.,* impact or vibratory); and (b) the total duration of time for each pile (vibratory driving) number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring; and
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

PSOs would record all incidents of marine mammal occurrence, regardless of distance from activity, and would document any behavioral reactions in concert with distance from piles being driven or removed. Specifically, PSOs will record the following:

- Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;
- Time of sighting;
- Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;
- Distance and location of each observed marine mammal relative to the pile being driven or hole being drilled for each sighting;
- Estimated number of animals (min/max/best estimate);
- Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*);
- Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in Table 2, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

Level A harassment is extremely unlikely given the small size of the Level A harassment isopleths and the required mitigation measures designed to minimize the possibility of injury to marine mammals. No mortality is anticipated given the nature of the activity.

Pile installation and removal activities have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level A and Level B harassment from underwater sounds generated from impact and vibratory pile installation, and vibratory pile removal activities. Potential takes could occur if individuals move into the ensonified zones when these activities are underway.

The takes from Level B harassment would be due to potential behavioral disturbance. No serious injury or mortality is anticipated for any stocks presented in this analysis given the nature of the activity and mitigation measures designed to minimize the

possibility of injury. The potential for harassment is minimized through construction methods and the implementation of planned mitigation strategies (see Proposed Mitigation section).

Take would occur within a limited, confined area of each stock's range. Level B harassment would be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take authorized is extremely small when compared to stock abundance.

No marine mammal stocks for which incidental take authorization is proposed are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. The relatively low marine mammal occurrences in the area, small shutdown zones, and proposed monitoring make injury takes of marine mammals unlikely. The shutdown zones would be thoroughly monitored before the proposed vibratory pile installation and removal begins, and construction activities would be postponed if a marine mammal is sighted within the shutdown zone. There is a high likelihood that marine mammals would be detected by trained observers under environmental conditions described for the proposed project. Limiting construction activities to daylight hours will also increase detectability of marine mammals in the area. Therefore, the proposed mitigation and monitoring measures are expected to eliminate the potential for injury and Level A harassment as well as reduce the amount and intensity for Level B behavioral harassment. Furthermore, the pile installation and removal activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in other similar locations which have occurred with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment.

Anticipated and authorized takes are expected to be limited to short-term Level B harassment (behavioral disturbance) as construction activities will occur over the course of 32 weeks. Effects on individuals taken by Level B harassment, based upon reports in the literature as well as monitoring from other similar activities, may include increased swimming speeds, increased surfacing time, or decreased foraging (*e.g.,* Thorson and Reyff, 2006; NAVFAC SW, 2018b). Individual animals, even if taken multiple times, will likely move away from the sound source and be temporarily displaced from the area due to elevated noise level during pile removal. Marine mammals could also experience TTS if they move into the Level B monitoring zone. TTS is a temporary loss of hearing sensitivity when exposed to loud sound, and the hearing threshold is expected to recover completely within minutes to hours. Thus, it is not considered an injury. While TTS could occur, it is not considered a likely outcome of this activity. Repeated exposures of individuals to levels of sounds that could cause Level B harassment are unlikely to considerably significantly disrupt foraging behavior or result in significant decrease in fitness, reproduction, or survival for the affected individuals. In all, there would be no adverse impacts to the stock as a whole.

The proposed project is not expected to have significant adverse effects on marine mammal habitat. There are no Biologically Important Areas or ESA-designated critical habitat within the project area, and the proposed activities would not permanently modify existing marine mammal habitat. The activities may cause fish to leave the area temporarily. This could impact marine mammals' foraging opportunities in a limited portion of the foraging range, however, due to the short duration of activities and the relatively small area of affected habitat, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities would have only minor, short-term effects on individuals. The specified activities are not expected to impact reproduction or survival of any individual marine mammals, much less affect rates of recruitment or survival and would therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality or Level A harassment is anticipated or authorized;
- The specified activity and associated ensonified areas are very small relative to the overall habitat ranges of all species;
- Biologically important areas or critical habitat have not been identified within the project area;
- The lack of anticipated significant or long-term effects to marine mammal habitat;
- The Navy is required to implement mitigation measures to minimize impacts, such as PSO observation and shutdown zones of 20 m (66 ft); and,
- Monitoring reports from similar work in San Diego Bay have documented little to no effect on individuals of the same species impacted by the specified activities.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS proposes to authorize is below one-third of the estimated stock abundances for all seven species (refer back to Table 9). For most requested species, the proposed take of individuals is less than 1 percent of the abundance of the affected stock (with exception for bottlenose dolphins at 7.1 percent). This is likely a conservative estimate because it assumes all takes are of different individual animals, which is likely not the case. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals,

NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the U.S. Navy for conducting the NBPL Pier 302 Replacement Project in San Diego Bay from October 1, 2023 through September 30, 2024, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed construction activities. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: November 9, 2022.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–24847 Filed 11–14–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC542]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a meeting of its Individual Fishing Quota (IFQ) Focus Group. The meeting is open to the public. There will be a virtual option for the public to listen to the plenary sessions and provide public comments at the end of day 2.

DATES: The meeting will convene on November 30, 2022, from 9 a.m. to 5 p.m. and December 1, 2022, from 9 a.m. to 4 p.m., EST.

ADDRESSES: The meeting will take place at the Gulf Council office. Please visit the Gulf Council website at *www.gulfcouncil.org* for meeting materials.

Council address: Gulf of Mexico Fishery Management Council, 4107 W. Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Ava Lasseter, Anthropologist, Gulf of Mexico Fishery Management Council; *ava.lasseter@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Charge: To provide a detailed plan for the following:

- Review the current IFQ programs' goals and objectives and recommend their replacement/retention. These revised goals and objectives shall serve as the basis for the Focus Group recommendations.
- Define the changes needed for an improved Red Snapper and Grouper-Tilefish IFQ Program to specifically address minimizing discards, fairness and equity, and new entrants' issues.
- The Council is considering changes to assist new entrants (*i.e.,* replacement fishermen) to the IFQ programs.

○ What could such program changes look like and what would be the implications of those changes?

○ Evaluate the benefits and drawbacks to get to active fishermen who own no shares:

1. Increases in annual allocation (not shares), and

2. Allocation held by the agency in non-active accounts.

The meeting will begin with welcome, introductions and meeting format, followed by a review of the agenda and meeting objectives. The focus group will assess and discuss program changes, next steps and other business. Public comment will be available as time allows at the end of Day 2.

Meeting Adjourns

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org.* You may register for the webinar to listen-in only by visiting *www.gulfcouncil.org* and click on the Council meeting on the calendar.

Although other non-emergency issues not on the agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take-action to address the emergency.

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

Dated: November 8, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–24756 Filed 11–14–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC536]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Whiting Committee and Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, November 30, 2022, at 10 a.m.

ADDRESSES:

Meeting address: Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; phone: (401) 739–3000.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Whiting Committee and Advisory Panel will meet to receive an annual monitoring report for fishing year 2021. They will also consider actions or accountability measures for fishing year 2023 as well as discuss and recommend management priorities for 2023. Other business may be discussed as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: November 8, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–24754 Filed 11–14–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC50]

Takes of Marine Mammals Incidental To Specified Activities; Taking Marine Mammals Incidental To the Parallel Thimble Shoal Tunnel Project in Virginia

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

ACTION: Notice; issuance of renewal incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a Renewal incidental harassment authorization (IHA) to Chesapeake Tunnel Joint Venture (CTJV) to incidentally harass marine mammals incidental to the Parallel Thimble Shoal Tunnel Project (PTST) in Virginia Beach, Virginia.

DATES: This Renewal IHA is valid from 16 November 2022 through 15 November 2023.

FOR FURTHER INFORMATION CONTACT: Cara Hotchkin, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the initial IHA issuance, provided all of the following conditions are met:

(1) A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA);

(2) The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take);
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and

(3) Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.*

History of Request

On November 16, 2021, NMFS issued an IHA to CJTV to take marine mammals incidental to the Parallel Thimble Shoal Tunnel Project in Virginia Beach, Virginia (86 FR 67024, November 24, 2021), effective from November 16, 2021 through November 15, 2022. On August 24, 2022, NMFS received an application for the renewal of that initial IHA. As described in the application for Renewal IHA, the activities for which incidental take is requested are nearly identical to, and a subset of, those covered in the initial authorization. The project has experienced delays and a portion of the work covered in the initial IHA will not be completed by the time it expires. As required, the applicant also provided a preliminary monitoring report which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. The notice of the proposed Renewal IHA was published on October 18, 2022 (87 FR 63037).

Description of the Specified Activities and Anticipated Impacts

CTJV's planned activities include construction associated with the PTST project. Specifically, the location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the initial IHA. The precise details of the work planned under the Renewal IHA are nearly identical to that described in the initial IHA; the planned work includes a subset of the initial activities, as well as some additional work that involves additional piles of identical type and driving methods as initially proposed. Details of the additional work are described below. The project consists of the construction of a two-lane parallel tunnel to the west of the existing Thimble Shoal Tunnel, connecting Portal Islands Nos. 1 and 2 of the Chesapeake Bay Bridge Tunnel (CBBT) facility which extends across the mouth of the Chesapeake Bay near Virginia Beach, Virginia. The PTST project will address existing constraints to regional mobility based on current traffic volume along the facility. Planned construction associated with the initial IHA included the driving of 764 piles over 252 days as shown below:

- 722 36-inch steel pipe piles; and
- 42 42-inch steel pipe piles.

Of these planned activities, under the initial IHA CTJV installed a total of 423 36-inch pipe piles and 26 42-inch pipe piles, a total of 449 piles. The remaining 16 42-inch piles have been eliminated from the construction plan due to a change in design. This change includes the use of 163 additional 36-inch piles instead of the originally requested 42-inch piles. Remaining piles will be installed using impact driving, vibratory driving and drilling with down-the-hole (DTH) hammers. Some piles will be removed via vibratory hammer. Accounting for work conducted under the initial IHA and the design change resulting in an increase in total piles, CTJV plans to drive 462 piles over an estimated 206 days under this Renewal IHA.

The anticipated impacts are identical to those described in the initial IHA. NMFS anticipates the take of the same five species of marine mammal (harbor seal, gray seal, bottlenose dolphin, harbor porpoise, and humpback whale) by Level A and Level B harassment incidental to underwater noise resulting from construction associated with the activities. For additional detail, please see the **Federal Register** notice of proposed Renewal IHA (87 FR 63037, October 18, 2022).

Detailed Description of the Activity

A detailed description of the activities to be conducted under the Renewal IHA may be found in the **Federal Register** notice for the proposed IHA for the Renewal authorization (87 FR 63037, October 18, 2022) and the proposed initial IHA (86 FR 56902, October 13, 2021). The location, timing (*e.g.,* seasonality), and nature of the pile driving operations, including the type and size of piles and the methods of pile driving, are identical to those analyzed in the previous notices. The Renewal IHA would be effective for a period of one year from the date of expiration of the initial IHA.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which take is authorized here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice for the proposed IHA for the initial authorization (86 FR 56902, October 13, 2021). Updated information regarding stock abundance was provided in the **Federal Register** notice announcing issuance of the initial IHA (86 FR 67024, November 24, 2021). NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature. NMFS has preliminarily determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized may be found in the **Federal Register** notice for the proposed initial IHA (86 FR 56902, October 13, 2021). NMFS has reviewed the monitoring data from the initial IHA, recent Stock Assessment Reports, information on relevant UMEs, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the **Federal Register** notices for the proposed and final initial IHAs (86 FR 56902, October 13, 2021; 86 FR 67024, November 24, 2021). The source levels and marine mammal occurrence data applicable to this authorization remain unchanged from the initial IHA. CTJV conducted approximately 50 percent of the planned work and has replaced all remaining 42-inch piles with additional 36-inch piles. The approximate total number of operational days for this Renewal IHA is lower than the initial IHA. However, because the take numbers developed for most species for which take is authorized involve qualitative elements and because the reduction in total days would not result in a substantive decrease in the take number for bottlenose dolphin (*i.e.,* the only species for which a density-based approach to estimating take is used), we carry forward the take numbers unchanged for this Renewal IHA. The stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA, as do the number of takes, which are indicated below in Table 1.

TABLE 1—ESTIMATED TAKE AUTHORIZED

Species	Stock	Level A takes	Level B takes
Humpback whale	Gulf of Maine		12
Harbor porpoise	Gulf of Maine/Bay of Fundy	5	7
Bottlenose dolphin	WNA [1] Coastal, Northern Migratory		43,203
	WNA Coastal, Southern Migratory		43,203
	NNCES [2]		250
Harbor seal	Western North Atlantic	1,154	1,730
Gray seal	Western North Atlantic	16	24

[1] Western North Atlantic.
[2] Northern North Carolina Estuarine System.

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (86 FR 67024, November 24, 2021), and the discussion of the least practicable adverse impact included in that document remains accurate. Further detail regarding the mitigation, monitoring, and reporting requirements prescribed through the IHA can be found in the notice of issuance for the initial IHA (86 FR 67024, November 24, 2021). The following measures are included in this renewal:

- Avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions;
- Conduct training between construction supervisors and crews and the marine mammal monitoring team and relevant CTJV staff prior to the start of all pile driving and DTH activity and when new personnel join the work, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood;
- Pile driving activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone;
- CTJV will establish and implement the shutdown zones indicated in Table 2. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones typically vary based on the activity type and marine mammal hearing group;
- Employ Protected Species Observers (PSOs) and establish monitoring locations as described in the Marine Mammal Monitoring Plan and Section 5 of the initial IHA. The Holder

must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions. For all pile driving and removal, at least one PSO must be used. The PSO will be stationed as close to the activity as possible;

- The placement of the PSOs during all pile driving and removal and DTH activities will ensure that the entire shutdown zone is visible during pile installation. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone will not be visible (*e.g.,* fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected;
- Monitoring must take place from 30 minutes prior to initiation of pile driving activity through 30 minutes post-completion of pile driving activity. Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine the shutdown zones clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made;
- If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal;
- CTJV must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer; and
- Use a bubble curtain during impact and vibratory pile driving and DTH in water depths greater than 3 m and ensure that it is operated as necessary to achieve optimal performance, and that no reduction in performance may be attributable to faulty deployment. At a minimum, CTJV must adhere to the following performance standards: The bubble curtain must distribute air bubbles around 100 percent of the piling circumference for the full depth of the water column. The lowest bubble ring must be in contact with the substrate for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent substrate contact. No parts of the ring or other objects shall prevent full substrate contact. Airflow to the bubblers must be balanced around the circumference of the pile. For work with interlocking pipe piles for the berm construction a special three-sided bubble curtain will be used (see initial IHA Application Appendix A).

TABLE 2—SHUTDOWN ZONES (METERS) FOR EACH METHOD

Method and piles/day	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocids
DTH (3/day)	1,230	50	200	150
DTH (6/day)	1,950	70	200	150
Impact (4/day)	1,010	40	200	150
Impact (6/day)	1,320	50	200	150
Vibratory (4/day)	20	10	20	10
Impact + DTH	Use zones for each source alone			
DTH + Vibratory	1,230	50	200	150
Impact + Vibratory	1,320	50	200	150
Impact + DTH + DTH	1,320	50	200	150
DTH + DTH + Vibratory	1,950	70	200	1,050
DTH + Vibratory + Impact	1,320	50	200	710
Impact + Impact + DTH	Use zones for each source alone			

Comments and Responses

NMFS received no public comments on the proposed Renewal IHA.

Determinations

The construction activities proposed by CTJV are nearly identical to those analyzed in the initial IHA, as are the method of taking and the effects of the action. The planned number of days of activity will be reduced given the completion of a substantial portion (approximately 50 percent) of the originally planned work. Additionally, the work at Portal Island No. 1 is nearly complete, with an estimated 11 days of work remaining. This significantly reduces the likelihood of three drills operating concurrently for the duration of the renewal period, thus reducing the number of days where the largest impact zones would be present. The potential effects of CTJV's activities are limited to Level A and Level B harassment in the form of auditory injury and behavioral disturbance. In analyzing the effects of the activities in the initial IHA, NMFS determined that CTJV's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than one-third of the abundance of all stocks). The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of the estimated abundance of harbor seal decreasing slightly. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) CTJV's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the Renewal IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act

Section 7(a)(2) of the ESA (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Renewal

NMFS has issued a Renewal IHA to CTJV for the take of marine mammals incidental to conducting pile driving activities at the Thimble Shoal Tunnel in Virginia Beach, Virginia between 16 November 2022 and 15 November 2023.

Dated: November 9, 2022.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–24812 Filed 11–14–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC551]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad Hoc Marine Planning Committee (MPC) will hold a public meeting.

DATES: The meeting will be held Thursday, December 1, 2022, from 1 p.m. to 4 p.m. Pacific Standard Time or until business for the day has been completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer, Pacific Council; telephone: (503) 820–2409.

SUPPLEMENTARY INFORMATION: The primary purpose of this online meeting is for the MPC to consider and provide feedback on suitability modeling being conducted by the National Centers for Coastal Ocean Science (NCCOS) and the Bureau of Ocean Energy Management (BOEM). Suitability modeling will be used by BOEM in the process of identifying offshore Wind Energy Areas (WEA) for two Call Areas off the Oregon Coast. Draft WEAs are expected to be identified in late 2022 or early 2023. This meeting will provide an opportunity for MPC members to receive updated information on the data and weighting factors used in the model, and for the MPC to provide feedback to BOEM and NCCOS.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: November 9, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–24833 Filed 11–14–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC548]

Endangered Species; File No. 22671

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

ACTION: Notice; receipt of application for a permit modification.

SUMMARY: Notice is hereby given that U.S. Geological Survey, Conte Anadromous Fish Research Laboratory, 1 Migratory Way, Turners Falls, MA 01376, (Responsible Party: Alexander Haro, Ph.D.), has requested a modification to scientific research Permit No. 22671–02.

DATES: Written, telefaxed, or emailed comments must be received on or before December 15, 2022.

ADDRESSES: The modification request and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 22671 mod 4 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 22671 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request

via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Erin Markin, Ph.D., (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 22671–02, issued on January 31, 2020 (85 FR 7978, February 12, 2020), is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit 22671–02 authorizes the permit holder to study the presence, life history, population size, migration, physiology, and passage of wild shortnose sturgeon (*Acipenser brevirostrum*) in the Connecticut River. The permit also authorizes use of captive (non-releasable) shortnose sturgeon for research and enhancement objectives. In research conducted on wild fish, researchers may use gill nets and trawls to capture juvenile and adult/sub-adult shortnose sturgeon to measure, weigh, passive integrated transponder tag (PIT), borescope, genetic tissue and blood sample, and photograph prior to release. A subset of animals may also be anesthetized and receive internal acoustic transmitters. Early life stages (ELS) may be lethally sampled with D-nets and egg mats to document spawning incidence. Up to two juvenile and one adult or sub-adult sturgeon may unintentionally die annually during research activities. The permit holder requests new authorization between the Holyoke Dam to Agawam, Massachusetts to add new objectives and take, including (1) determining the range, ecology, habitat, and recruitment of juvenile shortnose sturgeon life stages; (2) using egg mat and D-net samplers to collect 150 ELS below the Holyoke Dam; (3) capturing up to 200 young-of-year and older juvenile shortnose sturgeon annually using gillnets, mini-trawl, beach seine, and cast-net sampling gear. Up to 175 of these would be PIT tagged, measured, photographed, fin clipped, and weighed, and up to 25 would be anesthetized and internally tagged before being released; (4) capturing up to 50 adult/sub-adult shortnose sturgeon annually, adding procedures, including borescope; PIT tag; measure; photo/video; fin clip (genetic) and weigh. Additionally, up to five of these fish, having expired acoustic transmitters, may also have them surgically reimplanted under anesthesia; and (5) anesthetizing and implanting acoustic tags in up to 20 adult/sub-adult shortnose sturgeon approaching the Holyoke Dam aggregation; and (6) performing additional procedures, including measure, weigh, PIT tag, photo, genetic tissue sample, and borescope, on up to 20 adult/sub-adult shortnose sturgeon collected under another authority in the Holyoke Dam fish lift. The permit is valid through March 31, 2029.

Dated: November 9, 2022.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–24810 Filed 11–14–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC539]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a one-day in person meeting of its Coastal Migratory Pelagics (CMP) Advisory Panel (AP).

DATES: The meeting will take place Thursday, December 1, 2022, from 8:30 a.m. to 5 p.m., EST.

ADDRESSES:

Meeting address: The meeting will be held at the Holiday Inn Tampa Westshore Airport hotel, located at 700 N Westshore Boulevard, Tampa, FL 33609; (813) 288–3620.

Registration information for listening in will be available on the Council's website by visiting *www.gulfcouncil.org* and clicking on the Meetings Tab and selecting Advisory Panel meetings, then CMP AP meeting.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Natasha Mendez-Ferrer, Fishery Biologist, Gulf of Mexico Fishery Management Council; *natasha.mendez@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Thursday

December 1, 2022; 8:30 a.m.–5 p.m., EST

The meeting will begin with Adoption of Agenda, Approval of Minutes from the July 22, 2021 CMP Advisory Panel; and, review of Scope of Work.

The APs will receive a presentation on the Florida Keys National Marine Sanctuary (FKNMS) Expansion Proposal, and provide recommendations.

The AP will review the Development of Electronic Reporting for the Commercial Coastal Logbook Program, and receive an update on CMP landings and status of Framework Amendment 11. The AP will review draft Framework Amendment 12: Modifications to Gulf *King Mackerel* Gillnet Fishing Season. The AP will receive an update on Amendment 33: Modifications to Gulf of Mexico Migratory Group *King Mackerel* Allocations and review CMP objectives.

The AP will hold a discussion on AP recommendations on a potential action to prohibit recreational sale of *Gulf Cobia.* The AP will receive Public Comment and discuss any Other Business items.

—Meeting Adjourns

The meeting will be in-person. You may register to listen in to the webinar by visiting *www.gulfcouncil.org* and clicking on the Advisory Panel meeting on the calendar. The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take-action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid or accommodations should be directed to Kathy Pereira, *kathy.pereira@gulfcouncil.org,* at least 5 days prior to the meeting date.

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

Dated: November 8, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–24755 Filed 11–14–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC545]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public webinar of its Scallop Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Thursday, December 1, 2022, at 8:30 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/1264182612564296717*.

ADDRESSES:

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Advisory Panel plans to discuss Framework 36 (FW36): Review specifications alternatives in FW36 and select final preferred alternatives. FW36 will set specifications including the overfishing limit (OFL), acceptable biological catch/annual catch limit (ABC/ACLs), days-at-sea (DAS), access area allocations for Limited Access (LA) vessels, quota and access area trip allocation to the Limited Access General Category (LAGC) Individual Fishing Quota (IFQ) component, Total Allowable Landings (TAL) for Northern Gulf of Maine (NGOM) management area, a target-TAC for LAGC incidental catch and set-asides for the observer and research programs for fishing year 2023, and default specifications for fishing year 2024. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: November 9, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–24831 Filed 11–14–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC544]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Recreational Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Thursday, December 1, 2022, beginning at 9:30 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/3175750647731937036.*

ADDRESSES:

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Recreational Advisory Panel will discuss Framework Adjustment 65/Specifications & Management Measures which include draft alternatives and draft impacts analysis, and make recommendations to the Groundfish Committee for final action to include: status determination criteria, rebuilding plan for Gulf of Maine (GOM) cod, FY2023–FY2024 US/CA total allowable catches, FY2023–FY2024 specifications: Georges Bank (GB) yellowtail flounder and GB cod (including a catch target for the recreational fishery), FY2023–FY2025 specifications for 14 stocks, additional measures to promote stock rebuilding for GB cod and GOM cod, and revised acceptable biological catch (ABC) control rules, in consultation with the Scientific and Statistical Committee. The panel will discuss the development of a draft white paper on potential approaches to allocate ''Georges Bank cod'' to the recreational fishery delivered in 2022 to inform the 2023 priorities discussion and make recommendations to the Groundfish Committee. They will also discuss other business as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: November 9, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–24830 Filed 11–14–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Agency Information Collection Activities; Submission for OMB Review; Infrastructure Investment and Jobs Act—Application for Broadband Grant Programs; Comment Request

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on August 26, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Telecommunications and Information Administration (NTIA), Commerce.

Title: Infrastructure Investment and Jobs Act—Application for Broadband Grant Programs.

OMB Control Number: 0660–0046.

Form Number(s): N/A.

Type of Request: Extension and revision of a current information collection.

Number of Respondents: 550 for SDEPG application, 700 for MMG application, 400 for TBCP application.

Average Hours per Response: 8.1 hours for SDEPG application, 14 for MMG application, 1 hour for TBCP application.

Burden Hours: 14,655.

Needs and Uses: With this information collection, NTIA will review the proposed applications and budgets of applicants to evaluate alignment to SDEPG, MMG, and TBCP requirements and program priorities. Applicants will have more structured questions and guidance for their applications. The forms will ultimately reduce the applicant burden by making the application process clearer and simpler. Additionally, the structured forms will reduce application errors and the number of application updates needed after the applications have been submitted.

Affected Public (SDEPG): Territories or possessions of the United States, Indian Tribes, Alaska Native entities, and Native Hawaiian organizations applying for Infrastructure Act Broadband Grant Program funding.

Affected Public (MMG): States, political subdivisions of a State, Tribal governments technology companies, electric utilities, utility cooperatives, public utility districts, telecommunications companies, telecommunications cooperatives, nonprofit foundations, nonprofit corporations, nonprofit institutions, nonprofit associations, regional planning councils, Native entities, economic development authorities, or any partnership of two (2) or more of these entities.

Affected Public (TBCP): Tribal Governments, Tribal Colleges or Universities, the Department of Hawaiian Home Lands on behalf of the Native Hawaiian Community, including Native Hawaiian Education Programs, Tribal organizations, or Alaska Native Corporations.

Frequency: One-time submission prior to application deadline.

Respondent's Obligation: Mandatory.

Legal Authority: Infrastructure Investment and Jobs Act of 2021 (IIJA), Public Law 117–58, 135 Stat. 429 (November 15, 2021); Consolidated Appropriations Act, 2021, Division N, Title IX, Section 905(c), Public Law 116–260, 134 Stat. 1182 (Dec. 27, 2020) (Act), as amended by the IIJA.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering the title of the collection or the OMB Control Number 0660–0046.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Department of Commerce.

[FR Doc. 2022–24826 Filed 11–14–22; 8:45 am]

BILLING CODE 3510–60–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0074]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau or CFPB) requests the extension of the Office of Management and Budget's (OMB's) approval of the existing information collection titled ''Equal Access to Justice Act'' approved under OMB Number 3170–0040.

DATES: Written comments are encouraged and must be received on or before December 15, 2022 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, Paperwork Reduction Act Officer, at (202) 841–0544, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Equal Access to Justice Act.

OMB Control Number: 3170–0040.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 3.

Estimated Total Annual Burden Hours: 15.

Abstract: The Equal Access to Justice Act (the Act) provides for payment of

fees and expenses to eligible parties who have prevailed against the Bureau in certain administrative proceedings. In order to obtain an award, the statute and associated regulations (12 CFR part 1071) require the filing of an application that shows that the party is a prevailing party and is eligible to receive an award under the Act. The Bureau's regulations implementing the Act require the collection of information related to the application for an award in 12 CFR part 1071, subparts B, C.

Request for Comments: The Bureau published a 60-day **Federal Register** notice on August 11, 2022 (87 FR 49584) under Docket Number: CFPB–2022–0055. The Bureau is publishing this notice and soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022–24804 Filed 11–14–22; 8:45 am]

BILLING CODE 4810–AM–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Comment Request; Application Package for the AmeriCorps National Civilian Community Corps (NCCC) Project Sponsor Survey

AGENCY: Corporation for National and Community Service.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing to revise an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by January 16, 2023.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) Electronically through *www.regulations.gov* (preferred method).

(2) By mail sent to: AmeriCorps, Michael Ketover, 250 E Street SW, Washington, DC 20525.

(3) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (2) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

Comments submitted in response to this notice may be made available to the public through *regulations.gov*. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Michael Ketover, 202–873–4574, or by email at *mketover@cns.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: AmeriCorps NCCC Project Sponsor Survey.

OMB Control Number: 3045–0190.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Current/prospective AmeriCorps NCCC Project Sponsors.

Total Estimated Number of Annual Responses: 300.

Total Estimated Number of Annual Burden Hours: 65 hours.

Abstract: The AmeriCorps NCCC Project Sponsor Survey is completed by organizations who have sponsored an AmeriCorps NCCC team. Each year, AmeriCorps NCCC engages teams of members in projects in communities across the United States. Service projects, which typically last from six to eight weeks, address critical needs in natural and other disasters, infrastructure improvement, environmental stewardship and conservation, energy conservation, and urban and rural development. Members construct and rehabilitate low-income housing, respond to natural disasters, clean up streams, help communities develop emergency plans, and address other local needs.

AmeriCorps seeks to renew and revise the current survey. The survey tool will be used in the same manner as the existing survey. AmeriCorps additionally seeks to continue using the current survey until the revised survey tool is approved by OMB. The current survey is due to expire on January 21, 2023.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on *regulations.gov.*

Walter Goodson,

Director, NCCC.

[FR Doc. 2022–24863 Filed 11–14–22; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Federal Advisory Committee Meeting

AGENCY: Board of Visitors of the U.S. Air Force Academy, Department of the Air Force.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal advisory committee meeting of the Board of Visitors (BoV) of the U.S. Air Force Academy (USAFA) will take place.

DATES: Open to the public Tuesday, December 6, 2022 from 9 a.m. to 5 p.m. (eastern time).

ADDRESSES: The meeting will occur at the U.S. Capitol Visitor's Center, Washington, DC, as well as virtually. Members of the public will only be allowed to attend the meeting virtually. The link for the virtual meeting can be found at: *https://www.usafa.edu/about/bov/* and will be active approximately thirty minutes before the start of the meeting.

FOR FURTHER INFORMATION CONTACT: *Designated Federal Officer:* Mr. Anthony R. McDonald, *anthony.mcdonald@us.af.mil,* (703) 614–4751, 1660 Air Force Pentagon, Washington, DC 20330–1660.

Alternate Designated Federal Officer: Mr. James M. Wilmer, *james.wilmer@afacademy.af.edu,* (719) 333–0472, 2304 Cadet Drive, Suite 3200, USAF Academy, CO 80840–5025.

USAFA BoV Website: https://www.usafa.edu/about/bov/. Sight contains information on the Board of Visitors, link to the virtual meeting, and meeting agenda.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to review morale and discipline, social climate, athletics, diversity, curriculum and other matters relating to the U.S. Air Force Academy. The meeting will address topics across the Academy including updates from the Academy Superintendent, Commandant, Dean, and Athletics Department. Furthermore, there will also be presentations on the Air Force Academy's Sexual Assault Prevention program; Budget, and Admissions and Recruiting.

Written Statements: Any member of the public wishing to provide input to the Board of Visitors of the U.S. Air Force Academy should submit a written statement in accordance with 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA. The public or interested organizations may submit written comments or statements to the BoV about its mission and/or the topics to be addressed in the open sessions of this public meeting. Written comments or statements should be submitted to the Alternate Designated Federal Officer, Mr. James Wilmer, via electronic mail, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received at least five (5) business days prior to the meeting so they may be made available to the BoV Chairman for consideration prior to the meeting. Written comments or statements received after November 28, 2022 may not be provided to the BoV until its next meeting. Please note that because the BoV operates under the provisions of the FACA, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Adriane Paris,

Air Force Federal Register Liaison Officer.

[FR Doc. 2022–24813 Filed 11–14–22; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for the KC–46A Main Operating Base 5 (MOB 5) Beddown at Grissom ARB, Indiana, March ARB, California Or Tinker AFB, Oklahoma

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of Intent.

SUMMARY: The Department of the Air Force (DAF) is issuing this Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) to assess the potential social, economic, and environmental impacts associated with the KC–46A Main Operating Base 5 (MOB 5) Beddown. The DAF is proposing to beddown KC–46A tanker aircraft, personnel, and associated infrastructure in support of the MOB 5 mission at one of three installations with March Air Reserve Base (ARB), California as the preferred alternative or at Grissom ARB, Indiana or Tinker Air Force Base (AFB), Oklahoma as reasonable alternatives.

DATES: A public scoping period will take place starting from the date of this NOI publication in the **Federal Register**. This scoping period will be conducted in compliance with NEPA and Section 106 consultation pursuant to *Code of Federal Regulations* title 36, section 800.2(d). Identification of potential alternatives, information, and analyses relevant to the Proposed Action are requested and will be accepted at any time during the EIS process. To ensure DAF has sufficient time to consider public input in the preparation of the Draft EIS, scoping comments should be submitted to the website or the address listed below by December 21, 2022. The Draft EIS is anticipated in Summer 2023 and the Final EIS is anticipated in Spring 2024. The Record of Decision would be approved and signed no earlier than 30 days after the Final EIS.

The DAF intends to hold open house scoping meetings from 5 p.m. to 8 p.m. in the following communities on the following dates:

1. March ARB—November 29, 2022, at the March Field Air Museum, 22550 Van Buren Blvd., Riverside, CA 92518

2. Tinker AFB—December 1, 2022, at the Sheraton Midwest City Hotel and Reed Conference Center, 5750 Will Rodgers Rd., Midwest City, OK 73110

3. Grissom ARB—December 6, 2022, at the Milestone Event Center, 1458 North Liberator Rd., Peru, IN 46970

ADDRESSES: The project website (*www.kc-46a-mob5.com*) provides information on the EIS and the scoping process and can be used to submit scoping comments online. Scoping comments may also be submitted to Mr. Austin Naranjo, AFCEC/CZN, Attn: KC–46A MOB 5 EIS, 2261 Hughes Ave., Ste 155, JBSA Lackland, TX 78236–9853 or via email to: *afcec.czn.nepacenter@us.af.mil.* Courier deliveries should be addressed to: Mr. Austin Naranjo, AFCEC/CZN, Attn: KC–46A MOB 5 EIS, 3515 S General McMullen, Suite 155, San Antonio, TX 78226–2018 (phone 478–222–9225). EIS inquiries and requests for digital or print copies of scoping materials are available upon request at the email or mailing address provided. For printed material requests, the standard U.S. Postal Service shipping timeline will apply. Members of the public who want to receive future

mailings informing them on the availability of the Draft and Final EIS are encouraged to submit a comment that includes their name and email or postal mailing address.

SUPPLEMENTARY INFORMATION: On January 24, 2022, the DAF announced that March ARB, California, has been identified as the preferred alternative for the KC–46A MOB 5 Beddown. Grissom ARB, Indiana, and Tinker AFB, Oklahoma, were identified as the reasonable alternatives. Along with the No Action Alternative, all three bases will be equally evaluated in the EIS. The MOB 5 mission includes the beddown of 12 KC–46A aircraft at one installation. The KC–46A aircraft would recapitalize the KC–135 tanker fleet and would continue supporting the mission of providing worldwide refueling, cargo, and aeromedical evacuation support. The purpose of the MOB 5 beddown is to provide a fully capable, combat-operational AFRC KC–46A air refueling squadron or squadrons to accomplish aerial refueling and related missions. The KC–46A MOB 5 beddown is needed to support the recapitalization of the DAF's aging refueling aircraft fleet. The DAF needs bases to accomplish the required training and to field a fully operational force. A DAF base for the MOB 5 mission is needed to achieve a high state of operational mission readiness.

Resource areas being analyzed for impacts in the EIS include air quality, biological resources, cultural resources, environmental justice and other sensitive receptors, hazardous materials and wastes, infrastructure, noise, land use, safety, socioeconomics and soils and water resources. Primary impacts from the KC–46A MOB 5 beddown are expected to the air quality and noise resource areas. Potential impacts under the Proposed Action at Grissom ARB, March ARB and Tinker AFB are anticipated to be less than significant or mitigatable to less than significant. Permits required for the action may include revisions to or new permits associated with air quality, land disturbance, and hazardous wastes. The DAF will consult with appropriate resource agencies and Native American tribes to determine the potential for significant impacts. Consultation will be incorporated into the preparation of the EIS and will include, but not be limited to, consultation under Section 7 of the Endangered Species Act and consultation under Section 106 of the National Historic Preservation Act.

Scoping and Agency Coordination: To effectively define the full range of issues to be evaluated in the EIS, the DAF will determine the scope of the analysis by soliciting comments from interested local, state, and federal elected officials and agencies, Tribes, as well as interested members of the public and others. Implementation of the KC–46A MOB 5 mission at Tinker AFB would potentially impact wetlands and/or floodplains and would therefore be subject to Executive Order (E.O.) 11990, ''Protection of Wetlands,'' and E.O. 11988, ''Floodplain Management''. Regulatory agencies with special expertise in wetlands and floodplains, such as the U.S. Army Corps of Engineers will be contacted and asked to comment. Consistent with E.O. 11988 and E.O. 11990, this Notice of Intent initiates early public review of the Proposed Action and alternatives and invites public comments and identification of potential alternatives. Implementation of the KC–46A MOB 5 mission also has the potential to impact historic properties. Consultation with the appropriate State Historic Preservation Officers as well as Native American Tribes will occur as part of this process. Concurrent with the publication of this NOI, public scoping notices will be announced locally. The project website at *www.kc-46a-mob5.com* provides posters, a project brochure and downloadable comment forms to fill out and return by mail. Scoping meetings will be held in the local communities near the alternative bases. The scheduled dates, times, locations, and addresses for the scoping meetings will also be published in local media a minimum of 15 days prior to the scoping meetings.

Adriane Paris,

Air Force Federal Register Liaison Officer.

[FR Doc. 2022–24783 Filed 11–14–22; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces; Notice of Federal Advisory Committee Meeting

AGENCY: General Counsel of the Department of Defense, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces will take place.

DATES: Open to the public, December 6, 2022, from 9:00 a.m. to 4:15 p.m. EST and December 7, 2022, from 8:30 a.m. to 11:30 a.m. EST.

ADDRESSES: Ritz Carlton, Pentagon City, 1250 S Hayes Street, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Dwight Sullivan, 703–695–1055 (Voice), 703–693–3903 (Facsimile), *dwight.h.sullivan.civ@mail.mil* (email). Mailing address is DACIPAD, One Liberty Center, 875 N Randolph Street, Suite 150, Arlington, Virginia 22203. Website: *http://dacipad.whs.mil/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: In section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92), Congress tasked the DAC–IPAD to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces. This will be the twenty-fifth public meeting held by the DAC–IPAD. On Day 1, the DAC–IPAD will receive an overview of the military justice pre-trial process from a panel of service representatives. Next, Survivors United representatives will provide their perspectives on victims' participation in the military justice process. Next, a panel of Special Victims' Counsel and Victims' Legal Counsel will discuss their role in representing victims of crimes in the military. After lunch, a panel of service representatives will brief the Committee on the implementation of the Office of Special Trial Counsel. To close the day, the Committee will discuss the DAC–IPAD and GAO Racial Disparity Reports, receive an update from the Case Review Subcommittee, receive public comment, and adjourn the meeting. On Day 2, the Committee will receive updates from the Special Projects Subcommittee and the Policy Subcommittee, discuss and deliberate on the DAC–IPAD annual report that is due March 30, 2023, and adjourn the meeting.

Agenda: Day 1, December 6, 2022: 9:00 a.m.–9:15 a.m. Welcome and Introduction to Public Meeting; 9:15 a.m.–10:00 a.m. Uniform Code of Military Justice Pre-Trial Process Overview; 10:00 a.m.–10:45 a.m. Survivors United; 10:45 a.m.–11:00 a.m. Break; 11:00 a.m.–12:00 p.m. Special Victims' Counsel/Victims' Legal Counsel (SVC/VLC) Panel; 12:00 p.m.–1:00 p.m. Lunch; 1:00–2:30 p.m. Offices of Special Trial Counsel Panel; 2:45 p.m.–3:15 p.m. DAC–IPAD and U.S. Government Accountability Office (GAO) Racial Disparity Reports Discussion; 3:15 p.m.–4:00 p.m. Case Review Subcommittee Update; 4:00 p.m.–4:15 p.m. Public Comment; 4:15 p.m. Public Meeting Adjourned. Day 2, December 7, 2022: 8:30 a.m.–9:15 a.m. Special Projects Subcommittee Update; 9:15 a.m.–10:00 a.m. Policy Subcommittee Update; 10:00 a.m.–10:15 a.m. Break; 10:15 a.m.–11:15 a.m. Deliberations; 11:15 a.m.–11:30 a.m. Meeting Wrap-up; Preview Next Meeting; 11:30 a.m. Public Meeting Adjourned.

Meeting Accessibility: Pursuant to section 10(a)(1) of the FACA and 41 CFR 102–3.140 and 102–3.150, this meeting is open to the public. Seating is limited and is on a first-come basis. Please consult the website for any changes to the public meeting date or time.

Written Statements: Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments to the DAC–IPAD about its mission and topics pertaining to this public meeting. Written comments must be received by the DAC–IPAD at least five (5) business days prior to the meeting date so that they may be made available to the DAC–IPAD members for their consideration prior to the meeting. Written comments should be submitted viaemail to the DAC–IPAD at *whs.pentagon.em.mbx.dacipad@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the DAC–IPAD operates under the provisions of the FACA, all written comments will be treated as public documents and will be made available for public inspection. Oral statements from the public will be permitted, though the number and length of such oral statements may be limited based on the time available and the number of such requests. Oral statement requests must be received by the DAC–IPAD at least five (5) business days prior to the meeting date by submitting them viaemail at *whs.pentagon.em.mbx.dacipad@mail.mil.* Oral presentations by members of the public will be permitted from 4:00 p.m.–4:15 p.m. EST on December 6, 2022.

Dated: November 9, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–24864 Filed 11–14–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–OS–0126]

Proposed Collection; Comment Request

AGENCY: Defense Counterintelligence and Security Agency (DCSA), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the DCSA announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 17, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24 Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Counterintelligence and Security Agency Privacy, Civil Liberties, and Freedom of Information Office; 1137 Branchton Road; Boyers, PA 16018; ATTN: Ms. Lisa M. Alleman, or call 724–794–5612.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Freedom of Information/Privacy Act Request for Adjudication Records; OMB Control Number 0704–0561.

Needs and Uses: The information collection is required to ensure needed information is collected to positively identify individuals who request records regarding themselves that are maintained by DCSA Consolidated Adjudications Services. These records will also be used in any Privacy Act appeals or related litigation. The DCSA Consolidated Adjudications Services Request for Records form will also be used to refer records under the release authority of another Federal Agency.

Affected Public: Individuals or households.

Annual Burden Hours: 10.

Number of Respondents: 120.

Responses per Respondent: 1.

Annual Responses: 120.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

Dated: November 8, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–24776 Filed 11–14–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–OS–0124]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the

OUSD(P&R) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 17, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24 Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Human Resources Activity, Office of People Analytics, 4800 Mark Center Drive, Suite 06E22, Alexandria, VA 22350–4000, Ashlea Klahr, 703–819–5356.

SUPPLEMENTARY INFORMATION: At the direction of President Biden, the Secretary of Defense ordered a 90-Day Independent Review Commission (IRC) on Sexual Assault in the Military. The IRC recommended the DoD establish ''pulse survey'' tool that would enable unit-level commanders to collect real-time climate data from Service members in their units between required administrations of the Defense Organizational Climate Survey (DEOCS), the command climate assessment tool used by the DoD. A subsequent September 2021 memo from the Secretary of Defense directed the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) to develop the survey tool to augment the DEOCS command climate assessment program required under Section 572 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013. USD(P&R) developed the Defense Organizational Climate Pulse (DOCP) to meet this directive.

A DOCP provides DoD leaders in active duty and Reserve component DoD units and DoD civilian personnel organizations an annual opportunity to a means to assess concerns identified in the DEOCS. Also included in the DOCP population are active duty and Reserve component members of the Coast Guard and foreign national employees working for the DoD. The survey is web-based and is a census of the commander's unit. The survey includes core demographic questions and a pool of survey items that include topics related to (1) unit experiences, (2) ratings of leadership, and (3) personal experiences and/or behaviors.

Title; Associated Form; and OMB Number: Defense Organizational Climate Pulse (DOCP)—Version 1.0; OMB Control Number 0704–DOCP.

Needs and Uses: The DOCP is fielded in response to a September 2021 memo from Secretary of Defense directing the USD(P&R) to develop the survey pulse tool. The information gathered from the DOCP will be used by commanders, prevention workforce personnel, equal opportunity officers (EOAs), survey administrators, and other leaders to assess changes in the unit's command climate, gather additional information related to risk and protective factors measured on the DOECS and/or other outcomes of interest (*e.g.,* sexual assault, sexual harassment, racial/ethnic discrimination, suicide, readiness, retention, retaliation, and various forms of abuse). The DOCP requirements will be further codified in a forthcoming DoD Instruction, which specifies that unit commanders may field only one DOCP annually. Based on the DOCP results, commanders, leaders, and their survey administrators will refine the action plans developed after the administration of a DEOCS to positively impact their organization's leadership climate. The survey results are provided to the commander/leader and their survey administrator. Survey responses could also be used in future analyses.

Affected Public: Individuals.

Annual Burden Hours: 18,539.5.

Number of Respondents: 158,910.

Responses per Respondent: 1.

Annual Responses: 158,910.

Average Burden per Response: 7 minutes.

Frequency: On occasion.

Unit commanders and organizational leaders may choose to administer a DOCP, 90 days after their most recent DEOCS. The DEOCS is a required administration for unit commanders. In contrast, the DOCP is a voluntary data collection unit commanders may request. Based on historical administrative records on the frequency of unit commander requests for a second DEOCS in a 12 month period, we anticipate a small fraction of unit commanders requesting a DOCP. The DCOP will be a confidential data collection.

Dated: November 8, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–24778 Filed 11–14–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–OS–0125]

Proposed Collection; Comment Request

AGENCY: Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 17, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24 Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Logistics Agency (J62C), 8725 John J. Kingman Road, Ft. Belvoir, VA 22060–6221, ATTN: Greg Riley, or call 571–767–3996.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Joint Contingency and Expeditionary Services (JCXS); OMB Control Number 0704–0589.

Needs and Uses: The information collection necessary to maintain the safety of contractors and U.S. Armed Forces while ensuring that the U.S. Government is not doing business with entities at odds with American interests. Joint Contingency and Expeditionary Services (JCXS) contains two modules. The Joint Contingency Contracting System (JCCS) evaluates vendors for possible approval or acceptance to do business with and have access to U.S. military installations around the world. The Civilian Arming Authorization Management System (CAAMS) provides a standardized and automated process for the submission, review, approval, and compliance management of the contractor arming process. JCXS is the DoD's agile, responsive, and global provider of Joint expeditionary acquisition business solutions that fulfill mission-critical requirements while supporting interagency collaboration—to include, but not limited to, contracting, finance, spend analysis, contract close-out, staffing, strategic sourcing, and reporting.

Affected Public: Individuals or households.

Annual Burden Hours: 2,750.

Number of Respondents: 5,500.

Responses per Respondent: 1.

Annual Responses: 5,500.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

Dated: November 8, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–24777 Filed 11–14–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0141]

Agency Information Collection Activities; Comment Request; National Assessment of Educational Progress (NAEP) 2024

AGENCY: Institute of Education Sciences (IES), National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved information collection request.

DATES: Interested persons are invited to submit comments on or before January 17, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0141. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, 202–245–6347.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Assessment of Educational Progress (NAEP) 2024.

OMB Control Number: 1850–0928.

Type of Review: A revision of a currently approved information collection request.

Respondents/Affected Public: Individuals and households.

Total Estimated Number of Annual Responses: 833,139.

Total Estimated Number of Annual Burden Hours: 519,605.

Abstract: The National Assessment of Educational Progress (NAEP), conducted by the National Center for Education Statistics (NCES), is a federally authorized survey of student achievement at grades 4, 8, and 12 in various subject areas, such as mathematics, reading, writing, science, U.S. history, civics, geography, economics, technology and engineering literacy (TEL), and the arts. The National Assessment of Educational Progress Authorization Act (Pub. L. 107–279 title III, section 303) requires the assessment to collect data on

specified student groups and characteristics, including information organized by race/ethnicity, gender, socio-economic status, disability, and limited English proficiency. It requires fair and accurate presentation of achievement data and permits the collection of background, noncognitive, or descriptive information that is related to academic achievement and aids in fair reporting of results. The intent of the law is to provide representative sample data on student achievement for the nation, the states, and subpopulations of students and to monitor progress over time. NAEP consists of two assessment programs: the NAEP long-term trend (LTT) assessment and the main NAEP assessment. The LTT assessments are given at the national level only and are administered to students at ages 9, 13, and 17 in a manner that is very different from that used for the main NAEP assessments. LTT reports mathematics and reading results that present trend data since the 1970s. In addition to the operational assessments, NAEP uses two other kinds of assessment activities: pilot assessments and special studies. Pilot assessments test items and procedures for future administrations of NAEP, while special studies (including the National Indian Education Study (NIES), the Middle School Transcript Study (MSTS), and the High School Transcript Study (HSTS)) are opportunities for NAEP to investigate particular aspects of the assessment without impacting the reporting of the NAEP results.

This request is to conduct NAEP in 2024, specifically: (1) Main NAEP operational assessments in 2024 for grade 4 (reading and mathematics), 8 (reading, mathematics and science), and 12 (reading and mathematics). In Puerto Rico, grades 4 and 8 mathematics will be the only subject assessed; (2) Pilot testing for new frameworks in mathematics (mainland U.S. and Puerto Rico) and reading for grades 4 and 8; (3) Middle School Transcript Study (MSTS); (4) High School Transcript Study (HSTS); and (5) National Indian Education Study (NIES) for grades 4 and 8.

Three additional 30-day packages will be submitted in February, April, and August 2023 in order to update all materials in time for the data collection in early 2024.

Dated: November 9, 2022.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–24796 Filed 11–14–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0142]

Agency Information Collection Activities; Comment Request; the Recognition Process for Accrediting Agencies, State Approval Agencies; Evaluation of Foreign Medical, and Foreign Veterinary Accrediting Agencies (e-Recognition)

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before January 17, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0142. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov*. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Herman Bounds, 202–453–6128.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: The Recognition Process for Accrediting Agencies, State Approval Agencies; Evaluation of Foreign Medical, and Foreign Veterinary Accrediting Agencies (e-Recognition).

OMB Control Number: 1840–0788.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 17.

Total Estimated Number of Annual Burden Hours: 18,351.

Abstract: The authority for collecting this information is contained in the Higher Education Act of 1965, as amended § 496 (HEA), and implementing regulations at 34 CFR 602. The data is required in order for recognized accrediting agencies to demonstrate compliance with 34 CFR 602. The Secretary will use these criteria in determining whether an accrediting agency is a reliable authority as to the quality of education or training provided by institutions of higher education they accredit. The data is required for State Agencies for the approval of Vocational Education to demonstrate compliance with 34 CFR 603. The Secretary will use these

criterial to determine whether a State Agency for the Approval of Vocational Education is a reliable authority as to the quality of education or training provided by the vocational institutions of higher education they accredit. The data is also required in order for State approval Agencies for Nurse Education to demonstrate compliance with the criteria and procedures for recognition of State Agencies for Approval of Nurse Education published in the January 16, 1969 **Federal Register**. The Secretary will use these criteria in determining whether a state agency is a reliable authority as to the quality of training offered by schools of nursing.

In addition, and in accordance with 34 CFR 600.55, the Secretary is also required to collect information, review, and determine whether the accreditation standards used by foreign countries to accredit medical education programs are comparable to the standards used to accredit medical education programs in the U.S.

Dated: November 9, 2022.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–24821 Filed 11–14–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a virtual meeting of the Basic Energy Sciences Advisory Committee (BESAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, December 7, 2022, 11:00 a.m. to 5:00 p.m.

ADDRESSES: This meeting is open to the public. This meeting will be held virtually via Zoom. Information to participate can be found on the website closer to the meeting date at *https://science.osti.gov/bes/besac/Meetings.*

FOR FURTHER INFORMATION CONTACT: Kerry Hochberger; Office of Basic Energy Sciences; U.S. Department of Energy; Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (301) 903–7661 or Email: *kerry.hochberger@science.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of this Board is to make recommendations to DOE–SC concerning the basic energy sciences research program.

Tentative Agenda:

- Call to Order, Introductions, Review of the Agenda
- Welcome from the Office of Science
- News from the Office of Basic Energy Sciences
- News on the Roundtable Reports for Foundational Science for Biopreparedness and Response & Fundamental Science to Accelerate Nuclear Energy Innovation
- News on the 2023 BESAC Charge
- Panel Discussion: Computational Infrastructure Panel
- Public Comment
- Adjourn

Breaks taken as appropriate.

Public Participation: The meeting is open to the public. A webcast of this meeting will be available. Please check the website below for updates and information on how to view the meeting. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Kerry Hochberger at *kerry.hochberger@science.doe.gov.* You must request an oral statement at least five business days before the meeting. Reasonable provisions will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule. Information about the committee can be found at: *https://science.osti.gov/bes/besac.*

Minutes: The minutes of this meeting will be available for review on the U.S. Department of Energy's Office of Basic Energy Sciences website at: *https://science.osti.gov/bes/besac/Meetings.*

Signed in Washington, DC, on November 8, 2022.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2022–24749 Filed 11–14–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–173–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Pioneer Nov–Dec 2022) to be effective 11/7/2022.

Filed Date: 11/7/22.

Accession Number: 20221107–5129.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: RP23–174–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: § 4(d) Rate Filing: New Negotiated Rate Agreements—Municipal Customers 2022 to be effective 12/1/2022.

Filed Date: 11/8/22.

Accession Number: 20221108–5000.

Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: RP23–175–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Compliance filing: Rate Schedule S–2 OFO Flow Through Refund Report to be effective N/A.

Filed Date: 11/8/22.

Accession Number: 20221108–5004.

Comment Date: 5 p.m. ET 11/21/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 8, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–24836 Filed 11–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–24–000.
Applicants: The Vanguard Group, Inc., Vanguard Global Advisors, LLC, Vanguard Asset Management, Ltd., Vanguard Investments Australia Ltd., Vanguard Fiduciary Trust Company.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of The Vanguard Group, Inc., et al.
Filed Date: 11/7/22.
Accession Number: 20221107–5238.
Comment Date: 5 p.m. ET 11/28/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1977–002; ER18–2194–002; ER18–2217–001; ER19–117–002; ER19–118–002.
Applicants: Innovative Solar 67, LLC, Innovative Solar 54, LLC, Buckleberry Solar, LLC, Fox Creek Farm Solar, LLC, Brantley Farm Solar, LLC.
Description: Notice of Non-Material Change in Status of Brantley Farm Solar, LLC, et al.
Filed Date: 11/4/22.
Accession Number: 20221104–5154.
Comment Date: 5 p.m. ET 11/25/22.
Docket Numbers: ER22–2584–000.
Applicants: Greeley Energy Facility, LLC.
Description: Report Filing: Greeley Energy Facility LLC submits tariff filing per: Response to Deficiency Letter to be effective N/A.
Filed Date: 11/4/22.
Accession Number: 20221104–5124.
Comment Date: 5 p.m. ET 11/25/22.
Docket Numbers: ER22–2946–000.
Applicants: Red Oak Power, LLC.
Description: Supplemental Information of Red Oak Power, LLC.
Filed Date: 11/7/22.
Accession Number: 20221107–5242.
Comment Date: 5 p.m. ET 11/17/22.
Docket Numbers: ER23–305–001.
Applicants: Dynasty Power Inc.
Description: Compliance filing: Amended Cost Justification re Certain WECC Spot Market Sales (ER23–305-) to be effective N/A.
Filed Date: 11/8/22.
Accession Number: 20221108–5075.
Comment Date: 5 p.m. ET 11/29/22.
Docket Numbers: ER23–387–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Service Agreement No. 106 to be effective 10/6/2022.
Filed Date: 11/8/22.
Accession Number: 20221108–5001.
Comment Date: 5 p.m. ET 11/29/22.
Docket Numbers: ER23–388–000.
Applicants: MATL LLP.
Description: § 205(d) Rate Filing: Heartland Long-Term TSA LT–22–2 FIling to be effective 1/8/2023.
Filed Date: 11/8/22.
Accession Number: 20221108–5002.
Comment Date: 5 p.m. ET 11/29/22.
Docket Numbers: ER23–389–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 6694; Queue Nos. V1–024/V1–025 to be effective 10/9/2022.
Filed Date: 11/8/22.
Accession Number: 20221108–5031.
Comment Date: 5 p.m. ET 11/29/22.
Docket Numbers: ER23–390–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2022–11–08_SA 3330 Termination of Assembly Solar LLC–METC E&P (J796) to be effective 11/9/2022.
Filed Date: 11/8/22.
Accession Number: 20221108–5053.
Comment Date: 5 p.m. ET 11/29/22.
Docket Numbers: ER23–391–000.
Applicants: Avista Corporation, PacifiCorp, Puget Sound Energy, Portland General Electric Company, NorthWestern Corporation.
Description: § 205(d) Rate Filing: Avista Corporation submits tariff filing per 35.13(a)(2)(iii: First Amendment Amended and Restated Colstrip Project to be effective 11/7/2022.
Filed Date: 11/8/22.
Accession Number: 20221108–5083.
Comment Date: 5 p.m. ET 11/29/22.
Docket Numbers: ER23–392–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, SA No. 6592; Queue No. U3–029 and U3–030 (correction) to be effective 8/23/2022.
Filed Date: 11/8/22.
Accession Number: 20221108–5105.
Comment Date: 5 p.m. ET 11/29/22.
Docket Numbers: ER23–393–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: RS 330 Certificate of Concurrence to PSE Dynamic Transfer BA to be effective 11/1/2022.
Filed Date: 11/8/22.
Accession Number: 20221108–5128.
Comment Date: 5 p.m. ET 11/29/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 8, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–24837 Filed 11–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6240–064]

Watson Associates; Notice of Waiver Period for Water Quality Certification Application

November 8, 2022.

On October 19, 2022, Watson Associates submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with the New Hampshire Department of Environmental Services (New Hampshire DES), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section 4.34(b)(5) of the Commission's regulations,[1] we hereby notify the New Hampshire DES of the following:

Date of Receipt of the Certification Request: October 19, 2022.

Reasonable Period of Time to Act on the Certification Request: One year (October 19, 2023).

If New Hampshire DES fails or refuses to act on the water quality certification request on or before the above date, then the agency certifying authority is deemed waived pursuant to section

[1] 18 CFR 4.34(b)(5).

401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–24818 Filed 11–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e) (1) (v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
None.		
Exempt:		
1. P–14803–001, P–2082–063	10/28/2022	U.S. Congress.[1]
2. P–1971–000	10/31/2022	FERC Staff.[2]
3. CP19–502–000, CP19–502–001	11/1/2022	FERC Staff.[3]
4. CP16–454–000	11/4/2022	U.S. Senator John Cornyn.
5. CP17–40–000	11/7/2022	U.S. Senator Tammy Ducksworth.

[1] Congressmen Cliff Bentz and Doug LaMalfa.
[2] Email communication dated 10/31/22 regarding teleconference with Idaho Power Company.
[3] Email communication dated 11/1/22 regarding conference call with the U.S. Army Corps of Engineers.

Dated: November 8, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–24838 Filed 11–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2842–044]

City of Idaho Falls; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for non-project use of project lands and waters (water withdrawal) for the Idaho Falls Hydroelectric Project, located on the Snake River in Bonneville County, Idaho, and has prepared an Environmental Assessment (EA) for the project. The project does not occupy Federal lands.

The EA contains the staff's analysis of the potential environmental effects of the water withdrawal and concludes that licensing it would not constitute a major Federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Alicia Burtner at (202) 502–8038 or *Alicia.Burtner@ferc.gov*.

Dated: November 8, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–24815 Filed 11–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN12–17–000]

Total Gas & Power North America, Aaron Hall and Therese Tran; Updated Notice of Designation of Commission Staff as Non-Decisional

With respect to an order issued by the Commission on April 28, 2016 in the above-captioned docket,[1] with the exceptions noted below, the staff of the Office of Enforcement are designated as non-decisional in deliberations by the Commission in this docket. Accordingly, pursuant to 18 CFR 385.2202 (2022), they will not serve as advisors to the Commission or take part in the Commission's review of any offer of settlement. Likewise, as non-decisional staff, pursuant to 18 CFR 385.2201 (2022), they are prohibited from communicating with advisory staff concerning any deliberations in this docket.

Exceptions to this designation as non-decisional are:

Ruedi Aebersold
Jeffrey Fang
Martin Lawera
Eric Primosch
Felice Richter
Derek Shiau
Nicholas Stavlas
Ambrea Watts
Mehrdad Barikbin
Samantha Maurer
David Zlotnick
Sheryl Caro
Serrita Hill

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–24835 Filed 11–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6240–064]

Watson Associates; Notice of Intent To Prepare an Environmental Assessment

On August 27, 2021, Watson Associates filed a relicense application for the 265-kilowatt Watson Dam Hydroelectric Project No. 6240 (project). The project is located on the Cocheco River in Strafford County, New Hampshire. The project does not occupy federal land.

[1] *Total Gas & Power North America, Aaron Hall and Therese Tran,* 155 FERC ¶ 61,105 (2016).

In accordance with the Commission's regulations, on August 23, 2022, Commission staff issued a notice that the project was ready for environmental analysis (REA Notice). Based on the information in the record, including comments filed on the REA Notice, staff does not anticipate that licensing the project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare an Environmental Assessment (EA) on the application to relicense the project.

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues EA.	May 2023.[1]
Comments on EA	June 2023.

Any questions regarding this notice may be directed to Michael Watts at (202) 502–6123 or *michael.watts@ferc.gov.*

Dated: November 8, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–24817 Filed 11–14–22; 8:45 am]

BILLING CODE 6717–01–P

[1] The Council on Environmental Quality's (CEQ) regulations under 40 CFR 1501.10(b)(1) require that EAs be completed within 1 year of the federal action agency's decision to prepare an EA. This notice establishes the Commission's intent to prepare an EA for the Watson Dam Hydroelectric Project. Therefore, in accordance with CEQ's regulations, the EA must be issued within 1 year of the issuance date of this notice.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–33–000]

Commission Information Collection Activities (FERC–547); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–547 (Gas Pipeline Rates: Refund Report Requirements), which will be submitted to the Office of Management and Budget (OMB) for review.

DATES: Comments on the collection of information are due December 15, 2022.

ADDRESSES: Send written comments on FERC–547 to the Office of Management and Budget (OMB) through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number 1902–0084 (Gas Pipeline Rates: Refund Report Requirements) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments (identified by Docket No. IC22–33–000 and FERC–547) to the Commission as noted below. Electronic filing through *https://www.ferc.gov* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:
  - *Mail via U.S. Postal Service only, addressed to:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) delivery to:* Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Please reference the specific collection number(s) (FERC–547) and/or title(s) (Gas Pipeline Rates: Refund Report Requirements) in your comments.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at: *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review field,'' select ''Federal Energy Regulatory Commission,'' click ''submit,'' and select ''comment'' to the right of the subject collection. FERC submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading

comments and issuances in this docket may do so at *https://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: Gas Pipeline Rates: Refund Report Requirements.

OMB Control No.: 1902–0084.

Type of Request: Three-year extension of the FERC–547 information collection requirements with no changes to the current reporting requirements.

Abstract: The Commission uses FERC–547 (Gas Pipeline Rates: Refund Report Requirements) to implement the statutory refund provisions governed by Sections 4 and 16 of the Natural Gas Act (NGA).[1] Section 4 authorizes the Commission to order a refund (with interest) for any portion of a natural gas company's increased rate or charge found to be unjust or unreasonable. Refunds may also be instituted by a natural gas company as a stipulation to a Commission-approved settlement agreement or a provision under the company's tariff. Section 16 of the NGA authorizes the Commission to prescribe rules and regulations necessary to administer its refund mandates. The Commission's refund reporting requirements are located in 18 CFR 154.501 (Refund Obligations) and 154.502 (Reports).

The Commission uses the data collected in FERC–547 to monitor refunds owed by natural gas companies to ensure that the flow-through of refunds owed by these companies are made as expeditiously as possible and to assure that refunds are made in compliance with the Commission's regulations.

Type of Respondents: Natural gas companies.

Estimate of Annual Burden:[2] Refund obligations occur following a Commission determination of unjust or unreasonable rates. Due to the nature of determinations on an ad hoc basis, the Commission estimate is based on the average number of refund obligations. The Commission estimates the annual public reporting burden for the information collection as:

FERC–547—GAS PIPELINE RATES: REFUND REPORT REQUIREMENTS

Number of respondents	Number of responses per respondent	Total number of responses	Average burden hours & average cost[3] per response ($)	Total annual burden hours & total annual cost ($)	Cost per respondent ($)
(1)	(2)	(1) × (2) = (3)	(4)	(3) × (4) = (5)	(5) ÷ (1) = (6)
22	2	44	2 hrs.; $182	88 hrs.; $8,008	$364

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: November 8, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–24816 Filed 11–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5944–024]

Moretown Hydroelectric LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following license application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* P–5944–024.

c. *Date filed:* November 30, 2020.

d. *Applicant:* Moretown Hydroelectric LLC.

e. *Name of Project:* Moretown No. 8 Hydroelectric Project (Moretown Project).

f. *Location:* The existing hydroelectric project is located on the Mad River in Washington County, Vermont. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Arion Thiboumery, Moretown Hydroelectric, LLC, 1273 Fowler Rd., Plainfield, VT 05667; (415) 260–6890 or email at *arion@ar-ion.net.*

i. *FERC Contact:* Maryam Zavareh, (202) 502–8474, *maryam.zavareh@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *https://ferconline.ferc.gov/FERC.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first

[1] 15 U.S.C. 717–717w.

[2] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[3] FERC staff estimates that industry costs for salary plus benefits are similar to Commission costs. The cost figure is the FY2022 FERC average annual salary plus benefits ($188,992/year or $91/hour).

page of any filing should include docket number P–5944–024.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis at this time.

l. The existing Moretown Hydroelectric Project consists of: (1) a 407-foot-long, 31-foot-high concrete gravity dam with a 159-foot-long overflow spillway and a crest elevation of 524.26 feet North American Vertical Datum (NAVD88); (2) a 17.5-acre impoundment; (3) a 20.3-foot-wide concrete intake structure with a 12.5-foot-wide, 15.1-foot-high trashrack; (4) a 39.4-foot-long, 8.5-foot-diameter steel penstock; (5) a 39.4-foot-long, 19.7-foot-wide concrete powerhouse containing a single 1.2-megawatt turbine-generator unit; (6) a tailrace; (7) a 105-foot-long, 12.5-kilovolt transmission line; and (8) appurtenant facilities. The Moretown Project is operated in a run-of-river mode with an average annual generation of 2,094 megawatt-hours.

m. A copy of the application can be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. The applicant must file no later than 60 days following the date of issuance of this notice either: (1) evidence of the date on which the certifying agency received the certification request; (2) a copy of the water quality certification; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please also note that the certification request must be sent to the certifying authority and to the Commission concurrently.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Deadline for Filing Comments, Recommendations, and Agency Terms and Conditions/Prescriptions
January 2023

Licensee's Reply to REA Comments
February 2023

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: November 8, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–24819 Filed 11–14–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–AO–2022–0729; FRL–10307–01–OA]

Proposed Information Collection Request; Comment Request; Environmental Education Local Grants Progress Report Form

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Comment Request; Environmental Education Local Grants Progress Report Form'' (EPA ICR No. 2731.01, OMB Control No. 2090–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for approval of a new collection. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before January 17, 2023.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OA–2022–0729 online using *www.regulations.gov* (our preferred method), by email to *OEI.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Michael Band, Office of Environmental Education, (1704A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–3155; email address: *band.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of

the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: This notice announces the collection of information related to the U.S. EPA Environmental Education (EE) Local Grants Program. EPA proposes to collect information from this program's grant recipients. Specifically, EPA proposes to have all EE grantees use the progress report form, detailed in the Supporting Statement, when drafting their Quarterly Progress Reports and Final Reports. By requiring all EE Grantees to use the EE Local Grant Progress Report Form, EPA's Office of Environmental Education will be equipped to gather data on this grant program's outputs, outcomes, the total number of individuals reached, and the total number of underserved communities reached. This information will help EPA ensure projects are on schedule to meet their goals and produce high quality environmental outputs. Additionally, requiring all EE grantees to submit their Quarterly and Final reports using the proposed form will allow EPA's Office of Environmental Education to accurately track and report the overall impact of this grant program as well as contribute to the Agency's Justice40 reporting requirements.

Form Numbers: EPA Form Number 5800–082.

Respondents/affected entities: Local education agencies, colleges or universities, state education or environmental agencies, nonprofit organizations as described in Section 501(C)(3) of the U.S. Internal Revenue Code, noncommercial educational broadcasting entities as defined and licensed by U.S. Federal Communications Commission.

Respondent's obligation to respond: Mandatory (in accordance with OMB and EPA regulations, Title 2 CFR, Parts 200 and 1500, the recipient agrees to submit progress reports on a quarterly basis to the EPA Project Officer within thirty (30) days after each reporting period and the Final Report to the EPA Project Officer within one hundred twenty (120) days after the expiration or termination of the approved project period.

Estimated number of respondents: 120 (per year).

Frequency of response: Four times per year for the Quarterly Progress Reports; one time for the Final Report.

Total estimated burden: 720 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $37,987 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: Without revised burden numbers at this time, the Office of Environmental Education expects the burden numbers to decrease in the future due to increased access to technology.

Hiram Tanner III,

Director, Office of Environmental Education (OEE).

[FR Doc. 2022–24745 Filed 11–14–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10366–01–R9]

Official Release of EMFAC2021 Motor Vehicle Emission Factor Model for Use in the State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is approving and announcing the availability of the latest version of the California EMFAC (short for EMission FACtor) model for use in state implementation plan (SIP) development and transportation conformity in California. EMFAC2021 is the latest update to the EMFAC model for use by California state and local governments to meet Clean Air Act (CAA) requirements. The new model, which is based on new and improved data and new and amended regulations in California, calculates air pollution emissions factors for passenger cars, trucks, motorcycles, motor homes, and buses. The EPA is also approving EMFAC2017 adjustment factors, which are based on these same new regulations, for those areas that have already begun SIP development with EMFAC2017. This notice also sets the date after which EMFAC2021, rather than EMFAC2017 or the EMFAC2017 adjustment factors discussed in this notice, must be used to satisfy the requirement that conformity determinations be based on the latest emissions model available. Because the EMFAC model is used only in California, this notice does not affect the applicability of the Motor Vehicle Emissions Simulator (MOVES) model for users in other states.

DATES: The EPA's approval of the EMFAC2021 emissions model and EMFAC2017 adjustment factors for SIP, conformity purposes, and applicable CAA purposes as described in this notice is effective November 15, 2022. EMFAC2021 must be used as described in this notice for all new regional emissions analyses for transportation conformity purposes that are started on or after November 15, 2024 and for all new carbon monoxide (CO) and particulate matter (PM_{10} and $PM_{2.5}$) hot-spot analyses that are started on or after November 15, 2023.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, *oconnor.karina@epa.gov,* (775) 434–8176, Air Planning Office (AIR–2), Air and Radiation Division, EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901.

SUPPLEMENTARY INFORMATION: Copies of the official version of the EMFAC2021 model and the EMFAC2017 adjustment factors, including technical support documents, are available on the California Air Resources Board (CARB) website: *https://ww2.arb.ca.gov/our-work/programs/mobile-source-emissions-inventory/msei-modeling-tools-emfac-software-and.*

Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA. This document is organized as follows:

I. Background
- A. What is the EMFAC model?
- B. For what purposes is EMFAC used?
- C. What versions of EMFAC are currently in use in California?
- D. What has CARB submitted to the EPA for approval?
- E. How is EMFAC2021 different from the previous versions of EMFAC?
- F. What is included in the EMFAC2017 adjustment factors?
- G. How were stakeholders and the public involved in the EMFAC development process?
- H. Future Updates to EMFAC

II. The EPA's Action
- A. What actions are the EPA taking in this notice?
- B. Can EMFAC2021 and EMFAC2017 adjustment factors be used for SIP development?
- C. What transportation conformity analyses can EMFAC2021 and EMFAC2017 adjustment factors be used for?
- D. Does this notice establish a transportation conformity grace period for the use of this model?

E. Can areas use EMFAC2017 during the grace period?
III. Summary of the EPA's Actions

I. Background

A. What is the EMFAC model?

The EMFAC model (''EMFAC'') is a computer model that can estimate emissions rates of air pollutants for on-road mobile sources (''motor vehicles''), for a range of past and future calendar years, that are operating in California. Within the EMFAC model, emissions are calculated for a variety of different vehicle classes composed of passenger cars, various types of trucks and buses, motorcycles, and motor homes.

EMFAC is used to calculate current and future inventories of motor vehicle emissions at the state, air district, air basin, county, and project level. EMFAC contains default vehicle activity data, and the option of modifying that data, so it can be used to estimate a motor vehicle emissions inventory in tons per day for a specific year, month, or season, and as a function of ambient temperature, relative humidity, vehicle population, mileage accrual, miles of travel, and speed. Thus, the model can be used to make decisions about air pollution policies and programs at the local or state level.

The EMFAC model is based on Python and MySQL software. This structure was developed to allow CARB to incorporate new and updated regulations and emissions data into the model and provide for a simplified user experience. The model is operated in either the Emissions Mode (total on-road emissions) or the Emissions Rate Mode (emission factors) for regional emissions analyses to access emissions databases and vehicle activity data for the appropriate geographic subarea. EMFAC also includes the Project-Level Assessment (EMFAC2021–PL) feature, which is available when EMFAC is run in Emissions Rate Mode. When using EMFAC2021–PL, emissions rates are estimated based on user-specified, project-specific conditions. An updated handbook for using EMFAC at the project level is available from CARB.[1] EMFAC allows users to run one model for SIP inventories, regional emissions analyses, and project analyses.

B. For what purposes is EMFAC used?

The EMFAC model is used in California for modeling emissions of on-road vehicles. Emissions inventories based on EMFAC are used to meet SIP, conformity, and other applicable requirements under the CAA. EMFAC is also used for National Environmental Protection Act and California Environmental Quality Act analyses in California where the project undergoing such analysis includes motor vehicle emissions. In addition, EMFAC can be used to model carbon dioxide emissions and energy consumption from on-road mobile sources in California, although that modeling is not used for transportation conformity and SIP purposes under the CAA.

In this notice, the EPA is addressing the use of EMFAC for CAA purposes, mainly SIP development and transportation conformity. The latest version of EMFAC should be used in ozone, carbon monoxide (CO), particulate matter ($PM_{2.5}$ and PM_{10}), and nitrogen dioxide (NO_2) SIP development as expeditiously as possible, as there is no grace period for the use of the latest emissions model in SIP submissions. The CAA requires that inventories and control measures approved into the SIP be based on the most current information and applicable models that are available when a SIP revision is developed.[2] Further discussion of the use of EMFAC in SIP revisions is found in section II.B of this notice.

CAA section 176(c)(1) and 40 CFR 93.111(a) require that the latest emissions estimates be used in transportation conformity analyses. The EPA approves models that fulfill these requirements. Under 40 CFR 93.111(a), the EPA must approve new versions of EMFAC for use in the preparation or revision of SIPs before they can be used in transportation conformity analyses.

EMFAC is used statewide in all regional emissions analyses and CO, PM_{10}, and $PM_{2.5}$ hot-spot analyses for transportation conformity determinations in California. Transportation conformity is required under CAA section 176(c) to ensure that federally supported transportation plans, transportation improvement programs (TIPs), and highway and transit projects are consistent with (''conform to'') the purpose of the SIP. Conformity to a SIP means that a transportation activity will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards (NAAQS) or interim milestones. The EPA's transportation conformity regulations describe how federally funded and approved highway and transit projects meet these statutory requirements.[3]

C. What versions of EMFAC are currently in use in California?

Most SIP revisions developed in California since 2015 were developed using EMFAC2017 (released by CARB in December 2017) or EMFAC2014 (released by CARB in December 2014). The EPA approved and announced the availability of EMFAC2017 on August 15, 2019,[4] and approved and announced the availability of EMFAC2014 on December 14, 2015,[5] for all nonattainment and maintenance areas in California.

EMFAC2017 was considered a major update to EMFAC2014, and most SIP revisions in California are being updated with EMFAC2017 in the 2021–2022 timeframe. Also, California is in the process of developing SIP revisions for the 2015 ozone NAAQS using EMFAC2017 with the adjustment factors discussed in section I.F and elsewhere in this notice.

D. What has CARB submitted to the EPA for approval?

In letters dated August 30, 2021 and August 31, 2021, CARB initially requested that the EPA approve EMFAC2021 and EMFAC2017 adjustment factors, respectively, for use in developing SIP revisions and in determining conformity in California.[6] As described in section E of this notice, EMFAC2021 is a significant change from previous EMFAC models and can calculate motor vehicle emissions for all areas in California.

On October 14, 2022, CARB sent the EPA a subsequent letter (''October 14, 2022 letter'') that noted CARB had found and fixed a computational error related to NO_X idling emissions from heavy-duty trucks. CARB noted this error has been fixed in EMFAC2021 version 1.0.2 and requested the EPA approve this latest version. CARB's October 14, 2022 letter also requested that the EPA approve both the desktop and web platform for version 1.02 of the of EMFAC2021 model. To create the

[1] *https://ww2.arb.ca.gov/sites/default/files/2021-06/emfac2021_volume_2_pl_handbook_ada.pdf.*

[2] CAA section 172(c)(3). Also see the discussion of emissions inventory requirements in the ''Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements'' rule (81 FR 58029, August 24, 2016) and in the ''Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements'' rule (83 FR 63022, December 6, 2018).

[3] 40 CFR 51.390 and 40 CFR part 93.

[4] 84 FR 41717.

[5] 80 FR 77337.

[6] The EMFAC2021 model and supporting information is available for downloading at *https://ww2.arb.ca.gov/our-work/programs/mobile-source-emissions-inventory/msei-modeling-tools-emfac-software-and.* Technical documentation explaining the changes to the model and the technical foundation for the model is available at *https://ww2.arb.ca.gov/sites/default/files/2021-08/emfac2021_technical_documentation_april2021.pdf.*

web platform, CARB runs the model for all areas and uploads the results to a database on the web that allows users to retrieve the needed information based on what they are modeling. The web platform database is based on the corrected version of EMFAC2021.

Finally, CARB submitted revised EMFAC2017 adjustment factors in the October 14, 2022 letter and noted that these adjustment factors have also been revised to correct the NO_X computational error and include factors by vehicle category in addition to by calendar year. In the October 14, 2022 letter, CARB requested that the EPA approve the EMFAC2017 adjustment factors for both SIP and conformity purposes.

CARB's August 30, 2021, August 31, 2021, and October 14, 2022 letters to the EPA are available on our website.[7]

E. How is EMFAC2021 different from the previous versions of EMFAC?

The EMFAC2021 model interface and overall design has not changed significantly as compared to EMFAC2017. However, EMFAC2021 emissions estimates have changed significantly because the model includes new data, new features, significant changes to the methodologies regarding calculation of motor vehicle emissions, the effect of new emission regulations, and revisions to implementation data for control measures. For example, EMFAC2021 includes updates to modules, pollutants, emissions factors and data on car and truck activities, and emissions reductions associated with new and amended regulations reducing emissions from heavy-duty diesel trucks and buses.[8]

New features in EMFAC2021 include the addition of plug-in hybrid and natural gas-powered vehicles, the addition of ammonia emissions, and new forecasting approaches for heavy-duty and light-duty vehicles. New methodologies for brake and tire wear and evaporative emissions are included; and new emissions factor data have been developed based on CARB's Vehicle, Truck and Bus Surveillance Programs, the EPA's In-Use Vehicle Program, dynamometer and Portable Emission Measurement Systems data, and transit bus testing. Motor vehicle fleet age, vehicle types, and vehicle populations have also been updated based on 2013–2019 California Department of Motor Vehicle data, International Registration Plan data, Port Vehicle Identification Number data, California Highway Patrol School Bus Inspections data, and National Transit Database information. Each of these changes affect emissions factors for each area in California. CARB's website describes these and other model changes.[9]

F. What is included in the EMFAC2017 adjustment factors?

CARB has developed adjustment factors for EMFAC2017 that account for the emissions reductions associated with the same regulations included in EMFAC2021. When EMFAC2017 was developed and submitted to the EPA for approval, the model included regulations adopted by CARB as of December 2017.[10] From 2018–2021, CARB adopted new regulations and amended existing regulations that will reduce emissions from heavy-duty diesel trucks and buses, including the Advanced Clean Truck, Innovative Clean Transit, Heavy-duty Omnibus, Heavy-duty Warranty Phase 1, Heavy-duty Vehicle Inspection, and Periodic Smoke Inspection Programs. The EMFAC2017 adjustment factors would be applied to the emission output of the EMFAC2017 model for all vehicle categories by calendar year to account for the benefits of these new regulations in motor vehicle emission budgets (''budgets'') and in conformity analyses to such budgets.

G. How were stakeholders and the public involved in the EMFAC development process?

Since 2019, CARB has held a series of public workshops to discuss emissions inventory updates and EMFAC updates, and to receive comments on the resulting changes in the emissions inventory and models.[11] CARB also conducted beta testing of interim versions of the model with air districts and metropolitan planning organizations (MPOs). Stakeholders and other members of the public had the opportunity to request briefings with CARB staff and provide them with comments and suggestions to improve the model. CARB also developed and posted training materials for EMFAC2021 and supports a mobile source emissions inventory email listserv to announce updates and changes to the EMFAC supporting material.[12]

CARB also made available to the public a technical document that describes updates to the model and public presentations that summarize the changes from earlier versions of the model. The technical documentation is available on CARB's website.[13] CARB provided information on specific changes incorporated into the EMFAC2021 model and included all presentations from the public workshops on the CARB website.[14]

H. Future Updates to EMFAC

On January 31, 2006, CARB submitted a letter to the EPA and to the California Division of the Federal Highway Administration (FHWA) indicating the State's intention to make future revisions to update EMFAC. These EMFAC updates would reflect, among other new information, updated vehicle fleet data every three years. In California, MPOs and air districts cannot update vehicle fleet data embedded within EMFAC, only CARB can update the fleet data with each new EMFAC update because of the model design. The EPA's July 2004 final rule[15] states that new vehicle registration data must be used when available, prior to the start of new conformity analyses, and that states and MPOs are strongly encouraged to update the data at least every five years as described in guidance issued December 2008 by the EPA and U.S. Department of Transportation (DOT).[16] CARB's next

[7] *https://www.epa.gov/state-and-local-transportation/policy-and-technical-guidance-state-and-local-transportation#emission.*

[8] Regulations include the Advanced Clean Truck, Innovative Clean Transit, Heavy-duty Omnibus, Heavy-Duty Emission Warranty Phase 1, Heavy-duty Vehicle Inspection, and Periodic Smoke Inspection Programs. Requests for waivers of CAA section 209(a) preemption, which prohibits states and political subdivisions from adopting and enforcing emission standards for new motor vehicles and engines, have been submitted by CARB to the EPA for the new regulations that require such a waiver, *i.e.,* the Advanced Clean Truck and the Heavy-duty Omnibus regulations. CARB has submitted a request that the EPA confirm that the Heavy-Duty Emission Warranty Phase 1 regulation falls within the scope of an existing waiver, or in the alternative that a waiver be granted.

[9] *https://ww2.arb.ca.gov/our-work/programs/mobile-source-emissions-inventory/msei-modeling-tools-emfac-software-and.*

[10] For further information, see the EPA's Notice of Availability for EMFAC2017 (84 FR 41717, August 15, 2019).

[11] *https://ww2.arb.ca.gov/our-work/programs/mobile-source-emissions-inventory/msei-meetings-workshops.*

[12] To subscribe to CARB's listserv for Mobile Source Emission Inventory development, click ''Subscribe'' at *https://ww2.arb.ca.gov/our-work/programs/mobile-source-emissions-inventory.*

[13] *https://ww2.arb.ca.gov/our-work/programs/mobile-source-emissions-inventory/msei-modeling-tools-emfac-software-and.*

[14] See *https://ww2.arb.ca.gov/sites/default/files/2021-08/emfac2021_technical_documentation_april2021.pdf* and *https://www.arb.ca.gov/msei/workshop-meetings.htm.*

[15] 69 FR 40004 (July 1, 2004).

[16] For more information, see the EPA and DOT's joint ''Guidance for The Use of Latest Planning Assumptions in Transportation Conformity Determinations'' (EPA420–B–08–901, December 2008).

update to the planning assumptions in EMFAC is expected in 2024.

II. The EPA's Action

A. What actions are the EPA taking in this notice?

In this notice, the EPA is approving and announcing that EMFAC2021 [17] is available for use in statewide California SIP development, and for transportation conformity regional emissions analyses, and CO, PM_{10}, and $PM_{2.5}$ hot-spot analyses. The EPA is approving both the desktop computer and web platform for version 1.02 of the EMFAC2021 model. CARB has provided documentation that these two forms of EMFAC2021 would be identical for criteria pollutant analyses for SIP and conformity purposes.

The EPA is also approving the EMFAC2017 adjustment factors and announcing that the factors are available for use in statewide California SIP development and in regional conformity emissions analyses where SIPs are based on EMFAC2017 with adjustment factors. However, EMFAC2017 adjustment factors are not approved for CO, PM_{10}, or $PM_{2.5}$ hot-spot analyses for transportation conformity.

Because the EMFAC model is used only in California, the EPA's statewide approval of the model does not affect the applicability of the MOVES emissions factor model for users in other states. The EPA also notes that this approval action does not affect the methodology required for calculating re-entrained road dust for PM_{10} and $PM_{2.5}$ SIP revisions and transportation conformity analyses. Estimates for PM_{10} and $PM_{2.5}$ in EMFAC2021 do not include such emissions. When applicable, PM_{10} and $PM_{2.5}$ nonattainment and maintenance areas are required to use the EPA's AP–42 road dust method for calculating road dust emissions, unless a local method is approved in advance by the EPA.[18]

Use of these EMFAC models in SIP revisions is covered further in section II.B, and use of these EMFAC models for conformity is covered further in section II.C. The grace period for conformity is covered in section II.D.

[17] EMFAC2021, v1.0.2 (October 14, 2022 release).

[18] For further information, see the EPA's notice of availability for the January 2011 AP–42 Method for Estimating Re-entrained Road Dust from Paved Roads (76 FR 6328, February 4, 2011). Also, for using AP–42 for unpaved roads, see the EPA's memorandum dated August 2, 2007, ''Policy Guidance on the Use of the November 1, 2006, Update to AP–42 for Re-entrained Road Dust for SIP Development and Transportation Conformity.''

B. Can EMFAC2021 and EMFAC2017 adjustment factors be used for SIP development?

The EPA is approving EMFAC2021 and EMFAC2017 adjustment factors for areas in California to use for SIP development. The EPA has previously articulated its policy with respect to how new emissions models are used in SIPs in earlier EMFAC approval notices as well as in MOVES policy guidance and **Federal Register** announcements. This notice describes how this policy applies for EMFAC2021 and EMFAC2017 adjustment factors.

EMFAC2021 should be used to estimate emissions of hydrocarbon (HC), CO, NO_X, PM_{10}, $PM_{2.5}$, ammonia, and sulfur oxides in SIP revisions that are being developed for individual nonattainment and maintenance areas in California as expeditiously as possible. The CAA requires that SIP inventories and control measures be based on the most current information and applicable models that are available when a SIP revision is developed and thus there is no grace period for use of EMFAC2021 in SIP revisions. However, the EPA also recognizes the time and level of effort that air quality planning agencies may have already undertaken in SIP development using EMFAC2017. Agencies should consult with EPA Region IX if they have questions about how EMFAC2021 affects SIP revisions under development in specific nonattainment or maintenance areas. Early consultation can facilitate the EPA's adequacy finding for motor vehicle emissions budgets for transportation conformity purposes or the EPA's action on SIP revisions.

Agencies should use the latest version of EMFAC that is available at the time that a SIP is developed. EMFAC2021 should be used for SIP revisions that will be submitted in the future so that they are based on the most accurate estimates of emissions possible. However, agencies that have already completed significant work on a SIP revision using EMFAC2017 (*e.g.,* attainment modeling has already been completed with EMFAC2017) may continue to rely on this earlier version of EMFAC because significant work has already occurred based on the latest information available at the time the SIP revision was developed.

The CAA does not require agencies that have already submitted SIP revisions or will submit SIP revisions shortly after the release of a new model to revise these SIP revisions simply because a new motor vehicle emissions model is now available.

CARB's request for the EPA to approve EMFAC2017 adjustment factors helps in this regard because these adjustment factors address a gap for those agencies that have been diligently working towards meeting SIP submission deadlines with the latest emissions model available at the time. The adjustment factors allow the emissions benefits of the latest CARB rules that are included in EMFAC2021 to be included in these SIP revisions as well, which will help these areas demonstrate attainment of the NAAQS. Note that EMFAC2017 adjustment factors are approved for use in nonattainment and maintenance area SIP revisions only where agencies have already completed significant SIP work with EMFAC2017. In all other cases, agencies should use EMFAC2021, particularly in instances where SIP development is in its initial stages or has not progressed far enough along that switching from a previous model version would create a significant adverse impact on state and local resources.

Incorporating EMFAC2021 into an individual area's nonattainment and maintenance SIP revisions now could assist areas in mitigating possible transportation conformity difficulties in the future after the EMFAC2021 transportation conformity grace period ends.[19] New regional emissions analyses using the emissions model that are started after the grace period is over must be based on EMFAC2021,[20] so having EMFAC2021-based budgets in place at that time could provide more consistency with transportation conformity determinations.

When individual area SIP revisions based on either EMFAC2021 or EMFAC2017 with adjustment factors are submitted to the EPA, we will begin the adequacy process for the motor vehicle emissions budgets according to the process in 40 CFR 93.118(f) and find them adequate if they meet the criteria in 40 CFR 93.118(e). However, we will not be able to approve SIP revisions based on EMFAC2021 or EMFAC2017 adjustment factors unless applicable regulations preempted by section 209(a) of the CAA, that are included in EMFAC2021 and EMFAC2017 adjustment factors, have been granted a waiver by the EPA under section 209(b) of the CAA. California's new motor vehicle emissions standards are preempted under section 209(a) of the CAA and therefore, California can only enforce such standards upon the EPA's

[19] Transportation conformity grace periods are discussed later in this notice in section II.D.

[20] 40 CFR 93.111.

waiver of this preemption under section 209(b) of the CAA. The new regulations that CARB adopted that will require waiver actions include the Advanced Clean Truck, Heavy-duty Emission Warranty Phase 1, and the Heavy-duty Omnibus regulations.[21] Based on a court decision, these regulations must also be approved into the California SIP before we can approve the SIP submissions for individual California areas that incorporate the associated emissions reductions to meet CAA requirements.[22]

C. What transportation conformity analyses can EMFAC2021 and EMFAC2017 adjustment factors be used for?

The EPA is approving EMFAC2021 to estimate emissions of HC, CO, NO_X, PM_{10}, $PM_{2.5}$, ammonia, and sulfur oxides in regional emissions analyses or transportation conformity determinations.[23] The EPA is also approving the use of EMFAC2017 adjustment factors to estimate regional emissions of these same pollutants for transportation conformity only in areas that have adequate SIP-approved budgets that are based on EMFAC2017 with adjustment factors. EMFAC2017 adjustment factors can be used only for regional conformity emissions analyses that are started before the end of the conformity grace period (as discussed in section II.E). For any regional emissions analyses that begin on or after that date, EMFAC2021 must be used.

The EPA is also approving EMFAC2021 to estimate CO, PM_{10}, and $PM_{2.5}$ emissions for conformity hot-spot analyses involving individual transportation projects. A hot-spot analysis is defined in 40 CFR 93.101 as an estimation of likely future localized pollutant concentrations and a comparison of those concentrations to the relevant NAAQS. This analysis is conducted on a smaller scale than a nonattainment or maintenance area, *e.g.,* for a congested roadway intersection. Hot-spot analyses are completed for only certain types of transportation projects; see 40 CFR 93.123(a) and (b) for further information.

However, note that EMFAC2017 adjustment factors are not approved for estimating CO, PM_{10}, and $PM_{2.5}$ emissions for conformity hot-spot analyses involving individual transportation projects. Because hot-spot analyses are not compared to SIP-approved budgets, there is no reason to use EMFAC2017 with adjustment factors for hot-spot analyses even in areas with budgets based on EMFAC2017 with adjustment factors; EMFAC2021 can and should be used instead. (Note that during the conformity grace period (discussed in section II.D), EMFAC2017 without the adjustment factors could be used for hot-spot analyses as well.) Furthermore, we believe project sponsors would want to use EMFAC2021 rather than EMFAC2017 for hot-spot analyses of transportation projects, such as PM hot-spot analyses on highway or terminal expansions involving significant new levels of diesel trucks (per 40 CFR 93.116 and 93.123), as it would allow them to incorporate the latest planning assumptions included in EMFAC2021 (per 40 CFR 93.110).

The EPA is approving EMFAC2021 and EMFAC2017 adjustment factors for transportation conformity purposes as described in this notice. The regulations included in these models have already been adopted by CARB, the State has completed its regulatory process, and CARB has submitted to the EPA the requests for waivers on the previously mentioned regulations. Thus, any regional emissions analyses that are based on these models meet the transportation conformity rule's requirement in 40 CFR 93.122(a)(3)(i). The emission benefits from these regulations can be included in regional emissions analyses, even before the EPA approves the regulations into the statewide SIP.

D. Does this notice establish a transportation conformity grace period for the use of this model?

The EPA is establishing a two-year grace period before EMFAC2021 is required for all new HC, NO_X, PM_{10}, $PM_{2.5}$, and CO regional emissions analyses (*e.g.,* supporting transportation plan and TIP conformity determinations) and a one-year grace period before EMFAC2021 is required in conformity analyses for all new CO, PM_{10}, and $PM_{2.5}$ hot-spot analyses supporting project-level conformity determinations. The grace period for regional emissions analyses begins on November 15, 2022 and ends on November 15, 2024. Areas have the option of using the new model for regional emissions analyses prior to the end of the grace period.

The transportation conformity rule[24] requires that conformity determinations be based on the latest motor vehicle emissions model approved by the EPA for SIP purposes for a state or area. Section 176(c)(1) of the CAA states that ''. . . [t]he determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel, and congestion estimates. . . .''

When the EPA approves and announces the availability of a new emissions model such as EMFAC2021, the EPA will consult with DOT to establish a grace period before the model is required for conformity analyses.[25] The conformity rule provides for a grace period for new emissions models of between 3 and 24 months after notice of availability is published in the **Federal Register**.[26]

The EPA articulated its intentions for establishing the length of a conformity grace period in the preamble to the 1993 transportation conformity rule: [27]

> EPA and DOT will consider extending the grace period if the effects of the new emissions model are so significant that previous SIP demonstrations of what emission levels are consistent with attainment would be substantially affected. In such cases, States should have an opportunity to revise their SIPs before MPOs must use the model's new emissions factors.

In consultation with FHWA and the Federal Transit Administration, the EPA considers ''the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity'' in establishing the length of the grace period.[28]

The EPA considered the time it will take state and local transportation and air quality agencies to conduct and provide technical support for analyses. State and local agencies will need to become familiar with the EMFAC2021 emissions model. Since 1993, the purpose of section 93.111(b) of the transportation conformity rule has been to provide a sufficient amount of time for MPOs and other state and local agencies to learn and employ new emissions models. The transition to a new emissions model for conformity

[21] CARB has submitted requests that the EPA grant California waivers of CAA section 209(a) preemption for the Advanced Clean Truck and the Heavy-Duty Omnibus regulations, and that the EPA confirm the Heavy-Duty Emission Warranty Phase 1 regulation falls within the scope of an existing waiver, or in the alternative that a waiver be granted. See footnote 8.

[22] *Committee for a Better Arvin* v. *EPA,* 786 F.3d 1169 (9th Cir. 2015). section 110(a) requires these standards to be enforceable before they are approved into a SIP.

[23] The EPA notes that EMFAC2021 can be used for CO_2 emissions analyses as well, but these analyses are not being used for SIP or transportation conformity purposes. In addition, although sulfur dioxide and ammonia are listed as potential precursors for $PM_{2.5}$ formation in 40 CFR 93.102(b)(2)(v), these precursors have not been considered significant for the on-road mobile sources covered by transportation conformity in California to date.

[24] 40 CFR 93.111.

[25] 40 CFR 93.111(b).

[26] 40 CFR 93.111(b)(1).

[27] 58 FR 62211 (November 24, 1993).

[28] 40 CFR 93.111(b)(2).

involves more than learning to use the new model and preparing input data and model output.

In addition to incorporating the new EMFAC2021 emissions rate and fleet data, state and local agencies also need to consider how the model affects regional conformity analysis results and whether SIP and/or transportation plan/TIP changes are necessary to assure future conformity determinations. As stated earlier in the notice, the changes to EMFAC affect emissions factors for each area in California. CARB has requested a 24-month grace period for regional emissions analyses to allow them to update SIP revisions previously developed using EMFAC2014 or EMFAC2017 with the updated emissions from EMFAC2021, as necessary. The EPA agrees that a two-year regional emissions analysis grace period provides time for CARB to revise previously approved SIP revisions with EMFAC2021 if needed so that MPOs can incorporate revised SIP-approved motor vehicle emission budgets into the transportation conformity process.

When the regional emissions analysis grace period ends on November 15, 2024, EMFAC2021 will become the only approved motor vehicle emissions model for all new regional transportation conformity analyses in California for meeting the requirement to use the latest emissions information in conformity analyses. In general, this means that all new HC, NO_X, PM_{10}, $PM_{2.5}$, and CO regional conformity analyses started after the end of the two-year grace period must be based on EMFAC2021, even if the SIP is based on an earlier version of the EMFAC model, such as EMFAC2014, EMFAC2017, or EMFAC2017 with adjustment factors.

In addition, in most cases, if an area revises previously approved EMFAC2014 or EMFAC2017-based SIP-approved budgets using EMFAC2021, the revised EMFAC2021 budgets would be used for conformity purposes once the EPA approves the SIP revision. In general, the EPA will not make adequacy findings for these SIP revisions because submitted SIPs cannot supersede approved budgets until they are approved. However, 40 CFR 93.118(e)(1) allows an approved budget to be replaced by an adequate budget if the EPA's approval of the initial budgets specifies that the budgets being approved may be replaced in the future by new adequate budgets. This flexibility has been used in limited situations in the past, such as during the transition from EMFAC7F and EMFAC7G to EMFAC2002.[29] In such cases, the EMFAC2021-based budgets would be used for conformity purposes once they have been found adequate. California air agencies should consult with the EPA as needed to determine if this flexibility applies.

Upon consideration of the transportation conformity rule's factors, the EPA is also establishing a one-year grace period before EMFAC2021 is required in conformity analyses for all new CO, PM_{10} and $PM_{2.5}$ hot-spot analyses supporting project-level conformity determinations. The grace period for hot-spot analyses begins on November 15, 2022 and ends on November 15, 2023. Areas have the option of using the new model for hot-spot analyses prior to the end of the grace period.

For application of EMFAC2021 at the project level, the application of EMFAC2021 and the model's overall design and interface are similar to EMFAC2017. As a result, project sponsors developing future hot-spot analyses for projects that require such analyses in CO and PM nonattainment and maintenance areas that have already used EMFAC2021 should not need significant time to familiarize themselves with this model.[30] In addition, the fact that time may be needed for revising SIPs or transportation plans/TIPs due to the emissions factor changes in EMFAC2021 is irrelevant for hot-spot analyses because hot-spot analyses do not rely upon such planning documents. But while EMFAC2021's model design and interface has not significantly changed from EMFAC2017, project sponsors may still need some time to familiarize themselves with CARB's updated EMFAC2021–PL handbook and consider technical resource allocation issues to incorporate EMFAC2021 into any future hot-spot analyses in multiple CO, PM_{10}, and $PM_{2.5}$ nonattainment and maintenance areas across California.

Therefore, it is appropriate to set a one-year grace period to allow all areas in California to incorporate EMFAC2021 in conformity hot-spot analyses for required project types and apply the updated planning assumptions incorporated in EMFAC2021 in a timely manner. In the interim, new PM and CO hot-spot analyses that are started prior to the end of the EMFAC2021 grace period can be based on EMFAC2017.[31]

When the hot-spot analysis grace period ends on November 15, 2023, EMFAC2021 will become the only approved motor vehicle emissions model for all new hot-spot transportation conformity analyses for required project types across California for meeting the requirement to use the latest emissions information in conformity. In general, this means that all new CO, PM_{10}, and $PM_{2.5}$ hot-spot analyses started after the end of the one-year grace period must be based on EMFAC2021 rather than EMFAC2017.

E. Can areas use EMFAC2017 during the grace period?

The conformity rule provides some flexibility for regional emissions analyses that are started before the end of the grace period.[32] Analyses that begin before or during the grace period may continue to rely on EMFAC2017. Also note that these regional emissions analysis results, when compared to an EMFAC2017-based motor vehicle emissions budget, can include the EMFAC2017 adjustment factors only if those adjustment factors were used in the motor vehicle emissions budget. This is the one case where a regional emissions analysis would need to use either EMFAC2017 with adjustment factors (or EMFAC2021) to show that conformity with the SIP is demonstrated. The interagency consultation process should be used if it is unclear if an EMFAC2017-based analysis was begun before the end of the 24-month grace period. When the grace period ends, EMFAC2021 will become the EPA-approved motor vehicle emissions model for regional emissions analyses for transportation conformity in California.

CO, PM_{10}, and $PM_{2.5}$ hot-spot analyses for project-level conformity determinations can be based on EMFAC2017 if the analysis was started before the end of the 12-month grace period, and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document.[33] Quantitative analysis already underway that was started before the end of the grace period using EMFAC2017 can be completed as long as 40 CFR 93.111(c) is satisfied. The interagency consultation process should be used if

[29] 67 FR 46618 (July 16, 2002), 67 FR 69139 (November 15, 2002), and 68 FR 15720 (April 1, 2003).

[30] The EPA's PM Hot-Spot Guidance, found on the EPA's website at: *https://www.epa.gov/state-and-local-transportation/project-level-conformity-and-hot-spot-analyses,* continues to apply for PM hot-spot analyses along with CARB's PL handbook for EMFAC2021.

[31] 40 CFR 93.111(c); see also the EPA's website: *https://www.epa.gov/state-and-local-transportation/project-level-conformity-and-hot-spot-analyses* for the latest guidance documents and information.

[32] 40 CFR 93.111(c).

[33] Id.

it is unclear whether an EMFAC2017-based analysis is covered by the circumstances described in the transportation conformity rule.

III. Summary of the EPA's Actions

As described in this notice, the EPA is approving and announcing the availability of EMFAC2021 and EMFAC2017 adjustment factors as submitted by CARB on October 14, 2022, for SIP, conformity, and applicable CAA purposes with the following limitations and conditions:

(1) The approval is limited to California,

(2) The approval is statewide and applies to estimation of emissions of HC, CO, NO_X, PM_{10}, $PM_{2.5}$, ammonia and sulfur oxides. In addition, EMFAC2021 will be used for pollutants and precursors that are applicable in a given nonattainment or maintenance area. The EPA is approving the emissions factor elements of EMFAC2021, but not the associated default travel activity (*e.g.,* vehicle miles traveled).

(3) The approval of EMFAC2021 and EMFAC2017 adjustment factors is for the development of individual nonattainment and maintenance area SIPs. The EPA will not be able to approve these SIPs unless applicable regulations preempted by section 209(a) of the CAA included in EMFAC2021 and EMFAC2017 adjustment factors have been granted a waiver by the EPA under section 209(b) of the CAA. These regulations must also be approved into the California state SIP before we can approve SIP submissions for individual California areas.

(4) A 24-month statewide transportation conformity grace period for regional emissions analyses will be established beginning November 15, 2022 and ending November 15, 2024 for the transportation conformity uses described in (2) above.

(5) The EPA is also approving EMFAC2021's Emission Rate Mode that allows the model to estimate project-level emissions for CO, PM_{10}, and $PM_{2.5}$ conformity hot-spot analyses.

(6) The EPA is also approving EMFAC2017 adjustment factors that account for the emission reductions consistent with the CARB regulations incorporated into EMFAC2021 for use in SIP development and in regional emissions analyses for pollutants and precursors that are applicable in a given nonattainment or maintenance area that has SIP-approved motor vehicle emissions budgets based on EMFAC2017 with adjustment factors. These adjustment factors can be used in regional emissions analyses for transportation conformity only until November 15, 2024 and cannot be used in transportation conformity hot-spot analyses.

(7) A 12-month statewide transportation conformity grace period for hot-spot analyses will be established beginning November 15, 2022 and ending November 15, 2023 for the transportation conformity uses described in (4) above.

Dated: November 8, 2022.

Martha Guzman Aceves,

Regional Administrator, EPA Region IX.

[FR Doc. 2022–24790 Filed 11–14–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0717 and OMB 3060–1303; FR ID 113439]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before December 15, 2022.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0717.

Title: Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92–77, 47 CFR Sections 64.703(a), 64.709, 64.710.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,418 respondents; 11,250,150 responses.

Estimated Time per Response: 1 minute (.017 hours)—50 hours.

Frequency of Response: Annual and on-occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is found at 47 U.S.C. 226, Telephone Operator Services, Public Law 101–435, 104 Stat. 986, codified at 47 CFR 64.703(a) Consumer Information, 64.709 Informational Tariffs, and 64.710 Operator Services for Prison Inmate Phones.

Total Annual Burden: 205,023 hours.

Total Annual Cost: $139,500.

Needs and Uses: The information collection requirements contained in 47 CFR 64.703(a), Operator Service Providers (OSPs) are required to disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate call, how to obtain rate quotations, including any applicable surcharges. 47 CFR 64.710 imposes similar requirements on OSPs to inmates at correctional institutions. 47 CFR 64.709 codifies the requirements for OSPs to file informational tariffs with the Commission. These rules help to ensure that consumers receive information necessary to determine what the charges associated with an OSP-assisted call will be, thereby enhancing informed consumer choice in the operator services marketplace.

OMB Control Number: 3060–1303.

Title: Advanced Methods to Target and Eliminate Unlawful Robocalls, Sixth Report and Order, CG Docket No. 17–59, Authentication Trust Anchor, Fifth Report and Order, WC Docket No. 17–97, FCC 22–37.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 6,493 respondents; 311,664 responses.

Estimated Time per Response: .25 hours.

Frequency of Response: On-occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections are contained in sections 4(i), 4(j), 201, 202, 217, 227, 227b, 251(e), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 201, 202, 217, 227, 227b, 251(e), 303(r), 403.

Total Annual Burden: 77,916 hours.

Total Annual Cost: No cost.

Needs and Uses: This notice and request for comments seeks to extend the information collection requirements as it pertains to the Advanced Methods to Target and Eliminate Unlawful Robocalls Sixth Report and Order and Call Authentication Trust Anchor Fifth Report and Order (''Gateway Provider Report and Order''). Unwanted and illegal robocalls have long been the Federal Communication Commission's (''Commission'') top source of consumer complaints and one of the Commission's top consumer protection priorities. Foreign-originated robocalls represent a significant portion of illegal robocalls, and gateway providers serve as a critical choke-point for reducing the number of illegal robocalls received by American consumers. In the Gateway Provider Report and Order, the Commission took steps to prevent these foreign-originated illegal robocalls from reaching consumers and to help track these calls back to the source. Along with further extension of the Commission's caller ID authentication requirements and Robocall Mitigation Database filing requirements, the Commission adopted several robocall mitigation requirements, including a requirement for gateway providers to respond to traceback within 24 hours, mandatory blocking requirements, a ''know your upstream provider'' requirement, and a general mitigation requirement.

Gateway Provider Report and Order, FCC 22–37, Paras. 65–71, 47 CFR 64.1200(n)(1)

A voice service provider must: . . . Upon receipt of a traceback request from the Commission, civil law enforcement, criminal law enforcement, or the industry traceback consortium:

(i) If the provider is an originating, terminating, or non-gateway intermediate provider for all calls specified in the traceback request, the provider must respond fully and in a timely manner;

(ii) If the provider receiving a traceback request is the gateway provider for any calls specified in the traceback request, the provider must fully respond to the traceback request within 24 hours of receipt of the request. The 24-hour clock does not start outside of business hours, and requests received during that time are deemed received at 8:00 a.m. on the next business day. If the 24-hour response period would end on a non-business day, either a weekend or a Federal legal holiday, the 24-hour clock does not run for the weekend or holiday in question, and restarts at 12:01 a.m. on the next business day following when the request would otherwise be due. For example, a request received at 3:00 p.m. on a Friday will be due at 3:00 p.m. on the following Monday, assuming that Monday is not a Federal legal holiday. For purposes of this rule, ''business day'' is defined as Monday through Friday, excluding Federal legal holidays, and ''business hours'' is defined as 8:00 a.m. to 5:30 p.m. on a business day. For purposes of this rule, all times are local time for the office that is required to respond to the request.

The first portion of the information collection for which OMB approval is sought comes from the requirement adopted in the Gateway Provider Report and Order that all voice service providers respond to traceback ''fully and in in a timely manner'' and gateway providers must respond within 24 hours. All voice service providers, including gateway providers are required to respond to traceback requests from the Commission, civil and criminal law enforcement, and the Industry Traceback Consortium. Traceback is a key enforcement tool in the fight against illegal calls, allowing the Commission or law enforcement to identify the caller and bring enforcement actions or otherwise stop future calls before they reach consumers. Any unnecessary delay in the process can increase the risk that this essential information may become impossible to obtain. While traceback is not a new process, some providers have historically been reluctant to respond, or have simply ignored requests. This requirement ensures that all providers are on notice that a response is required, and allows real consequences for refusal.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–24740 Filed 11–14–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0972; FR ID 113411]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before January 17, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0972.

Title: Multi-Association Group (MAG) Plan Order, Parts 54 and 69 Filing Requirements for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers.

Form Number(s): N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents and Responses: 202 respondents; 69 responses.

Estimated Time per Response: 20–90 hours.

Frequency of Response: On occasion and three-year reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority is contained in 47 U.S.C. 1–4, 10, 154(i), 154(j), and 201–205.

Total Annual Burden: 1,512 hours.

Total Annual Cost: $55,800.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however request confidential treatment for information they believe to confidential 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Following the passage of the Telecommunications Act of 1996, the Commission adopted interstate access charge and universal service support reforms. These reforms were designed to establish a ''procompetitive, deregulatory national policy framework'' for the United States telecommunications industry. Specifically, the Commission aligned the interstate access rate structure more closely with the manner in which costs are incurred, and created a universal service support mechanism for rate-of-return carriers (Interstate Common Line Support (ICLS)) to replace implicit support in interstate access charges with explicit support that is portable to all eligible telecommunications carriers. To administer the ICLS mechanism, the Universal Service Administrative Company required, among other things, that rate-of-return carriers collect projected cost and revenue data. In addition, carriers are required to submit tariff data, including certain cost studies, to ensure that their rates are just and reasonable.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–24738 Filed 11–14–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0139; –0169; –0189; –0202]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the request to renew the existing information collections described below (OMB Control No. 3064–0139, –0169, –0189, and –0202). The notice of the proposed renewal for these information collections was previously published in the **Federal Register** on September 14, 2022, allowing for a 60-day comment period.

DATES: Comments must be submitted on or before December 15, 2022.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

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: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collection of Information

1. *Title:* CRA Sunshine

OMB Number: None.

Affected Public: Insured state nonmember banks and state savings associations and their affiliates and nongovernmental entities and persons.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB NO. 3064–0139)

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (Hours)
1. Reporting burden by covered banks—list of agreements, 12 CFR 346.6(d)(1)(ii) (Mandatory).	Reporting (On occasion)	1	1	1:00	1
2. Reporting burden by covered banks—copies of agreements, 12 CFR 346.6(d)(1)(i) (Mandatory).	Reporting (On occasion)	1	1	1:00	1
3. Reporting burden by NGEPs—copies of agreements, 12 CFR 346.6(c) (Mandatory).	Reporting (On occasion)	1	1	1:00	1
4. Reporting burden by covered banks—annual report, 12 CFR 346.7(b) (Mandatory).	Reporting (Annual)	3	1	4:00	12
5. Reporting burden by NGEPs—annual report, 12 CFR 346.7(b) (Mandatory).	Reporting (Annual)	4	1	4:00	16
6. Reporting burden by covered banks—filing NGEP report, 12 CFR 346.7(f)(2)(ii) (Mandatory).	Reporting (Annual)	3	1	1:00	3
7. Disclosure burden by covered banks—covered agreements to public, 12 CFR 346.6(b) (Mandatory).	Disclosure (On occasion)	3	1	1:00	3
8. Disclosure burden by NGEPs—covered agreements to public, 12 CFR 346.6(b) (Mandatory).	Disclosure (On occasion)	4	1	1:00	4
9. Disclosure burden by covered banks to NGEPs—CRA affiliate activities, 12 CFR 346.4(b) (Mandatory).	Disclosure (On occasion)	1	1	1:00	1
Total Annual Burden (Hours)					42

Source: FDIC.

General Description of Collection: This collection implements a statutory requirement imposing reporting, disclosure and recordkeeping requirements on some community reinvestment-related agreements between insured depository institutions or affiliates, and nongovernmental entities or persons. The information assists interested members of the public in assessing whether the parties are fulfilling their agreements, and helps the agencies understand how the institutions they regulate are fulfilling their CRA responsibilities. There is no change in the method or substance of the collection. The overall reduction in burden hours is the result of economic fluctuation. In particular, the decline in the estimated overall annual time burden from 100 hours in 2021 to 42 hours in 2022 is the result of a reduction in the number of banks and NGEPs reporting.

2. *Title:* Qualifications for Failed Bank Acquisitions.

OMB Number: 3064–0169.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB NO. 3064–0169)

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Section D—Investor Reports on Affiliates (Required to Obtain or Retain a Benefit).	Third-Party Disclosure (Annual)	3	12	2:00	72
2. Section E—Maintenance of Business Books and Records (Required to Obtain or Retain a Benefit).	Recordkeeping (Annual)	3	4	2:00	24
3. Section I—Disclosures Regarding Investors and Entities in Ownership Chain (Required to Obtain or Retain a Benefit).	Reporting (On occasion)	1	1	4:00	4
Total Annual Burden					100

Source: FDIC.

General Description of Collection: The FDIC's policy statement on Qualifications for Failed Bank Acquisitions provides guidance to private capital investors interested in acquiring or investing in failed insured

depository institutions regarding the terms and conditions for such investments or acquisitions. The information collected pursuant to the policy statement allows the FDIC to evaluate, among other things, whether such investors (and their related interests) could negatively impact the Deposit Insurance Fund, increase resolution costs, or operate in a manner that conflict with statutory safety and soundness principles and compliance requirements.

There is no change in the method or substance of the collection. The overall reduction in burden hours is due to economic fluctuations. In particular, no private capital investors have attempted to bid on failed banks in the years since the last financial crisis. FDIC is using a placeholder estimate of 1 respondent in recognition that a private capital group could participate in the bidding process.

3. *Title:* Stress Testing Recordkeeping and Reporting.

OMB Number: 3064–0189.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB NO. 3064–0189)

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Annual Stress Test Reporting Template and Documentation for covered banks, 12 CFR Part 325.6- (Mandatory)*.	Reporting (Biennial)	1	1	80:00	80
2. Methodologies and Practices for covered banks, 12 CFR Part 325.5 (Mandatory)*.	Recordkeeping (Biennial)	1	1	213:00	213
3. Publication—covered banks, 12 CFR Part 325.7 (Mandatory)*.	Third-Party Disclosure (Biennial)	1	1	53:00	53
4. Documentation of Assumptions, Uncertainties and Limitations for FDIC-supervised IDIs with total consolidated assets of $10 billion or more, 2009 Interagency Guidance (Voluntary).	Recordkeeping (Annual)	56	1	40:00	2,240
5. Summary of Test Result for FDIC-supervised IDIs with total consolidated assets of $10 billion or more, 2009 Interagency Guidance (Voluntary).	Recordkeeping (Annual)	56	1	40:00	2,240
6. Policies and Procedures for FDIC-supervised IDIs with total consolidated assets of $10 billion or more, 2009 Interagency Guidance (Voluntary).	Recordkeeping (Annual)	5	1	180:00	900
Total Annual Burden (Hours)					5,726

Source: FDIC.

General Description of Collection: The Federal Deposit Insurance Corporation (FDIC) has issued a rule requiring periodic stress testing by FDIC-supervised institutions having more than $250 billion in total assets, consistent with changes made by Section 401 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). Section 165(i)(2) of the Dodd-Frank Act requires each primary Federal regulator to issue consistent and comparable regulations to: (1) ensure that certain financial companies conduct stress tests; (2) establish the form and content of the required reports of such stress tests, and (3) require companies to publish a summary of the stress test results. As originally enacted, section 165(i)(2)(C) applied to all IDIs with average total consolidated assets of $10 billion or greater, required such IDIs to conduct annual stress tests, and required the use of three scenarios: baseline, adverse, and severely adverse. Consistent with the requirements of section 165(i)(2)(C), as originally enacted, the FDIC published its Final Rule implementing Section 165(i)(2) on October 15, 2012.[1] The requirements under part 325 applied to FDIC-supervised IDIs with average total consolidated assets of $10 billion or greater.

The Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), enacted on May 24, 2018, amended certain aspects of the company-run stress-testing requirements in section 165(i)(2) of the Dodd-Frank Act. Specifically, section 401 of EGRRCPA raises the minimum asset threshold from $10 billion[2] to $250 billion;[3] replaces the requirement for covered banks to conduct stress tests ''annually'' with the requirement to conduct stress tests ''periodically;'' and no longer requires the ''adverse'' stress-testing scenario, thus reducing the number of required stress test scenarios from three to two. EGRRCPA also makes certain conforming and technical changes that were previously included in an April 2018 notice of proposed rulemaking[4] that was superseded, in part, by the enactment of EGRRCPA. The EGRRCPA amendments to the section 165(i)(2) stress testing

[1] *See https://www.govinfo.gov/content/pkg/FR-2012-10-15/pdf/FR-2012-10-15.pdf* (pp. 8—18). While the Dodd-Frank Act specified a total consolidated asset size threshold of $10 billion, it did not specify a calculation methodology. As such, the FDIC's implementing regulations determined applicability by assessing *average* total consolidated assets over the last four consecutive Call Reports.

[2] *See https://www.govinfo.gov/content/pkg/FR-2012-10-15/pdf/2012-25194.pdf.*

[3] *See https://www.govinfo.gov/content/pkg/FR-2019-10-24/pdf/2019-23036.pdf.*

[4] *https://www.federalregister.gov/documents/2018/04/02/2018-06162/annual-stress-test-applicability-transition-for-covered-banks-with-50-billion-or-more-in-assets.*

requirements became effective eighteen months after enactment.

The FDIC's Final Rule [5] implementing EGRRCPA specified that, in light of the frequency change from ''annually'' to ''periodically,'' stress tests would be conducted biennially, unless the covered bank is consolidated under a bank holding company that is required by Federal Reserve Board to conduct annual stress tests, in which case such IDI subsidiaries are also to conduct annual stress tests.[6]

The aspects of part 325 that constitute an information collection are those that require a banking organization to (i) file stress test reports to be filed periodically with the FDIC and the Board of Governors of the Federal Reserve System (the Board) in the time, manner, and form specified by the FDIC (12 CFR 325.6); (ii) establish and maintain a system of controls, oversight, and documentation, including policies and procedures that describe the covered bank's stress test practices and methodologies, as well as processes for updating such bank's stress test practices, as well as specific calculations that must be made by the banking organization during its stress tests (12 CFR 325.5); and (iii) publish a summary of the results of its stress tests (12 CFR 325.7).

On May 17, 2012, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Board of Governors of the Federal Reserve (FRB), published the 2012 Interagency Guidance on the use of stress testing as a means to better understand the range of a banking organization's potential risk exposures. The guidance is intended for IDIs with total consolidated assets of more than $10 billion [7] and provides an overview of how a banking organization should structure its stress testing activities to ensure they fit into the banking organization's overall risk management program. The purpose of the guidance is to outline broad principles for a satisfactory stress testing framework and describe the manner in which stress testing should be used, that is as an integral component of risk management applicable at various levels of aggregation within a banking organization as well as a tool for capital and liquidity planning. The 2012 Interagency Guidance recommends that IDIs stress test in coordination with a their ''overall strategy and annual planning cycles'' and assess and review their stress testing frameworks at least once a year to ensure that stress testing coverage is comprehensive, tests are relevant and current, methodologies are sound, and results are properly considered.''

The aspects of the 2012 Interagency Guidance that constitute an information collection are the provisions that state a banking organization should (i) have a stress testing framework that includes clearly defined objectives, well-designed scenarios tailored to the banking organization's business and risks, well documented assumptions, conceptually sound methodologies to assess potential impact on the banking organization's financial condition (Section II); (ii) maintain an internal summary of test results to document at a high level the range of its stress testing activities and outcomes, as well as proposed follow-up actions (Section III); and (iii) have policies and procedures for a stress testing framework (Section VI).

There has been no change in the substance or methodology of this information collection. The 1,386 hour increase in total estimated annual burden from 4,340 hours in 2019 to 5,726 hours currently is driven by an increase in the number of FDIC-supervised IDIs that have at least $10 billion in total consolidated assets, which results in an increase in the estimated number of respondents for IC 4 and IC 5 from 39 to 56 each, as well as an increase in the estimated number of annual respondents in IC 6 from 1 to 5. This change is attenuated by the change in stress testing frequency for institutions subject to stress testing requirements under the Dodd-Frank Act, as amended by EGRRCPA, from annually to biennially.

4. *Title:* Recordkeeping for Timely Deposit Insurance Determination.

OMB Number: 3064–0202.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0202]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Implementation—Lowest Complexity, 12 CFR 370 (Mandatory).	Recordkeeping (Annual)	1	1	3145:00	3,145
2. Implementation—Middle Complexity, 12 CFR 370 (Mandatory).	Recordkeeping (Annual)	1	1	5960:00	5,960
3. Implementation—Highest Complexity, 12 CFR 370 (Mandatory).	Recordkeeping (Annual)	1	1	36307:00	36,307
4. Ongoing—Lowest Complexity, 12 CFR 370 (Mandatory).	Recordkeeping (Annual)	3	1	5:00	15
5. Ongoing—Middle Complexity, 12 CFR 370 (Mandatory).	Recordkeeping (Annual)	15	1	60:00	900
6. Ongoing—Highest Complexity, 12 CFR 370 (Mandatory).	Recordkeeping (Annual)	10	1	20:00	200
7. Request for Exception, 12 CFR 370.8(b) (RtoB).	Reporting (On occasion)	1	1	20:00	20

[5] *See https://www.govinfo.gov/content/pkg/FR-2019-10-24/pdf/2019-23036.pdf.*

[6] *See https://www.federalregister.gov/documents/2018/11/29/2018-24464/prudential-standards-for-large-bank-holding-companies-and-savings-and-loan-holding-companies*—Category I and Category II bank holding companies and their IDI subsidiaries are required to stress test annually.

[7] The $10 billion asset threshold in the 2012 Interagency Guidance was calculated using total consolidated assets as of the most recent period, instead of the four-quarter rolling average of total consolidated assets that was used in determining eligibility for stress tests under the Dodd-Frank Act. However, the 2012 Interagency Guidance also recommends that ''banking organizations with assets near the threshold should use reasonable judgment and consider, in conjunction with their primary federal supervisor as appropriate, whether they should consider preparing to follow the guidance.'' See *https://www.federalregister.gov/documents/2012/05/17/2012-11989/supervisory-guidance-on-stress-testing-for-banking-organizations-with-more-than-10-billion-in-total.*

SUMMARY OF ESTIMATED ANNUAL BURDEN—Continued

[OMB No. 3064–0202]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
8. Request for Release, 12 CFR 370.8(c) (RtoB).	Reporting (On occasion)	1	1	200:00	200
9. Request for Extension, 12 CFR 370.6(b) (RtoB).	Reporting (On occasion)	1	1	162:00	162
10. Request for Exemption, 12 CFR 370.8(a) (RtoB).	Reporting (On occasion)	1	1	163:00	163
11. Annual Certification and Report, 12 CFR 370.10(a) (Mandatory).	Reporting (Annual)	30	1	186:00	5,580
Total Annual Burden (Hours):					52,652

Source: FDIC.

General Description of Collection: When a bank fails, the FDIC must provide depositors insured funds ''as soon as possible'' after failure while also resolving the failed bank in the least costly manner. The 12 CFR part 370 facilitates prompt payment of FDIC-insured deposits when large insured depository institutions fail. The rule requires insured depository institutions that have two million or more deposit accounts (''covered institutions''), to maintain complete and accurate data on each depositor's ownership interest by right and capacity for all of the covered institution's deposit accounts. The covered institutions are required to develop the capability to calculate the insured and uninsured amounts for each deposit owner, by ownership right and capacity, for all deposit accounts. This data would be used by the FDIC to make timely deposit insurance determinations in the event of a covered insured depository institution's failure.

There is no change in the method or substance of the collection. The overall reduction in burden hours arises almost entirely from the reduction in the number of respondents for ICs 1–3 capturing the implementation burdens, especially the reduction in the number of covered institutions of Highest Complexity. The reduction for that IC alone is almost 400,000 hours per year.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on November 8, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–24781 Filed 11–14–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS22–07]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: This will be a virtual meeting via Zoom. Please visit the agency's homepage (*www.asc.gov*) and access the provided registration link in the What's New box. You MUST register in advance to attend this Meeting.

Date: November 16, 2022.

Time: 10:00 a.m. ET.

Status: Open.

Reports

Chair
Executive Director
Grants
Financial

Action and Discussion Items

Approval of Minutes
September 14, 2022 Quarterly Meeting Minutes
ASC Hearing Proposal

How To Attend and Observe an ASC Meeting

The meeting will be open to the public via live webcast only. Visit the agency's homepage (*www.asc.gov*) and access the provided registration link in the What's New box. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC Meetings.

James R. Park,

Executive Director.

[FR Doc. 2022–24850 Filed 11–14–22; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at

the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than November 30, 2022.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309; Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Paul A. Durand, Jr., Youngsville, Louisiana, as co-trustee of The Sue Soileau Trust, Lafayette, Louisiana; and Karen Sue Rowe, Sunset, Louisiana, as co-trustee of the Washington State Bancshares, Inc. Employee Stock Ownership Plan, Washington, Louisiana;* to acquire voting shares of Washington State Bancshares, Inc., and thereby indirectly acquire voting shares of Washington State Bank, both of Washington, Louisiana.

B. Federal Reserve Bank of Minneapolis (Stephanie Weber, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Daniel Davison, Star Prairie, Wisconsin; Lauren Howard, Duluth, Minnesota; Patrick Davison, Boise, Idaho; Jacquelyn Sahnow, River Falls, Wisconsin; and Steven Davison and Rhonda Davison, both of Alamo, Texas;* to become the Davison Family Shareholder Group, a group acting in concert, to retain voting shares of River Falls Bancshares, Inc., and thereby indirectly retain voting shares of River Falls State Bank, both of River Falls, Wisconsin.

C. Federal Reserve Bank of San Francisco (Joseph Cuenco, Assistant Vice President, Formations & Transactions) 101 Market Street, San Francisco, California 94105–1579:

1. *Anna Lou Patten Irrevocable Trust u.a.d. 12/28/12, Michael Watson, individually, and as trustee, Lindon, Utah, with Matthew Mitton, as special trustee, Salt Lake City, Utah; Chad Patten, Lehi, Utah; and Kestin Wilkinson, Orem, Utah;* all as a group acting in concert, to retain voting shares of Capital Community Bancorporation, Inc., and thereby indirectly retain voting shares of Capital Community Bank, both of Provo, Utah.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–24851 Filed 11–14–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue, NW, Washington DC 20551–0001, not later than December 15, 2022.

A. *Federal Reserve Bank of New York* (Ivan J. Hurwitz, Head of Bank Applications) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *comments.applications@ny.frb.org*:

1. *Provident Financial Services, Inc., Jersey City, New Jersey;* to acquire Lakeland Bancorp, Inc., Oak Ridge, New Jersey, and thereby indirectly acquire Lakeland Bank, New Foundland, New Jersey.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *FSB Financial Services, Inc., Waterloo, Iowa;* to acquire Scenic Community Bancshares Corporation, and thereby indirectly acquire Iowa Falls State Bank, both of Iowa Falls, Iowa.

2. *Scenic Community Bancshares Corporation, Iowa Falls, Iowa;* to become a bank holding company by acquiring Iowa Falls State Bank, Iowa Falls, Iowa.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–24852 Filed 11–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) reapprove the proposed information collection project ''*Consumer Assessment of Healthcare Providers and Systems (CAHPS) Home and Community Based Services (HCBS) Survey Database*.'' This proposed information collection was previously published in the **Federal Register** on August 19, 2022, and allowed 60 days for public comment. AHRQ did not receive any substantive comments during this period. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by December 15, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

''**Consumer Assessment of Healthcare Providers and Systems (CAHPS) Home and Community Based Services (HCBS) Survey Database**''

AHRQ requests that OMB reapprove AHRQ's collection of information for the AHRQ Consumer Assessment of Healthcare Providers and Systems (CAHPS) Database for Home and Community-Based Services: OMB Control number 0935–0245, expiration October 31, 2022.

The CAHPS Home and Community-Based Services (HCBS) Survey Database consists of data from the HCBS CAHPS Survey, which is the first cross-disability survey of home and community-based service beneficiaries' experience receiving long-term services and supports. It is designed to facilitate comparisons across state Medicaid HCBS programs throughout the country that target adults with disabilities, *e.g.,* including older adults, individuals with physical disabilities, persons with developmental or intellectual disabilities, those with acquired brain injury and persons with severe mental illness.

The HCBS CAHPS Survey was developed by the Centers for Medicare & Medicaid Services (CMS) for voluntary use by state Medicaid programs, including both fee-for-service HCBS programs as well as managed long-term services and supports (MLTSS) programs. States with adequate sample sizes may consider using survey metrics in value-based purchasing initiatives.

The HCBS CAHPS Database serves as a primary source of data available to states, agency programs and researchers to help answer important questions related to beneficiary experiences. AHRQ, through its contractor, collects and makes available de-identified survey data, enabling HCBS programs to identify areas where quality can be improved.

Aggregated HCBS Database results are made publicly available on AHRQ's CAHPS website. Technical assistance is provided by AHRQ, through its contractor, at no charge to programs, to facilitate the access and use of these materials for quality improvement and research. Technical assistance is also provided to support HCBS CAHPS data submission.

The HCBS CAHPS Database supports AHRQ's goals of promoting improvements in the quality and patient-centeredness of health care in home or community-based care settings. This research has the following goals:

1. Improve care provided by individual providers and state programs.
2. Offer several products and services, including providing survey results presented through the AHRQ Data Tools website, summary chartbooks, custom analyses, private reports and data for research purposes.
3. Provide information to help identify strengths and areas with potential for improvement in patient care.

This study is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services; quality measurement and improvement; and health surveys and database development 42 U.S.C 299a(a)(1), (2), and (8).

Method of Collection

The development and operation of the HCBS CAHPS Database will include the following major components undertaken by AHRQ through its contractor. To achieve the goals of this project, the following activities and data collections will be implemented:

- Registration with the site to obtain an account with a secure username and password: The point-of-contact (POC) completes an online registration form, providing contact and organizational information required to initiate the registration process.
- Submission of signed Data Use Agreements (DUAs) and survey questionnaires: The data use agreement completed by the participating organization provides confidentiality assurances and states how the data submitted will be used.
- Submission of program information form: The POC completes an online information form to describe organizational characteristics of the program.
- Submission of de-identified survey data files: POCs upload data files in the format specified in the data file specifications to ensure data submitted is standardized and consistently named and coded.
- Follow-up with submitters in the event of a rejected file, to assist in making corrections and resubmitting the file.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated burden hours for the respondents to participate in the database. The 51 POCs in Exhibit 1 represent the 51 states or agencies that will administer the Adult HCBS survey. An estimated thirteen survey vendors will assist them.

Each state or agency will register online for submission. The online Registration form will require about 5 minutes to complete. Each submitter will also complete a program information form of information about each program such as the name of the program, program size, state, etc. The online program information form takes on average 5 minutes to complete. The data use agreement will be completed by each of the 51 participating States. Survey vendors do not sign or submit DUAs. The DUA requires about 3 minutes to sign and return by fax or mail. Each submitter, which in most cases will be the survey vendor performing the data collection, will provide a copy of their questionnaire and the survey data file in the required file format. Survey data files must conform to the data file layout specifications provided by the HCBS CAHPS Database. Since the unit of analysis is at the program level, submitters will upload one data file per program. Once a data file is uploaded the file will be automatically checked to ensure it conforms to the specifications and a data file status report will be produced and made available to the submitter. Submitters will review each report and will be expected to correct any errors in their data file and resubmit if necessary. It will take about one hour to submit the data for each program. The total burden is estimated to be 63 hours annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents/ POCs	Number of responses per POC	Hours per response	Total burden hours
Registration Form	51	1	5/60	4.25
Program Information Form	51	1	5/60	4.25

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents/ POCs	Number of responses per POC	Hours per response	Total burden hours
Data Use Agreement	51	1	3/60	2.5
Data Files Submission	13	4	1	52
Total	NA	NA	NA	63

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to complete one submission process. The cost burden is estimated to be $3,162 annually.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Registration Form	51	4.25	[a] 57.61	$245
Program Information Form	51	4.25	[a] 57.61	245
Data Use Agreement	51	2.5	[b] 102.41	256
Data Files Submission	13	52	[c] 46.46	2,416
Total	** 166	63	NA	3,162

* National Compensation Survey: Occupational wages in the United States May 2021, ''U.S. Department of Labor, Bureau of Labor Statistics.''
(a) Based on the mean hourly wage for Medical and Health Services Managers (11–9111).
(b) Based on the mean hourly wage for Chief Executives (11–1011).
(c) Based on the mean hourly wages for Computer Programmers (15–1251).
** The 51 POCs listed for the registration form, program information form and the data use agreement are the estimated POCs from the estimated participating programs.

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: November 8, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–24752 Filed 11–14–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–IP–23–002, Understanding Adult Immunization Quality Improvement Approaches Among Adult HCP and Health Departments; and RFA–IP–23–003, Programmatic Interventions to Increase Uptake of Influenza and COVID–19 Vaccination Among Students Attending Institutions of Higher Education.

Date: March 29, 2023.

Time: 10 a.m.–5 p.m., EDT.

Place: Teleconference, Centers for Disease Control and Prevention, Room 1080, 8 Corporate Boulevard, Atlanta, Georgia 30329.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, National Center for HIV, Viral Hepatitis, STD, and TB Prevention, CDC, 1600 Clifton Road, NE, Mailstop US8–1, Atlanta, Georgia 30329–4027; Telephone: (404) 718–8833; Email: *GAnderson@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–24791 Filed 11–14–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1789–N]

Medicare Program; Request for Nominations to the Advisory Panel on Hospital Outpatient Payment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is requesting nominations to fill vacancies on the Advisory Panel (the Panel) on Hospital Outpatient Payment (HOP). The purpose of the Panel is to advise the Secretary of the Department of Health and Human Services (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (the Administrator) on the clinical integrity of the Ambulatory Payment Classification (APC) groups and their associated weights, supervision of hospital outpatient therapeutic services, and hospital outpatient prospective payment system (OPPS) OPPS APC rates for covered ambulatory surgical centers (ASC) procedures.

DATES: We are accepting HOP Panel member nominations submitted by February 13, 2023 5 p.m. eastern time. We may consider accepting submissions that are received after that date at our discretion.

ADDRESSES: Nominations must be submitted through the ''Hospital Outpatient Payment (HOP) Panel Member Nomination'' module on MEARIS™. To access the module, visit *https://mearis.cms.gov* to register, log in, and submit your nomination. CMS can only accept HOP Panel Member nominations that are submitted via MEARIS™.

Persons wishing to obtain further information may submit an email to the following email address: *APCPanel@cms.hhs.gov.*

News Media: Representatives should contact the CMS Press Office at (202) 690–6145.

Website: For additional information on the HOP Panel, updates to the Panel's activities, and submission of nominations to the HOP Panel, we refer readers to our website at *http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonAmbulatoryPaymentClassificationGroups.html.*

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Department of Health and Human Services (the Secretary) is required by section 1833(t)(9)(A) of the Social Security Act (the Act), and allowed by section 222 of the Public Health Service Act (PHS Act) to consult with an expert outside panel, that is, the Advisory Panel (the Panel) on Hospital Outpatient Payment (HOP) regarding the clinical integrity of the Ambulatory Payment Classification (APC) groups and relative payment weights that are components of the Medicare Hospital Outpatient Prospective Payment System (OPPS), the appropriate supervision level for hospital outpatient therapeutic services, and OPPS APC rates for covered ambulatory surgical center (ASC) procedures.

The Panel is governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, enacted October 6, 1972), as amended (5 U.S.C. appendix 2), which sets forth standards for the formation and use of advisory panels. The Panel may consider data collected or developed by entities and organizations (other than the Department of Health and Human Services) as part of their deliberations.

We consider the technical advice provided by the Panel as we prepare the proposed and final rules to update the OPPS for the following calendar year (CY).

The current members of the Panel are:

- E.L. Hambrick, M.D., J.D., CMS Chairperson
- Terry Bohlke, C.P.A., C.M.A, M.H.A., C.A.S.C
- Carmen Cooper-Oguz, P.T., D.P.T, M.B.A, C.W.S, W.C.C
- Paul Courtney, M.D.
- Peter Duffy, M.D.
- Lisa Gangarosa, M.D.
- Bo Gately, M.B.A.
- Michael Kuettel, M.D., M.B.A, Ph.D.
- Scott Manaker, M.D., Ph.D.
- Matthew Wheatley, M.D., F.A.C.E.P

II. Request for Nominations; Criteria for Nominees

The Panel shall consist of a chair and up to 15 members who are full-time employees of hospitals, hospital systems, or other Medicare providers that are subject to the OPPS. The Panel may also include a representative of a provider with ASC expertise, who shall advise CMS only on OPPS APC rates, as appropriate, impacting ASC covered procedures within the context and purview of the Panel's scope. The Secretary or a designee selects the Panel membership based upon either self-nominations or nominations submitted by Medicare providers and other interested organizations of candidates determined to have the required expertise. For supervision deliberations, the Panel may include members that represent the interests of Critical Access Hospitals, who advise CMS only regarding the level of supervision for hospital outpatient therapeutic services. New appointments are made in a manner that ensures a balanced membership under the Federal Advisory Committee Act guidelines.

The HOP Panel currently consists of 9 panel members. Six additional vacancies will occur in CY 2023. The list of current HOP Panel members are located in the Background section of this notice, as well as on the Advisory Panel on Hospital Outpatient Payment Committee page, on the FACA database website at: *https://www.facadatabase.gov/committee/committee.aspx?cid=1791&aid=76.*

Panel members serve on a voluntary basis, without compensation, according to an advance written agreement; however, for the meetings, CMS has a special interest in ensuring, while taking into account the nominee pool, that the Panel is diverse in all respects of the following: Geography; rural or urban practice; race, ethnicity, sex, and disability; medical or technical specialty; and type of hospital, hospital health system, or other Medicare provider subject to the OPPS. Appointment to the HOP Panel shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Based upon either self-nominations or nominations submitted through MEARIS™ by providers or interested organizations, the Secretary, or his or her designee, appoints new members to the Panel from among those candidates determined to have the required expertise. New appointments are made in a manner that ensures a balanced membership under the FACA guidelines.

Nominations for a person not serving on the committee may be reconsidered as committee vacancies arise, but should be updated and resubmitted no

later than 3 years after the original nomination submittal to continue to be considered for committee vacancies. CMS will consider the submitted nominations unless they are withdrawn or the nominees' qualifications have changed. Nominations will be considered as vacancies occur. Nominations that were submitted through MEARIS™ prior to the publication of this notice, or in response to the Medicare Program; Request for Nominations to the Advisory Panel on Hospital Outpatient Payment *notice (83 FR 3715) published in the January 26, 2018* **Federal Register**, will be given consideration, and do not need to be resubmitted in response to this notice.

The Panel must be balanced in its membership in terms of the points of view represented and the functions to be performed. Each panel member must be employed full-time by a hospital, hospital system, or other Medicare provider subject to payment under the OPPS (except for the critical access hospital (CAH) members, since CAHs are not paid under the OPPS). All members must have technical expertise to enable them to participate fully in the Panel's work. Such expertise encompasses hospital payment systems; hospital medical care delivery systems; provider billing systems; APC groups; Current Procedural Terminology codes; and alpha-numeric Health Care Common Procedure Coding System codes; and the use of, and payment for, drugs, medical devices, and other services in the outpatient setting, as well as other forms of relevant expertise. For supervision deliberations, the Panel shall have members that represent the interests of CAHs, who advise CMS only regarding the level of supervision for hospital outpatient therapeutic services.

It is not necessary for a nominee to possess expertise in all of the areas listed, but each must have a minimum of 5 years of experience and currently have full-time employment in his or her area of expertise. Generally, members of the Panel serve overlapping terms up to 4 years, based on the needs of the Panel and contingent upon the rechartering of the Panel. A member may serve after the expiration of his or her term until a successor has been sworn in.

Any interested person or organization may nominate qualified individuals. Self-nominations will also be accepted. Each nomination submitted in MEARIS™ must include the following:

- Letter of Nomination stating the reasons why the nominee should be considered.
- Curriculum vitae or resume of the nominee that includes an email address where the nominee can be contacted.
- Written and signed statement from the nominee that the nominee is willing to serve on the Panel under the conditions described in this notice and further specified in the Charter.
- The hospital or hospital system name and address, or CAH name and address, as well as all Medicare hospital and or Medicare CAH billing numbers of the facility where the nominee is employed.

Future updates or changes to the panel nomination process may be published in the **Federal Register**, posted on the CMS Advisory Panel for Hospital Outpatient Payment website, or included in updates to the MEARIS™ HOP Panel Member Nomination module.

III. The Charter

The Secretary rechartered the Panel in 2020 for a 2-year period effective through November 20, 2022. The current charter is accessible on the CMS website at *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonAmbulatoryPaymentClassificationGroups.*

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: November 9, 2022.

Lynette Wilson,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2022–24811 Filed 11–14–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; Matching Program

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of a re-established matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Child Support Enforcement (OCSE), is providing notice of a re-established matching program between HHS/ACF/OCSE and state workforce agencies (SWA) administering the Unemployment Compensation benefits program (UC). The matching program compares SWA records with new hire and quarterly wage information maintained in the National Directory of New Hires (NDNH), the outcomes that help SWAs administer their UC programs.

DATES: The deadline for comments on this notice is December 15, 2022. The re-established matching program will commence no sooner than 30 days after publication of this notice, provided no comments are received that warrant a change to this notice. The matching program will be conducted for an initial term of 18 months (from approximately January 19, 2023, through July 18, 2024) and, within 3 months of expiration, may be renewed for one additional year if the parties make no change to the matching program and certify that the program has been conducted in compliance with the agreement.

ADDRESSES: Interested parties may submit written comments on this notice to Venkata Kondapolu, Director, Division of Federal Systems, Office of Child Support Enforcement, Administration for Children and Families, by email at *venkata.kondapolu@acf.hhs.gov* or by mail at Mary E. Switzer Building, 330 C St. SW, 5th Floor, Washington, DC 20201. Comments received will be available for public inspection at this address from 9 a.m. to 5 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: General questions about the matching program may be submitted to Venkata Kondapolu, Director, Division of Federal Systems, Office of Child Support Enforcement, Administration for Children and Families, by email at *venkata.kondapolu@acf.hhs.gov,* by mail at Mary E. Switzer Building, 330 C St. SW, 5th Floor, Washington, DC 20201, or by telephone at 202–260–4712.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended (5 U.S.C. 552a), provides certain

protections for individuals applying for and receiving federal benefits. The law governs the use of computer matching by federal agencies when records in a system of records contain information about individuals that are retrieved by name or other personal identifiers or are matched with records of other federal, state, or local government records. The Privacy Act requires agencies involved in a matching program to:

1. Obtain approval of a Computer Matching Agreement, prepared in accordance with the Privacy Act, by the Data Integrity Board of any federal agency participating in a matching program.

2. Enter into a written Computer Matching Agreement.

3. Provide a report of the matching program to Congress and the Office of Management and Budget (OMB), and make it available to the public, as required by 5 U.S.C. 552a(o), (u)(3)(A), and (u)(4).

4. Publish a notice of the matching program in the **Federal Register** as required by 5 U.S.C. 552a(e)(12) after OMB and Congress complete their review of the report, as provided by OMB Circular A–108.

5. Notify the individuals whose information will be used in the matching program that the information they provide is subject to verification through matching, as required by 5 U.S.C. 552a(o)(1)(D).

6. Verify match findings before suspending, terminating, reducing, or making a final denial of an individual's benefits or payments or taking other adverse action against the individual, as required by 5 U.S.C. 552a(p).

This matching program complies with these requirements.

Tanguler Gray,

Commissioner, OCSE.

Participating Agencies: The agencies participating in the matching program are OCSE (source agency) and state agencies administering the Unemployment Compensation (UC) benefits program (non-federal agencies).

Authority for Conducting the Matching Program: The authority for conducting the matching program is contained in section 453(j)(8) of the Social Security Act (42 U.S.C. 653(j)(8)).

Purpose(s): The purpose of the matching program is to provide each SWA with new hire and quarterly wage information from OCSE's National Directory of New Hires (NDNH) system of records pertaining to adult UC applicants and recipients resulting from comparing client name and Social Security number combinations in the SWA's files to information in the NDNH. The match results assist the SWAs in establishing or verifying an individual's eligibility for assistance, reducing payment errors, and maintaining program integrity, including determining whether duplicate participation exists or if the applicant or recipient resides in another state. The SWAs may also use the NDNH information for secondary purposes, such as updating UC recipients' reported participation in work activities, updating recipients' and their employers' contact information, administering the SWAs' tax compliance function, and complying with U.S. Department of Labor (DOL) reporting requirements.

Categories of Individuals: The categories of individuals involved in the matching program are adult members of households who have applied for or receive UC benefits.

Categories of Records: The categories of records involved in the matching program that may include personal identifiers are new hire, quarterly wage, and unemployment insurance information. The specific data elements that will be provided to OCSE in a state agency input file are:

- Name
- Social Security number

The state agency will use a unique code in the Passback Data field of the input file to identify the specific authorized purpose for the record being submitted for NDNH matching.

OCSE will compare the Social Security numbers in the state agency input file to the Social Security numbers in the NDNH, and will provide the state agency with any available new hire, and quarterly wage information in the NDNH pertaining to the individuals whose records are contained in the state agency input file. The NDNH data elements OCSE will return to the state agency are as follows:

A. New Hire File

- New hire processed date
- Employee name and address
- Employee date and state of hire
- Federal and state employer identification numbers
- Department of Defense code
- Employer name and address
- Transmitter agency code
- Transmitter state code
- Transmitter state or agency name

B. Quarterly Wage File

- Quarterly wage processed date
- Employee name
- Federal and state employer identification numbers
- Department of Defense code
- Employer name and address
- Employee wage amount
- Quarterly wage reporting period
- Transmitter agency code
- Transmitter state code
- Transmitter state or agency name

System(s) of Records: The NDNH data used in this matching program will be disclosed from the following OCSE system of records, as authorized by routine use 13: ''*OCSE National Directory of New Hires,*'' System No. 09–80–0381; 87 FR 3553 (January 24, 2022).

[FR Doc. 2022–24775 Filed 11–14–22; 8:45 am]

BILLING CODE 4184–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; Matching Program

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of a re-established matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Child Support Enforcement (OCSE) is providing notice of a re-established matching program between HHS/ACF/OCSE and state agencies administering the Temporary Assistance for Needy Families (TANF) program. The matching program compares state TANF agency records with new hire, quarterly wage, and unemployment insurance information maintained in the National Directory of New Hires (NDNH). The outcomes of the comparisons help state agencies to establish and verify eligibility for applicants and recipients of TANF benefits, reduce TANF benefit errors, and maintain program integrity.

DATES: The deadline for comments on this notice is December 15, 2022. The re-established matching program will commence no sooner than 30 days after publication of this notice, provided no comments are received that warrant a change to this notice. The matching program will be conducted for an initial term of 18 months (from approximately January 19, 2023, through July 18, 2024) and, within 3 months of expiration, may be renewed for one additional year if the parties make no change to the matching program and certify that the program has been conducted in compliance with the agreement.

ADDRESSES: Interested parties may submit written comments on this notice to Venkata Kondapolu, Director, Division of Federal Systems, Office of Child Support Enforcement, Administration for Children and Families, by email at *venkata.kondapolu@acf.hhs.gov* or by mail at Mary E. Switzer Building, 330 C St. SW, 5th Floor, Washington, DC 20201. Comments received will be available for public inspection at this address from 9 a.m. to 5 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: General questions about the matching program may be submitted to Venkata Kondapolu, Director, Division of Federal Systems, Office of Child Support Enforcement, Administration for Children and Families, by email at *venkata.kondapolu@acf.hhs.gov,* by mail at Mary E. Switzer Building, 330 C St. SW, 5th Floor, Washington, DC 20201, or by telephone at 202–260–4712.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended (5 U.S.C. 552a), provides certain protections for individuals applying for and receiving federal benefits. The law governs the use of computer matching by federal agencies when records in a system of records contains information about individuals that are retrieved by name or other personal identifier or are matched with records of other federal, state, or local government records. The Privacy Act requires agencies involved in a matching program to:

1. Obtain approval of a Computer Matching Agreement, prepared in accordance with the Privacy Act, by the Data Integrity Board of any federal agency participating in a matching program.

2. Enter into a written Computer Matching Agreement.

3. Provide a report of the matching program to Congress and the Office of Management and Budget (OMB) and make it available to the public, as required by 5 U.S.C. 552a(o), (u)(3)(A), and (u)(4).

4. Publish a notice of the matching program in the **Federal Register** as required by 5 U.S.C. 552a(e)(12) after OMB and Congress complete their review of the report, as provided by OMB Circular A–108.

5. Notify the individuals whose information will be used in the matching program that the information they provide is subject to verification through matching, as required by 5 U.S.C. 552a(o)(1)(D).

6. Verify match findings before suspending, terminating, reducing, or making a final denial of an individual's benefits or payments, or taking other adverse action against the individual, as required by 5 U.S.C. 552a(p).

This matching program complies with these requirements.

Tanguler Gray,

Commissioner, OCSE.

Participating Agencies

The agencies participating in the matching program are OCSE (source agency) and state agencies administering the Temporary Assistance for Needy Families (TANF) program (non-federal agencies).

Authority for Conducting the Matching Program

The authority for conducting the matching program is contained in section 453(j)(3) of the Social Security Act (42 U.S.C. 653(j)(3)).

Purpose(s)

The purpose of the matching program is to provide each participating state agency administering TANF with new hire, quarterly wage, and unemployment insurance information from OCSE's NDNH system of records to assist them in establishing or verifying TANF applicants' and recipients' eligibility for assistance, reducing payment errors, and maintaining program integrity, including determining whether duplicate participation exists, or if the applicant or recipient resides in another state. The state TANF agencies may also use the NDNH information to update the recipients' reported participation in work activities and recipients' and their employers' contact information maintained by the state TANF agencies.

Categories of Individuals

The categories of individuals involved in the matching program are adult members of households who have applied for or receive TANF benefits.

Categories of Records

The categories of records involved in the matching program that may include personal identifiers are new hire, quarterly wage, and unemployment insurance information. The specific data elements that will be provided to OCSE in a state agency input file are:

☐ Submitting state code (two-digit Federal Information Processing Standard code)
☐ Date stamp (input file transmission date)
☐ TANF caseload month and year of adult TANF applicants and recipients
☐ Adult TANF applicant/recipient's Social Security number
☐ Adult TANF applicant/recipient's first, middle (optional), and last name
☐ Name/Social Security number verification request

Optional

Passback data (state agency information used to identify individuals within the input file to be returned on the output file)

Same state data indicator (indicates whether the state agency requests NDNH new hire, quarterly wage, or unemployment insurance even if the information was provided by that same state)

OCSE will compare the Social Security numbers in the state agency input file to the Social Security numbers in the NDNH and will provide the state agency with any available new hire, quarterly wage, and available unemployment insurance information in the NDNH pertaining to the individuals whose records are contained in the state agency input file. The NDNH data elements that OCSE will return to the state agency are as follows:

A. New Hire File
- New hire processed date
- Employee name and address
- Employee date and state of hire
- Federal and state employer identification numbers
- Department of Defense code
- Employer name and address
- Transmitter agency code
- Transmitter state code
- Transmitter state or agency name

B. Quarterly Wage File
- Quarterly wage processed date
- Employee name
- Federal and state employer identification numbers
- Department of Defense code
- Employer name and address
- Employee wage amount
- Quarterly wage reporting period
- Transmitter agency code
- Transmitter state code
- Transmitter state or agency name

C. Unemployment Insurance File
- Unemployment insurance processed date
- Claimant name and address
- Claimant benefit amount
- Unemployment insurance reporting period
- Transmitter state code
- Transmitter state or agency name

System(s) of Records

The NDNH data used in this matching program will be disclosed from the following OCSE system of records, as authorized by routine use 8: ''OCSE National Directory of New Hires,''

System No. 09–80–0381; 87 FR 3553 (January 24, 2022).

[FR Doc. 2022–24771 Filed 11–14–22; 8:45 am]

BILLING CODE 4184–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0526]

David Elias Mendoza: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring David Elias Mendoza for a period of 5 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Mr. Mendoza engaged in a pattern of importing or offering for import misbranded drugs (*i.e.,* in an amount, frequency, or dosage that is inconsistent with his personal or household use) that are not designated in an authorized electronic data interchange system as products regulated by FDA. Mr. Mendoza was given notice of the proposed debarment and was given an opportunity to request a hearing to show why he should not be debarred. As of March 28, 2022 (30 days after receipt of the notice), Mr. Mendoza had not responded. Mr. Mendoza's failure to respond and request a hearing within the timeframe prescribed by regulation constitutes a waiver of his right to a hearing and any contentions concerning this matter.

DATES: This order is applicable November 15, 2022.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, or at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Enforcement (ELEM–4144), Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–402–8743, or at *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act (21 U.S.C. 335a(b)(1)(D)) permits debarment of an individual from importing or offering for import any drug into the United States if FDA finds, as required by section 306(b)(3)(D) of the FD&C Act, that the individual has engaged in a pattern of importing or offering for import misbranded drugs (*i.e.,* in an amount, frequency, or dosage that is inconsistent with personal or household use by the importer) that are not designated in an authorized electronic data interchange system as products regulated by FDA.

After an investigation, FDA discovered that Mr. Mendoza has engaged in numerous instances of importing or offering for import misbranded drugs (*i.e.,* in an amount, frequency, or dosage that is inconsistent with his personal or household use) that were not designated in an authorized electronic data interchange system as products that are regulated by FDA; all the parcels containing the misbranded drugs serving as the basis for this action, described in further detail below, were intercepted by FDA at the John F. Kennedy (JFK) International Mail Facility (IMF) and were addressed to Mr. Mendoza at one of two addresses connected to him.

On or about June 4, 2019, Mr. Mendoza offered for import a parcel that contained 250 tablets of CENFORCE–100, which was a misbranded drug because the product was determined to be a prescription drug product that failed to contain the ''Rx-only'' symbol on its label and lacked adequate directions for use in its labeling. The product was refused entry on July 9, 2019.

On or about January 24, 2020, Mr. Mendoza offered for import a parcel that contained 250 tablets of CENFORCE–100, which was a misbranded drug because the product was determined to be a prescription drug product that failed to contain the ''Rx-only'' symbol on its label and lacked adequate directions for use in its labeling. The product was refused entry on February 20, 2020.

On or about January 29, 2020, Mr. Mendoza offered for import a parcel that contained 250 tablets of CENFORCE–100, which was a misbranded drug because the product was determined to be a prescription drug product that failed to contain the ''Rx-only'' symbol on its label and lacked adequate directions for use in its labeling. The product was refused entry on February 25, 2020.

On or about January 30, 2020, Mr. Mendoza offered for import a parcel that contained 270 tablets of CENFORCE–100, which was a misbranded drug because the product was determined to be a prescription drug product that failed to contain the ''Rx-only'' symbol on its label and lacked adequate directions for use in its labeling. The product was refused entry on February 25, 2020.

On or about February 14, 2020, Mr. Mendoza offered for import a parcel that contained 330 tablets of CENFORCE–100, which was a misbranded drug because the product was determined to be a prescription drug product that failed to contain the ''Rx-only'' symbol on its label and lacked adequate directions for use in its labeling. The product was refused entry on March 17, 2020.

On or about February 14, 2020, Mr. Mendoza offered for import a parcel that contained 250 tablets of CENFORCE–100, which was a misbranded drug because the product was determined to be a prescription drug product that failed to contain the ''Rx-only'' symbol on its label and lacked adequate directions for use in its labeling. The product was refused entry on March 17, 2020.

On or about February 24, 2020, Mr. Mendoza offered for import a parcel that contained 250 tablets of CENFORCE–100, which was a misbranded drug because the product was determined to be a prescription drug product that failed to contain the ''Rx-only'' symbol on its label and lacked adequate directions for use in its labeling. The product was refused entry on March 19, 2020.

On or about June 10, 2020, Mr. Mendoza offered for import a parcel that contained 300 tablets of CENFORCE–100, which was a misbranded drug because the product was determined to be a prescription drug product that failed to contain the ''Rx-only'' symbol on its label. The product was refused entry on July 10, 2020.

On or about June 10, 2020, Mr. Mendoza offered for import a parcel that contained 300 tablets of CENFORCE–100, which was a misbranded drug because the product was determined to be a prescription drug product that failed to contain the ''Rx-only'' symbol on its label. The product was refused entry on July 7, 2020.

On or about June 16, 2020, Mr. Mendoza offered for import a parcel that contained 300 tablets of CENFORCE–100, which was a misbranded drug because the product failed to contain adequate directions for use in its labeling. The product was refused entry on July 14, 2020.

On or about June 16, 2020, Mr. Mendoza offered for import a parcel that contained 320 tablets of CENFORCE–100, which was a misbranded drug

because the product failed to contain adequate directions for use in its labeling. The product was refused entry on July 14, 2020.

On or about June 18, 2020, Mr. Mendoza offered for import a parcel that contained 300 tablets of CENFORCE–100, which was a misbranded drug because the product was determined to be a prescription drug product that failed to contain the ''Rx-only'' symbol on its label. The product was refused entry on July 15, 2020.

As a result of Mr. Mendoza's pattern of importing or offering for import misbranded drugs (*i.e.,* in an amount, frequency, or dosage that is inconsistent with his personal or household use) that are not designated in an authorized electronic data interchange system as products regulated by FDA, in accordance with section 306(b)(3)(D) of the FD&C Act, FDA sent Mr. Mendoza, by certified mail on February 17, 2022, a notice proposing to debar him for a 5-year period from importing or offering for import any drug into the United States.

In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Mr. Mendoza's pattern of conduct and concluded that his conduct warranted the imposition of a 5-year period of debarment.

The proposal informed Mr. Mendoza of the proposed debarment and offered him an opportunity to request a hearing, providing 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Mendoza received the proposal and notice of opportunity for a hearing on February 26, 2022. Mr. Mendoza failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(D) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. David Elias Mendoza has engaged in a pattern of importing or offering for import misbranded drugs (*i.e.,* in an amount, frequency, or dosage that is inconsistent with his personal or household use) that are not designated in an authorized electronic data interchange system as products regulated by FDA. FDA finds that this pattern of conduct should be accorded a debarment period of 5 years as provided by section 306(c)(2)(A)(iii) of the FD&C Act.

As a result of the foregoing finding, Mr. Mendoza is debarred for a period of 5 years from importing or offering for import any drug into the United States, effective (see **DATES**). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of any drug or controlled substance by, with the assistance of, or at the direction of Mr. Mendoza is a prohibited act.

Any application by Mr. Mendoza for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2021–N–0526 and sent to the Dockets Management Staff (see **ADDRESSES**). The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions will be placed in the docket and will be viewable at *https://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

Dated: November 9, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–24805 Filed 11–14–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–2778]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Threshold of Regulation for Substances Used in Food-Contact Articles

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by December 15, 2022.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0298. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Threshold of Regulation for Substances Used in Food-Contact Articles—21 CFR 170.39

OMB Control Number 0910–0298—Extension

Under section 409(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 348(a)), the use of a food additive is deemed unsafe unless one of the following is applicable: (1) it conforms to an exemption for investigational use under section 409(j) of the FD&C Act; (2) it conforms to the terms of a regulation prescribing its use; or (3) in the case of a food additive which meets the definition of a food-contact substance in section 409(h)(6) of the FD&C Act, there is either a regulation authorizing its use in accordance with section 409(a)(3)(A) of the FD&C Act or an effective notification in accordance with section 409(a)(3)(B) of the FD&C Act.

The regulations in § 170.39 (21 CFR 170.39) established a process that provides the manufacturer with an opportunity to demonstrate that the likelihood or extent of migration to food of a substance used in a food-contact article is so trivial that the use need not be the subject of a food additive listing regulation or an effective notification. The Agency has established two thresholds for the regulation of substances used in food-contact articles. The first exempts those substances used in food-contact articles where the resulting dietary concentration would be at or below 0.5 part per billion. The second exempts regulated direct food additives for use in food-contact articles where the resulting dietary exposure is

1 percent or less of the acceptable daily intake for these substances.

To determine whether the intended use of a substance in a food-contact article meets the threshold criteria, certain information specified in § 170.39(c) must be submitted to FDA. This information includes the following components: (1) the chemical composition of the substance for which the request is made; (2) detailed information on the conditions of use of the substance; (3) a clear statement of the basis for the request for exemption from regulation as a food additive; (4) data that will enable FDA to estimate the daily dietary concentration resulting from the proposed use of the substance; (5) results of a literature search for toxicological data on the substance and its impurities; and (6) information on the environmental impact that would result from the proposed use. We use this information to determine whether the food-contact substance meets the threshold criteria.

Description of Respondents: Respondents to this information collection are individual manufacturers and suppliers of substances used in food-contact articles (*i.e.,* food packaging and food processing equipment) or of the articles themselves.

In the **Federal Register** of April 7, 2022 (87 FR 20433), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR 170.39	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Threshold of regulation for substances used in food-contact articles	7	1	7	48	336

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The threshold of regulation process offers one advantage over the premarket notification process for food-contact substances established by section 409(h) of the FD&C Act (OMB control number 0910–0495) in that the use of a substance exempted by FDA is not limited to only the manufacturer or supplier who submitted the request for an exemption. Other manufacturers or suppliers may use exempted substances in food-contact articles as long as the conditions of use (*e.g.,* use levels, temperature, type of food contacted, etc.) are those for which the exemption was issued. As a result, the overall burden on both Agency and the regulated industry would be significantly less in that other manufacturers and suppliers would not have to prepare, and we would not have to review, similar submissions for identical components of food-contact articles used under identical conditions.

Manufacturers and other interested persons can easily access an up-to-date list of exempted substances which is on display at FDA's Dockets Management Staff and on the internet at *https://www.fda.gov/food/packaging-food-contact-substances-fcs/threshold-regulation-exemptions-substances-used-food-contact-articles.* Having the list of exempted substances publicly available decreases the likelihood that a company would submit a food additive petition or a notification for the same type of food-contact application of a substance for which the Agency has previously granted an exemption from the food additive listing regulation requirement.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: November 9, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–24801 Filed 11–14–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council on Blood Stem Cell Transplantation

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Secretary's Advisory Council on Blood Stem Cell Transplantation (ACBSCT) has scheduled public meetings. Information about ACBSCT and the agenda for these meetings can be found on the ACBSCT website at *https://bloodstemcell.hrsa.gov/about/advisory-council.*

DATES:

- Monday, December 5, 2022, 12–4 p.m. Eastern Time; and
- Tuesday, December 6, 2022, 12–4 p.m. Eastern Time.

ADDRESSES: This meeting will be held virtually by webinar. A link to register and join the meeting will be posted at least 10 days prior to the meeting at *https://bloodstemcell.hrsa.gov/about/advisory-council.*

FOR FURTHER INFORMATION CONTACT: Shelley Grant, Designated Federal Official, at the HRSA's Health Systems Bureau, Division of Transplantation, 5600 Fishers Lane, 8W–67, Rockville, Maryland 20857; 301–443–8036; or *ACBSCTHRSA@hrsa.gov.*

SUPPLEMENTARY INFORMATION: ACBSCT provides advice and recommendations to the Secretary of Health and Human Services (Secretary) on policy, program development, and other matters of significance concerning the activities under the authority of 42 U.S.C. Section 274k, Section 379 of the Public Health Service Act, as amended, and Public Law 109–129, and as amended.

During the December 5 and December 6, 2022, meetings, ACBSCT will discuss the impact of COVID–19 on blood stem cell donation and transplantation; unmet needs in blood stem cell transplantation and cellular therapy; strategies to improve rates of adult blood stem donation; and other areas to increase blood stem cell donation and transplantation. Agenda items are subject to change as priorities dictate. Refer to the ACBSCT website for any updated information concerning the meeting. Members of the public will have the opportunity to provide comments. Public participants may submit written statements in advance of the scheduled meetings; oral comments will be honored in the order they are requested and may be limited as time allows. Requests to submit a written statement or make oral comments to ACBSCT should be sent to Shelley Grant using the contact information above at least 3 business days prior to the meeting. Individuals who plan to

attend and need special assistance or another reasonable accommodation should notify ACBSCT at the address and phone number listed above at least 10 business days prior to the meeting.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–24788 Filed 11–14–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice for Public Comments on Healthcare-Associated Infections (HAI) National Action Plan Targets

AGENCY: Office of Infectious Disease and HIV/AIDS Policy, Office of the Assistant Secretary for Health, Department of Health and Human Services, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice for public comment.

SUMMARY: The Department of Health and Human Services' (HHS) Office of Infectious Disease and HIV/AIDS Policy (OIDP) in the Office of the Assistant Secretary for Health (OASH) announces the draft targets for updating the Healthcare-Associated Infections (HAI) National Action Plan, Phase 1, Acute Care Hospitals, for public comment. The HHS Core Group of the HAI National Action Plan reviewed data pre-pandemic and between 2020 and 2021 and developed potential 5-year targets based on assumptions that current HAI rates should return to pre-pandemic baseline rates within 2 years or within 3 years when determining these 5-year targets. The HHS HAI NAP Core Group recommends 5-year targets assuming a return to pre-pandemic baseline rates within 3 years based on two fundamentals: (1) pandemic-related challenges will likely persist in upcoming years, and (2) the pandemic has caused major strains on the health care system which make a 3-year timeline to achieve pre-pandemic Standardized Infection Ratio (SIR) the most appropriate choice. The draft targets are below.

DATES: All comments must be received by 5:00 p.m. ET on January 13, 2023, to be considered.

ADDRESSES: All comments must be submitted electronically to *OIDP-HAI@hhs.gov* to be considered.

FOR FURTHER INFORMATION CONTACT: Chinedu R. Okeke, OIDP, Medical Officer at *chinedu.okeke@hhs.gov* or 202–868–8872.

SUPPLEMENTARY INFORMATION: Healthcare Associated Infections (HAIs) are infections that patients get while receiving care or treatment, and many HAIs are preventable. Modern healthcare employs many types of invasive devices and procedures to treat patients and to help them recover. Infections can be associated with surgeries and the devices used in medical procedures, such as catheters or ventilators and due to the transmission of pathogens. HAIs are an important cause of morbidity and mortality in the United States and are associated with a substantial increase in healthcare costs each year. At any given time in the US, 1 out of every 31 hospitalized patients are affected by an HAI. HAIs occur in all types of care settings, including acute care hospitals, ambulatory surgical centers, dialysis facilities, outpatient care, and long-term care facilities. The updates here are for phase 1 of the action plan, which focuses on acute care hospitals.

HAIs are a significant source of complications across the continuum of care and can be transmitted between different healthcare facilities. However, recent studies suggest that implementing existing prevention practices can lead up to a 70 percent reduction in certain HAIs. Likewise, recent modeling data suggests that substantial reductions in resistant bacteria, like MRSA, can be achieved through coordinated activities between healthcare facilities in each region. The financial benefit of using these prevention practices is estimated to be $25 billion to $31.5 billion in medical cost savings. Risk factors for HAIs can be grouped into three general categories: medical procedures and antibiotic use, organizational factors, including risks for pathogen transmission, and patient characteristics. The behaviors of health care providers and their interactions with the health care system also influence the rate of HAIs.

To provide a roadmap for HAI prevention, HHS released the National Action Plan to Prevent Health Care-Associated Infections: Roadmap to Elimination (HAI National Action Plan) in 2009 with updates to phase 1, acute care hospitals made in 2013 and 2018. In 2020, HHS leadership transitioned the HAI portfolio to the Office of Infectious Disease and HIV/AIDS Policy (OIDP). To date, OIDP is the lead for the federal steering committee and charged with leading the process to update the HAI National Action Plan. Due to the COVID–19 pandemic, HHS and implementing agencies delayed the process of updating the national action plan and indicator targets for HAIs in acute care hospitals due to data instability. This proposed update would include new indicator targets for certain HAIs in acute care hospitals.

Goals

All Goals Are Five-Year Goals With the Baseline Year Being 2023 and the Goal Year Being 2028

- Reduce central line-associated bloodstream infections (CLABSI) in intensive care units and ward-located patients by 40% from 2023–2028
- Reduce catheter-associated urinary tracts infections (CAUTI) in intensive care units and ward-located patients by 25% from 2023–2028
- Reduce hospital-onset MRSA bacteremia by 40% from 2023–2028
- Reduce hospital-onset *Clostridioides difficile* infections (CDI) by 20% from 2023–2028

Of note, the previous iteration of the HAI national action plan included targets for reducing surgical site infections (SSI). However, during the period of 2020–2022, there has been significant data instability for SSI due to variable surgical volume related to deferral of elective surgeries in hospitals undergoing COVID surges. The HAI national action plan Core Group therefore decided not to establish targets for SSI at this time.

Information Needs

HHS seeks to obtain feedback from external stakeholders on the following:

1. Are the draft targets realistic and achievable?
2. Are there any critical gaps in the draft targets? If so, please specify the gaps.
3. Do you have any concerns about the targets? If so, please specify, and describe the concern regarding it.

Each commenter is limited to a maximum of seven pages.

Dated: November 2, 2022,

B. Kaye Hayes,

Deputy Assistant Secretary for Infectious Disease, Director, Office of Infectious Disease and HIV/AIDS Policy, Executive Director, Presidential Advisory Council on HIV/AIDS, Office of the Assistant Secretary for Health, Department of Health and Human Services.

[FR Doc. 2022–24822 Filed 11–14–22; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR22–069 High Impact, Interdisciplinary Science in NIDDK Research Areas: Adipocyte Heterogeneity (RC2).

Date: December 6, 2022.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, 2 Democracy, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ann A Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7119, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 8, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–24731 Filed 11–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation Cooperative Agreement (U01 Clinical Trial Required).

Date: December 9, 2022.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G54, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Hitendra S. Chand, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G54, Rockville, MD 20852, (240) 627–3245, *hiten.chand@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 8, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–24774 Filed 11–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Emerging Imaging Technologies and Applications.

Date: December 6, 2022.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lawrence Edward Kagemann, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–6849, *larry.kagemann@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 8, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–24729 Filed 11–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Special Emphasis Panel.

Date: December 5–6, 2022.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Bethesda, MD 20892, 301–827–9087, *mooremar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research

Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: November 9, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–24824 Filed 11–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request Information Program on Clinical Trials: Maintaining a Registry and Results Databank (National Library of Medicine)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Library of Medicine (NLM), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received with 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Christeenna Iraheta, Office of Administrative and Management Analysis Services, National Library of Medicine, Building 38A, Room B2N12A, 8600 Rockville Pike, Bethesda, MD 20894, or call non-toll-free number (301) 827–6361, or Email your request, including your address to: *Christeenna.iraheta@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Information Program on Clinical Trials: Maintaining a Registry and Results Databank, 0925–0586, Expiration Date: 02/28/2023, EXTENSION, National Library of Medicine (NLM), National Institutes of Health (NIH).

Need and Use of Information Collection: The National Institutes of Health operates *ClinicalTrials.gov,* which was established as a clinical trial registry under section 113 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) and was expanded to include a results data bank by Title VIII of the Food and Drug Administration Amendments Act of 2007 (FDAAA) and by the Clinical Trials Registration and Results Information Submission regulations at 42 CFR part 11. *ClinicalTrials.gov* collects registration and results information for clinical trials and other types of clinical studies (*e.g.,* observational studies and patient registries) with the objectives of enhancing patient enrollment and providing a mechanism for tracking subsequent progress of clinical studies to the benefit of public health. It is widely used by patients, physicians, and medical researchers; in particular those involved in clinical research. While many clinical studies are registered and submit results information voluntarily, 42 CFR part 11 requires the registration of certain applicable clinical trials of drug, biological, and device products and the submission of results information for completed applicable clinical trials of drug, biological, and device products whether or not they are approved, licensed, or cleared by the Food and Drug Administration.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 1,219,801.

ESTIMATED ANNUALIZED BURDEN HOURS

Submission type	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Registration—attachment 2				
Initial	7,400	1	8	59,200
Updates	7,400	8	2	118,400
Triggered, voluntary	141	1	8	1,128
Initial, non-regulated, NIH Policy	940	1	8	7,520
Updates, non-regulated, NIH Policy	940	8	2	15,040
Initial, voluntary and non-regulated	17,860	1	8	142,880
Updates, voluntary and non-regulated	17,860	8	2	285,760
Results Information Submission—attachment 5				
Initial	7,400	1	40	296,000
Updates	7,400	2	10	148,000
Triggered, voluntary—also attachment 2	47	1	45	2,115
Initial, non-regulated, NIH Policy	940	1	40	37,600
Updates, non-regulated, NIH Policy	940	2	10	18,800
Initial, voluntary and non-regulated	1,400	1	40	56,000

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Submission type	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Updates, voluntary and non-regulated	1,400	2	10	28,000
Other				
Certification to delay results—attachment 6	5,150	1	30/60	2,575
Extension request and Appeals—attachment 7	125	1	2	250
Initial, expanded access—attachment 3	213	1	2	426
Updates, expanded access—attachment 3	213	2	15/60	107
Total		271,122		1,219,801

Christeenna M. Iraheta,

Project Clearance Liaison, National Library of Medicine, National Institutes of Health.

[FR Doc. 2022–24859 Filed 11–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Research Education Program (R25 Clinical Trial Not Allowed).

Date: December 9, 2022.

Time: 10:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F40A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Robert C. Unfer, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F40A, Rockville, MD 20852, (240) 669–5035, *robert.unfer@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 8, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–24770 Filed 11–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: December 7, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G41, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Kelly L. Hudspeth, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G41, Rockville, MD 20852, 240–669–5067, *kelly.hudspeth@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 8, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–24758 Filed 11–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Using Rodent Behavioral Models to Identify Substance Abuse Pharmacotherapies.

Date: December 6, 2022.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North

Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Caitlin Elizabeth Angela Moyer, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 443–4577, *caitlin.moyer@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: November 8, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–24732 Filed 11–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2023 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, Department of Health and Human Services (HHS).

ACTION: Notice of intent to award a single source cooperative agreement to Mental Health Association of New York City, Inc. (DBA Vibrant Emotional Health).

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) intends to award $62,000,000 (total costs) for up to one year to Vibrant Emotional Health for the 988 National Suicide Prevention Lifeline Expansion for Behavioral Health Crisis Response (Lifeline Expansion). These funds will allow Vibrant Emotional Health to ensure effective and continuous operations of the national Lifeline backup, chat/text, Spanish and LGBTQI+ youth crisis center networks, administrative and leadership support to ensure training, evaluation, personnel, and committee oversight and implementation, and continued development of the Lifeline unified platform and information technology integration for local and national crisis centers.

FOR FURTHER INFORMATION CONTACT: James Wright, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857; telephone: (240) 276–1615; email: *james.wright@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION: This funding will: (1) fund national Lifeline backup, chat/text, Spanish and specialized service networks; (2) expand training and resources for high-risk populations; and (3) improve unified data management across the 988 Lifeline crisis centers nationwide for the contact growth during the first quarter of FY 2023. This is not a formal request for application. Assistance will be provided only to Vibrant Emotional Health based on the receipt of a satisfactory application that is approved by an independent review group.

Funding Opportunity Title: 988 Suicide and Crisis Lifeline Operations.

Assistance Listing Number: 93.243.

Authority: Section 520E–3 of the Public Health Service Act, as amended.

Justification: Eligibility for this award is limited to the Mental Health Association of New York City, Inc. (DBA Vibrant Emotional Health). Since 2005, Vibrant Emotional Health has provided oversight and management of the Suicide Prevention Lifeline and its local call centers, backup centers, and chat/text functions with a network of over 180 centers in all fifty states. This longstanding history has positioned Vibrant Emotional Health as the only identified organization with the required experience and national reach to work with the backup centers and chat/text organizations with expansion of their workforce and development of the infrastructure to improve unified data management across centers.

Vibrant Emotional Health's history, experience, and ongoing communications with these centers have been critical to ensure sufficient capacity was in place for the July 2022 transition to 988. Several external evaluations have reinforced the evidence of effectiveness of Lifeline services through oversight of the Lifeline by Vibrant Emotional Health. It would not be possible for any other organization to establish the relationships with crisis centers that Vibrant Emotional Health has built over the last 15 years and could run the risk of significant numbers of unanswered calls, chats, and texts. In addition, if these funds were awarded to another organization, oversight of the expanded backup and chat/text centers would be fragmented, and the network would run the risk of inefficiencies and adverse outcomes to individuals in crisis. Vibrant Emotional Health has long been recognized throughout the nation for its state-of-art technology-enabled services, community wellness programs, and advocacy and education work and is uniquely qualified to carry-out the requirements of this funding opportunity.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2022–24793 Filed 11–14–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0578]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0028

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

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0028, Course Approval and Records for Merchant Mariner Training Schools; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before January 17, 2023.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2022–0578] to the Coast Guard using the Federal eRulemaking 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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–6P), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2022–0578], and must be received by January 17, 2023.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Course Approval and Records for Merchant Mariner Training Schools.

OMB Control Number: 1625–0028.

Summary: The information is needed to ensure that merchant marine training schools meet minimal statutory requirements. The information is used to approve the curriculum, facility and faculty for these schools.

Need: 46 U.S.C. 7315 authorizes an applicant for a Merchant Mariner Credential to substitute the completion of an approved course for a portion of the required sea service. 46 CFR 10.402 contains the Coast Guard regulations for course approval.

Forms: None.

Respondents: Merchant marine training schools.

Frequency: Five years for reporting; one year for recordkeeping.

Hour Burden Estimate: The estimated burden remains 145,917 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: November 4, 2022.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2022–24786 Filed 11–14–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0577; OMB Control Number 1625–0027]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0027, Vessel Documentation; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before January 17, 2023.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2022–0577] to the Coast Guard using the Federal eRulemaking 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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all

comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2022–0577], and must be received by January 17, 2023.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Vessel Documentation.

OMB Control Number: 1625–0027.

Summary: The information collected will be used to establish the eligibility of a vessel to: (a) be documented as a ''vessel of the United States,'' (b) engage in a particular trade, and/or (c) become the object of a preferred ship's mortgage. The information collected concerns citizenship of owner/applicant and build, tonnage and markings of a vessel.

Need: 46 U.S.C. Chapters 121, 123, 125 and 313 requires the documentation of vessels. A Certificate of Documentation is required for the operation of a vessel in certain trades, serves as evidence of vessel nationality and permits a vessel to be subject to preferred mortgages.

Forms

- CG–1258, Application for Initial, Exchange, or Replacement of Certificate of Documentation; Redocumentation with optional attachments.
- CG–1261, Builder's Certification and First Transfer of Title.
- CG–1270, Certificate of Documentation.
- CG–1280, Vessel Renewal Notification Application for Renewal.
- CG–1330, Certificate of Ownership of Vessel.
- CG–1332, General Index or Abstract of Title.
- CG–1340, Bill of Sale.
- CG–1356, Bill of Sale by Government Entity Pursuant to Court Order of Administrative Degree of Forfeiture.
- CG–4593, Application, Consent, and Approval for Withdrawal of Application for Documentation or Exchange of Certificate of Documentation.
- CG–5542, Optional Application for Filing.
- CG–7042, Authorization for Credit Card Transactions.
- CG–7043, Abstract of Title/Certified COD Request.

Why is the Coast Guard proposing to add two new forms: The Coast Guard is adding optional forms CG–1330 and CG–1332 to provide a standardized means of delivering information about documented U.S. vessels. A Certificate of Ownership of Vessel (CG–1332) provides the name and official number of a vessel, name and address of the last owner of record, the Certificate of Documentation expiration date, any outstanding mortgages, preferred mortgages, and notice of lien. Additionally, it lists any pending application and or instruments filed. A General Index or Abstract of Title (CG–1330) contains information concerning build, ownership, and encumbrances or liens filed and recorded against a vessel.

Respondents: Owners/builders of yachts and commercial vessels of at least 5 net tons.

Frequency: Annually, and on occasion.

Hour Burden Estimate: The estimated burden has increased from 50,844 hours to 84,443 hours, due to an increase in the estimated number of responses. In addition, the estimated burden has increased by 5,883 hours, due to the addition of two new optional forms—CG–1330, Certificate of Ownership of Vessel and CG–1332, General Index or Abstract of Title. The total estimated burden is 90,326 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: November 4, 2022.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2022–24785 Filed 11–14–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0036; OMB No. 1660–0083]

Agency Information Collection Activities: Proposed Collection; Comment Request; Application for Community Disaster Loan (CDL) Program

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on an extension, with change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Community Disaster Loan (CDL) Program. This collection allows the Federal Government to make loans to local governments that have suffered economic problems due to disasters.

DATES: Comments must be submitted on or before January 17, 2023.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2022–0036. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Martha Castro, Program Manager, Program Support and Monitoring Branch, Public Assistance Division, 202–212–5761, *Martha.Castro@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The information collection is required for Community Disaster Loan (CDL) Program eligibility determinations, CDL management, and compliance with other Federal laws and regulations. The CDL Program is authorized by section 417 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288, as amended, 42 U.S.C. 5184) and implementing regulations at 44 CFR, part 206, subpart K. FEMA may make a CDL to any local government which has suffered a substantial loss of tax or other revenues as a result of a major disaster or emergency and which demonstrates a need for Federal financial assistance to perform its governmental functions.

The CDL must be justified on the basis of need and be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and the three succeeding fiscal years. FEMA has the authority to cancel repayment of all or part of these CDLs to the extent that a determination is made that revenues of the local government during the three fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster related revenue losses and additional unreimbursed disaster-related municipal operating expenses.

FEMA reviewed the forms included in this collection and found that FEMA Form 090–0–4 (Letter of Application) presented difficulties for the local governments. FEMA found a simpler way of fulfilling the regulatory requirement through a template letter which local governments can paste into their letterhead. Therefore, FEMA Form 090–0–4 (Letter of Application) will no longer be part of this collection.

Collection of Information

Title: Application for Community Disaster Loan (CDL) Program.

Type of Information Collection: Extension, with minor change, of a currently approved information collection.

OMB Number: 1660–0083.

FEMA Forms: FEMA Form FF–104–FY–22–223 (formerly 090–0–1), Certification of Eligibility for Community Disaster Loans; FF–104–FY–22–224 (formerly 116–0–1), Promissory Note; FF–104–FY–22–225 (formerly 085–0–1), Local Government Resolution—Collateral Security; FF–104–FY–22–226 (formerly 112–0–3C), Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters, and Drug-Free Workplace Requirements; FF–104–FY–22–227 (formerly 009–0–15), Application for Loan Cancellation.

Abstract: The loan package for the CDL Program provides local governments that have suffered substantial loss of tax or other revenues as a result of a major disaster, the opportunity to obtain financial assistance in order to perform their governmental functions. The loan must be justified on the basis of need and actual expenses.

Affected Public: State, local, or Tribal Government.

Estimated Number of Respondents: 260.

Estimated Number of Responses: 260.

Estimated Total Annual Burden Hours: 552.

Estimated Total Annual Respondent Cost: $25,800.

Estimated Respondents' Operation and Maintenance Costs: 0.

Estimated Respondents' Capital and Start-Up Costs: 0.

Estimated Total Annual Cost to the Federal Government: $1,059,047.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–24803 Filed 11–14–22; 8:45 am]

BILLING CODE 9111–24–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6360–N–01]

Notice of Certain Operating Cost Adjustment Factors for 2023

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice; request for comment.

SUMMARY: This notice establishes operating cost adjustment factors (OCAFs) for project-based assistance contracts issued under Section 8 of the United States Housing Act of 1937 and renewed under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) for eligible multifamily housing projects having an anniversary date on or after February 11, 2023. OCAFs are annual factors used to adjust Section 8 rents renewed under section 515 or section 524 of MAHRA. Through this notice HUD also seeks public input on two proposed technical changes to its OCAF calculation method.

DATES:

Comment due date: December 15, 2022.

Applicability date: February 11, 2023, unless HUD receives comment that would lead to the reconsideration of these proposed changes, as described below.

ADDRESSES: HUD invites interested persons to submit comments regarding changes to the OCAF calculation method. Communications must refer to the above docket number and title and should contain the information specified in the ''Request for Public Comments and FMR Reevaluations'' section. There are two methods for submitting public comments:

1. Electronic Submission of Comments. Interested persons may submit comments or reevaluation requests electronically through the Federal eRulemaking Portal at *https://www.regulations.gov.* HUD strongly encourages commenters to submit comments or reevaluation requests electronically. Electronic submission of comments or reevaluation requests allows the author maximum time to prepare and submit a comment or reevaluation request, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments or reevaluation requests submitted electronically through the *https://www.regulations.gov* website can be viewed by other submitters and interested members of the public. Commenters or reevaluation

requestors should follow instructions provided on that site to submit comments or reevaluation requests electronically.

2. Submission of Comments by Mail. Members of the public may submit comments or requests for reevaluation by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at all federal agencies, however, submission of comments by standard mail often results in delayed delivery. To ensure timely receipt of comments or reevaluation requests, HUD recommends that comments or requests submitted by standard mail be submitted at least two weeks in advance of the deadline. HUD will make all comments or reevaluation requests received by mail available to the public at *https://www.regulations.gov.*

Note: To receive consideration as public comments or reevaluation requests, comments or requests must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments or Reevaluation Requests. HUD does not accept facsimile (FAX) comments or requests.

FOR FURTHER INFORMATION CONTACT: Jennifer Lavorel, Director, Office of Asset Management and Portfolio Oversight Program Administration Office, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; telephone number 202–402–2515 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 514(e)(2) and section 524(c)(1) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) (42 U.S.C. 1437f note), as amended, require HUD to establish guidelines for the development of operating cost adjustment factors (OCAFs) for rent adjustments. Similar language is found in sections 524(a)(4)(C)(i), 524(b)(1)(A), and 524(b)(3)(A) of MAHRA, all of which prescribe the use of the OCAF in the calculation of renewal rents. MAHRA gives HUD broad discretion in setting OCAFs, referring, for example, in sections 524(a)(4)(C)(i), 524(b)(1)(A), 524(b)(3)(A), and 524(c)(1), to simply ''an operating cost adjustment factor established by the Secretary.'' HUD uses a single methodology for establishing OCAFs. The sole limitation to this grant of authority is a specific requirement in each of the foregoing provisions that application of an OCAF ''shall not result in a negative adjustment.''

OCAFs vary among states and territories. Contract rents are adjusted by applying the OCAF for the state or territory in which the subject project is located to that portion of the rent attributable to operating expenses exclusive of debt service.

The OCAFs provided in this notice are applicable to eligible projects having a contract anniversary date on or after February 11, 2023.

II. Proposed Changes to OCAF Methodology

HUD seeks public input on the following proposed technical changes to its OCAF calculation methodology.

Vintage of data. To calculate the inflation factor for each of the nine cost components that comprise the OCAF, HUD uses year-over-year data, pulling data as of May of each year. Beginning with the 2024 OCAFs, HUD will begin to pull data in August of each year, to reduce the time lag between when OCAFs are calculated and when they go into effect.

Note: To provide for OCAFs that are relatively generous in 2023, given historically high inflation levels, HUD calculated the cost component inflation factor for most of the cost components using a time period that exceeds 1 year. HUD used the most recent available data at the time of calculation for the numerator. For the denominator, HUD used the figure for the time period that was used in the calculation of the 2022 OCAFs. Going forward, HUD will revert to using year-over-year data for each component, subject to data availability.

Insurance component data source. To calculate the inflation factor for the insurance component, HUD has used the Bureau of Labor Statistics Consumer Price Index, Tenants and Household Insurance Index. Beginning with the 2023 OCAFs, HUD instead uses the industry data for Direct property and casualty insurers-Commercial multiple peril insurance series from the Bureau of Labor Statistics, Producer Price Index, as it is the best metric for insurance costs for properties of leased rental housing.

With respect to these proposed changes to OCAF methodology, HUD will consider all comments submitted not later than 30 days from the date of publication of this notice. Unless HUD receives comment that would lead to the reconsideration of these proposed changes, the changes will become effective on February 11, 2023. If HUD receives adverse comment that leads to reconsideration, HUD will notify the public via a revised notice issued immediately following the close of the comment period.

III. OCAF Data Sources

OCAFs are calculated as the sum of weighted component cost changes for electricity, employee benefits/employee wages, fuel oil, goods/supplies/equipment, insurance, natural gas, property taxes, and water/sewer/trash, using publicly available indices. The weights used in the OCAF calculations for each of the nine cost component groupings are set using current percentages attributable to each of the nine expense categories. HUD calculates weights using three years of audited Annual Financial Statements from projects covered by OCAFs. The expenditure percentages for these nine categories have been found to be stable over time, and using three years of data increases their stability. The nine cost component weights are calculated at the state level, which is the lowest level of geographical aggregation with enough projects to permit statistical analysis. These data are not available for the Western Pacific Islands, so data for Hawaii are used as the best available indicator of OCAFs for these areas.

HUD uses the best current price data sources for the nine cost categories in calculating annual change factors. State-level data for electricity, fuel oil, and natural gas from Department of Energy surveys are relatively current and continue to be used. Data on changes in employee benefits/employee wages, goods/supplies/equipment, insurance, property taxes, and water/sewer/trash costs are available only at the national level.

The data sources used for the selected nine cost indicators are as follows:

- *Electricity:* Energy Information Agency (EIA), May 2022 ''Electric Power Monthly'' report, Table 5.6.B. HUD compares the estimate for January 2022 through May 2022 to the estimate for January 2020 to December 2020. *https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=epmt_5_06_b.*
- *Employee benefits:* Bureau of Labor Statistics (BLS) ECI, Private Industry Benefits, All Workers (Series ID CIU2030000000000I), at the national level. HUD compares the second quarter 2022 to the first quarter of 2021. *https://data.bls.gov/timeseries/CIU2030000000000I.*

• *Employee wages:* Bureau of Labor Statistics (BLS) ECI, Private Industry Wages and Salaries, All Workers (Series ID CIU2020000000000I), at the national level. HUD compares the second quarter 2022 to the first quarter of 2021. *https://data.bls.gov/timeseries/CIU2020000000000I.*

• *Fuel Oil:* EIA U.S. Weekly Heating Oil and Propane Prices report. Average weekly residential heating oil prices in cents per gallon excluding taxes for the period from October 5, 2021, through the week of March 29, 2022, are compared to the average from October 5, 2020, through the week of March 29, 2021. For the States with insufficient fuel oil consumption to have separate estimates, the relevant regional Petroleum Administration for Defense Districts (PADD) change between these two periods is used; if there is no regional PADD estimate, the U.S. change between these two periods is used. *https://www.eia.gov/dnav/pet/pet_pri_wfr_a_EPD2F_PRS_dpgal_w.htm.*

• *Goods/Supplies/Equipment:* Bureau of Labor Statistics (BLS) Consumer Price Index, All Items Less Food, Energy and Shelter (Series ID CUUR0000SA0L12E) at the national level. HUD compares the July 2022 estimate to the estimate for May 2021. *https://data.bls.gov/timeseries/CUUR0000SA0L12E.*

• *Insurance:* Bureau of Labor Statistic (BLS) Producer Price Index, industry data for Direct property and casualty insurers-Commercial multiple peril insurance (Series ID PCU5241265241265) at the national level. HUD compares the estimate for July 2022 to the estimate for May 2021. *https://data.bls.gov/timeseries/PCU5241265241265.*

• *Natural Gas:* Energy Information Agency, Natural Gas, Residential Energy Price, monthly prices in dollars per 1,000 cubic feet at the state level. HUD compares the estimate for January 2021 through May 2022 to the estimate for January 2020 through December 2020. Due to EIA data quality standards, several states were missing data for one or two months in 2021 and 2022; in these cases, data for these missing months were estimated using data from the surrounding months in that year and the relationship between that same month and the surrounding months in 2020. *http://www.eia.gov/dnav/ng/ng_pri_sum_a_EPG0_PRS_DMcf_a.htm.*

• *Property Taxes:* Census Quarterly Summary of State and Local Government Tax Revenue—Table 1 *https://www.census.gov/econ/currentdata/dbsearch?program=QTAX&startYear=2019&endYear=2021&categories=QTAXCAT1&dataType=T01&geoLevel=US&notAdjusted=1&submit=GET+DATA&releaseScheduleId=.* Twelve-month property taxes are computed as the total of four quarters of tax receipts for the period from April through March. Total 12-month taxes are then divided by the number of occupied housing units to arrive at average 12-month tax per housing unit. HUD compares the estimate for April 2021 through March 2022 to the estimate for April 2020 through March 2021.The number of occupied housing units is taken from U.S. Census Bureau's Current Population Survey/Housing Vacancy Survey (CPS/HVS) housing inventory estimates the estimates, Table 8: *https://www.census.gov/housing/hvs/data/histtab8.xlsx.*

• *Water/Sewer/Trash:* Consumer Price Index, All Urban Consumers, Water and Sewer and Trash Collection Services (Series ID CUUR00 00SEHG) at the national level. HUD compares the estimate for July 2022 to the estimate for May 2021. *https://data.bls.gov/timeseries/CUUR0000SEHG.*

The sum of the nine cost component percentage weights equals 100 percent of operating costs for purposes of OCAF calculations. To calculate the OCAFs, state-level cost component weights developed from AFS data are multiplied by the selected inflation factors. For instance, if wages in Virginia comprised 50 percent of total operating cost expenses and increased by 4 percent from 2021 to 2022, the wage increase component of the Virginia OCAF for 2023 would be 2.0 percent (50% * 4%). This 2.0 percent would then be added to the increases for the other eight expense categories to calculate the 2023 OCAF for Virginia. For states where the calculated OCAF is less than zero, the OCAF is floored at zero. The OCAFs for 2023 are included as an Appendix to this notice.

IV. Findings and Certifications Environmental Impact

This notice sets forth rate determinations and related external administrative requirements and procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 Code of Federal Regulations 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).

V. Paperwork Reduction Act

This notice does not impact the information collection requirements already submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The OMB control number associated with this collection is 2502–0587.

VI. Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 14.195.

Julia R. Gordon,

Office of the Assistant Secretary for Housing, Federal Housing Administration Commissioner.

Appendix

Operating Cost Adjustment Factors for 2023

Alabama	5.8
Alaska	6.0
Arizona	5.7
Arkansas	5.9
California	7.1
Colorado	5.9
Connecticut	6.1
Delaware	5.8
District of Columbia	5.8
Florida	6.1
Georgia	5.6
Hawaii	7.3
Idaho	5.1
Illinois	7.3
Indiana	6.4
Iowa	5.0
Kansas	5.5
Kentucky	6.4
Louisiana	5.9
Maine	8.3
Maryland	6.6
Massachusetts	6.1
Michigan	5.5
Minnesota	7.3
Mississippi	6.2
Missouri	5.2
Montana	5.4
Nebraska	5.9
Nevada	6.2
New Hampshire	5.7
New Jersey	5.3
New Mexico	6.0
New York	7.6
North Carolina	5.7
North Dakota	6.0
Ohio	6.2
Oklahoma	4.9
Oregon	5.6
Pacific Islands	7.3
Pennsylvania	5.8
Puerto Rico	6.3
Rhode Island	5.3
South Carolina	5.6
South Dakota	4.8
Tennessee	5.7
Texas	5.7
Utah	5.6
Vermont	6.0

Virgin Islands	5.8
Virginia	6.0
Washington	5.9
West Virginia	6.6
Wisconsin	6.6
Wyoming	5.6
United States	6.1

[FR Doc. 2022–24845 Filed 11–14–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L13100000.PP0000.LLHQ310000.234; OMB Control No. 1004–0209]

Agency Information Collection Activities; Measurement of Oil

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before January 16, 2023.

ADDRESSES: Send your written comments on this information collection request (ICR) by mail to Darrin King, Information Collection Clearance Officer, U.S. Department of the Interior, Bureau of Land Management, Attention PRA Office, 440 W 200 S #500, Salt Lake City, UT 84101; or by email to *BLM_HQ_PRA_Comments@blm.gov.* Please reference Office of Management and Budget (OMB) Control Number 1004–0209 in the subject line of your comments. Please note that the electronic submission of comments is recommended.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jennifer Spencer by email at *j35spenc@blm.gov,* or by telephone at (307) 775–6261. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of our estimate of the burden for this 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) How the agency might minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This collection of information enables the BLM to ensure compliance with standards for the measurement of oil produced from Federal and Indian (except Osage Tribe) leases and compliance with pertinent statutes. This OMB Control Number is currently scheduled to expire on April 30, 2023. The BLM plans to request that OMB renew this OMB Control Number for an additional three years.

Title of Collection: Measurement of Oil (43 CFR Subpart 3174).

OMB Control Number: 1004–0209.

Form Numbers: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses that participate in the production of oil from Federal and Indian (except Osage Tribe) leases.

Total Estimated Number of Annual Respondents: 11,742.

Total Estimated Number of Annual Responses: 11,742.

Estimated Completion Time per Response: Varies from 6 minutes to 80 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 5,884.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for all except the following information collection one-time activities pertaining to measurement equipment in use for the measurement of Federal or Indian fluid minerals:

- Documentation of Testing for Approval of a Coriolis Meter;
- Request to Use Alternate Oil Measurement System; and
- Testing of Alternate Oil Measurement System.

Total Estimated Annual Nonhour Burden Cost: $5,580,305.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Darrin A. King,

Information Collection Clearance Officer.

[FR Doc. 2022–24854 Filed 11–14–22; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L13100000.PP0000.LLHQ310000.234; OMB Control No. 1004–0210]

Agency Information Collection Activities; Measurement of Gas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the

Bureau of Land Management (BLM) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before January 16, 2023.

ADDRESSES: Send your written comments on this information collection request (ICR) by mail to Darrin King, Information Collection Clearance Officer, U.S. Department of the Interior, Bureau of Land Management, Attention PRA Office, 440 W 200 S #500, Salt Lake City, UT 84101; or by email to *BLM_HQ_PRA_Comments@blm.gov.* Please reference Office of Management and Budget (OMB) Control Number 1004–0210 in the subject line of your comments. Please note that the electronic submission of comments is recommended.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jennifer Spencer by email at *j35spenc@blm.gov,* or by telephone at (307) 775–6261. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of our estimate of the burden for this 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) How the agency might minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The BLM is requesting renewal of a control number that pertains to the accurate measurement and proper reporting of all natural gas removed or sold from Federal and Indian leases, units, unit participating areas, and areas subject to communitization agreements. This OMB Control Number is currently scheduled to expire on April 30, 2023. The BLM plans to request that OMB renew this OMB Control Number for an additional three years.

Title of Collection: Measurement of Oil (43 CFR Subpart 3174).

OMB Control Number: 1004–0210.

Form Numbers: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Primarily business that operate Federal oil and gas leases. Also lessees, purchasers, and transporters of natural gas from Federal oil and gas leases.

Total Estimated Number of Annual Respondents: 430,782.

Total Estimated Number of Annual Responses: 430,782.

Estimated Completion Time per Response: Varies from 6 minutes to 80 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 95,068.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion and one-time.

Total Estimated Annual Nonhour Burden Cost: $24,600,894.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Darrin A. King,

Information Collection Clearance Officer.

[FR Doc. 2022–24856 Filed 11–14–22; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L13100000.PP0000.LLHQ310000.234; OMB Control No. 1004–0207]

Agency Information Collection Activities; Oil and Gas Facility Site Security

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before January 16, 2023.

ADDRESSES: Send your written comments on this information collection request (ICR) by mail to Darrin King, Information Collection Clearance Officer, U.S. Department of the Interior, Bureau of Land Management, Attention PRA Office, 440 W 200 S #500, Salt Lake City, UT 84101; or by email to *BLM_HQ_PRA_Comments@blm.gov.* Please reference Office of Management and Budget (OMB) Control Number 1004–0207 in the subject line of your comments. Please note that the electronic submission of comments is recommended.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jennifer Spencer by email at *j35spenc@blm.gov,* or by telephone at (307) 775–6261. Individuals in the United States who are deaf, deafblind, hard of hearing, or have

a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of our estimate of the burden for this 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) How the agency might minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This control number enables the Bureau of Land Management (BLM) to collect information about Federal and Indian (except Osage Tribe) onshore oil and gas leases. The information facilitates accurate measurement of oil and gas, production accountability, payment of royalties that are due, and prevention of theft and loss. This OMB Control Number is currently scheduled to expire on May 31, 2023. The BLM plans to request that OMB renew this OMB Control Number for an additional three years.

Title of Collection: Oil and Gas Facility Site Security (43 CFR Subparts 3170 and 3173).

OMB Control Number: 1004–0207.

Form Numbers: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Lessees, operators, purchasers, and transporters directly involved in producing, transporting, purchasing, selling, or measuring oil or gas through the point of royalty measurement or the point of first sale, whichever is later.

Total Estimated Number of Annual Respondents: 5,000.

Total Estimated Number of Annual Responses: 93,975.

Estimated Completion Time per Response: Varies from 0.25 to 10 hours per response.

Total Estimated Number of Annual Burden Hours: 69,640.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Darrin A. King,

Information Collection Clearance Officer.

[FR Doc. 2022–24855 Filed 11–14–22; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0255]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired; 2022 Census of Law Enforcement Training Academies (CLETA)

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Justice Statistics, Office of Justice Programs, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until January 17, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Emily Buehler (email: *emily.buehler@usdoj.gov;* telephone: 202–305–2667), Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531.

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:* Reinstatement, with change, of a previously approved collection for which approval has expired.

2. *Title of the Form/Collection:* 2022 Census of Law Enforcement Training Academies (CLETA).

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The form number is CJ–52. The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will include all state and local law enforcement training academies in the United States that provide basic training to law enforcement recruits.

Abstract: BJS has conducted the CLETA regularly since 2002. The 2022 CLETA will be the fifth administration. Historically, the CLETA generates an enumeration of all state and local training academies that provide basic law enforcement training in the United States. The CLETA provides details about the instructors, curricula, resources, and recruits at the approximately 750 training academies operating nationally. The survey asks about the operating entity; resources available to recruits; total operating budget; full-time and part-time instructors or trainers and their education, sworn officer experience, certifications, and ongoing training; sex, race and Hispanic origin, prior educational attainment, and veteran status of recruits starting and completing training; and the length and content of basic training curricula offered at the academy.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* BJS estimates approximately 750 law enforcement academies with a respondent burden of about 2 hours per academy to complete the survey form and about 10 minutes per agency of data quality follow-up time for approximately 450 of those academies.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,575 total burden hours associated with this information collection.

If additional information is required, contact: Robert Houser, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 3E.206, Washington, DC 20530.

Dated: November 8, 2022.

Robert Houser,

Department Clearance Officer for PRA, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–24782 Filed 11–14–22; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0311]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection: National Inmate Survey in Prisons (NIS–4P)

AGENCY: 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.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Comments are encouraged and will be accepted for 30 days until December 15, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Amy Lauger, Supervisory Statistician, Re-entry, Recidivism, and Special Projects Unit, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *Amy.Lauger@usdoj.gov;* telephone: 202–307–5955).

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:* National Inmate Survey in Prisons (NIS–4P).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number at this time. 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:* Respondents will primarily be Federal or State Government entities. The work under this clearance will be used to produce estimates for the incidence and prevalence of sexual victimization within correctional facilities as required under the Prison Rape Elimination Act of 2003 (Pub. L. 108–79). The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics.

Abstract: In 2003, the Prison Rape Elimination Act (PREA or the Act) was signed into law. The Act requires BJS to ''carry out, for each calendar year, a comprehensive statistical review and analysis of the incidence and effects of prison rape.'' The Act further instructs BJS to collect survey data: ''. . .the Bureau shall. . .use surveys and other

statistical studies of current and former inmates. . .''

To implement the Act, BJS developed the National Prison Rape Statistics Program (NPRS), which includes four separate data collection efforts: the Survey on Sexual Violence (SSV), the National Inmate Survey (NIS), the National Survey of Youth in Custody (NSYC), and the National Former Prisoner Survey (NFPS). The NIS collects information on sexual victimization self-reported by inmates held in adult correctional facilities, both prisons and jails. The NIS has been conducted three times, in 2007 (NIS–1), in 2008–09 (NIS–2), and in 2011–12 (NIS–3). Each iteration of NIS was conducted in at least one facility in all 50 states and the District of Columbia. In each iteration of the survey, inmates completed the survey using an audio computer-assisted self-interview (ACASI), whereby they heard questions and instructions via headphones and responded to the survey items via a touch-screen interface.

The collection requested in this notice is the fourth iteration of the National Inmate Survey. For NIS–4, administration of the survey in prisons will take place separately from survey administration in jails. This collection request is specific to conducting the survey in adult prison facilities.

BJS submitted this collection for approval in 2020 in anticipation of fielding the survey in 2021. The survey was delayed due to COVID–19 and fielding is now set to begin in 2023. The collection is slightly modified from the version approved in 2020.

The main difference is a series of edits to items related to sexual orientation and gender identity based on latest recommendations from the National Institute of Health. In addition, revisions have been made to reflect the possibility that a transgender man could be housed in a women's prison or that a transgender woman could be housed in a men's prison. In previous rounds of the NIS, respondents were routed through the survey assuming that prisons housed inmates based on anatomy rather than gender identity. We have revised our questions to make sure they are appropriate for all inmates living in a sampled facility. A module on parental involvement has been removed from the survey.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Prior to data collection commencing in 2023, BJS will coordinate the logistics of NIS–4 survey administration with staff at federal and state correctional facilities. It is estimated that 241 facility respondents will devote 150 minutes of time to this coordination effort. During data collection in 2023, an estimated 75,674 federal and state prison inmates will be interviewed, with the average interview lasting an estimated 35 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total estimated NIS–4 in Prisons public burden, inclusive of facility staff and respondent burden estimates and assuming a 100% response rate, is 77,288 hours. This comprises 19,522 hours of facility staff burden (coordinating the administration, completing the facility questionnaire, and escorting inmates to and from the interviews) and 57,766 hours of respondent interviewing burden. The third iteration of NIS had around a 65% response rate, so the true burden will likely be much lower.

If additional information is required contact: Robert Houser, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 3E.206, Washington, DC 20530.

Dated: November 8, 2022.

Robert Houser,

Department Clearance Officer for PRA, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–24780 Filed 11–14–22; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Requests: National Museum Survey Pilot

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to announce its plan to request approval for a pilot *National Museum Survey* (NMS). A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 14, 2023.

ADDRESSES: Send comments to Connie Bodner, Ph.D., Director of Grants Policy and Management, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Bodner can be reached by telephone: 202–653–4636, or by email at *cbodner@imls.gov.* Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays. Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

FOR FURTHER INFORMATION CONTACT: Jake Soffronoff, Survey Methodologist, Office of Research and Evaluation, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Mr. Soffronoff can be reached by telephone at 202–653–4648, or by email at *jsoffronoff@imls.gov.* Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: IMLS is particularly interested in public comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological

collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

I. Background

The Institute of Museum and Library Services is the primary source of Federal support for the Nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grantmaking, research, and policy development. To learn more, visit *www.imls.gov.*

II. Current Actions

The United States boasts a diverse array of museums of different sizes including history, art, and science and technology museums, as well as children's museums, zoos, aquariums, nature centers, public gardens, historic houses, academic museums and galleries, and specialized museums. Together, they steward living and non-living collections and, through their programs and services, contribute to the cultural health, economic vitality, and social well-being of the communities they serve. In a data-driven world, a regular sector-wide data-gathering effort is needed to document the reach of the museum sector and the services it provides.

IMLS is exercising its authority under 20 U.S.C. 9108 to design a new survey that fills this need: the National Museum Survey. The NMS will be a voluntary survey that aims to capture the scope and scale of museums' presence and reach within the United States over time. The survey will collect foundational, high-level data directly from museums to inform policymakers, the museum field, and the public about the social, cultural, educational, and economic roles that the nation's diverse museums play in American society.

Agency: Institute of Museum and Library Services.

Title: National Museum Survey Pilot.

OMB Control Number: 3137–NEW.

Agency Number: 3137.

Respondents/Affected Public: Museum senior administrators.

Total Estimated Number of Annual Respondents: 800.

Frequency of Response: Once per request.

Average Minutes/Hours per Response: 2 hours.

Total Estimated Number of Annual Burden Hours: 1,600 hours.

Cost Burden (dollars): To be determined.

Public Comments Invited: Comments submitted in response to this Notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: November 9, 2022.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2022–24870 Filed 11–14–22; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 15, 2022. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or *ACApermits@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, at the above address, 703–292–4479.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670, as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

1. Applicant Permit

Application: 2023–019

George Papagapitos, Swan Hellenic, Fort Lauderdale, FL 33316.

Activity for Which Permit is Requested

Waste Management. The applicant seeks an Antarctic Conservation Permit for waste management activities associated with use of remotely piloted aircrafts (RPAs) in Antarctica. Aircrafts will be launched from land or by boat and will be used for commercial, marketing, or educational purposes only. RPAs will not be flown over any concentrations of wildlife, Antarctic Specially Protected or Managed Areas or Historic Sites and Monuments without appropriate authorization. Aircraft are only to be flown by experienced, pre-approved pilots in fair weather conditions and in the presence of an observer, who will always maintain visual line of sight with the aircraft during operation. Measures are in place to prevent loss of the aircraft.

Location

Antarctic Peninsula region, Ross Sea region.

Dates of Permitted Activities

November 1, 2022–March 31, 2023.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2022–24806 Filed 11–14–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–320–LA–2; ASLBP No. 23–977–02–LA–BD01]

TMI–2 Solutions, LLC; Establishment of Atomic Safety and Licensing Board

Pursuant to the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

TMI–2 SOLUTIONS, LLC (Three Mile Island Nuclear Station, Unit 2)

TMI–2 Solutions, LLC seeks to amend the license and associated technical specifications for Three Mile Island Nuclear Station, Unit 2 to support the facility's transition from post defueled monitoring storage to decommissioning. In response to a notice filed in the **Federal Register**, *see* 87 FR 51,454 (Aug. 22, 2022), Eric Epstein filed a hearing request on November 3, 2022.

The Board is comprised of the following Administrative Judges:

E. Roy Hawkens, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Nicholas G. Trikouros, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Gary S. Arnold, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302.

Rockville, Maryland.

Dated: November 9, 2022.

Edward R. Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2022–24867 Filed 11–14–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339; NRC–2020–0201]

Notice of Intent To Conduct Scoping Process and Prepare Supplement To Draft Environmental Impact Statement Virginia Electric and Power Company North Anna Power, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Subsequent license renewal application supplement; intent to conduct scoping process and prepare supplement to draft environmental impact statement; and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received Environmental Report, Supplement 1, from Virginia Electric and Power Company (Dominion, the applicant), dated September 28, 2022, related to Dominion's application for subsequent license renewal (SLR) of Renewed Facility Operating License Nos. NPF–4 and NPF–7 for North Anna Power Station Units 1 and 2 (North Anna).

The NRC staff will prepare a supplement to its draft supplemental environmental impact statement (DSEIS) for North Anna subsequent license renewal, *i.e.,* NUREG–1437, Supplement 7, Second Renewal, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 7, Second Renewal, Regarding Subsequent License Renewal for North Anna Power Station Units 1 and 2, Draft Report'' (August 2021). The subsequent renewed operating licenses would authorize the applicant to operate North Anna for an additional 20 years beyond the period specified in each of the current renewed licenses. The current renewed operating licenses for North Anna Units 1 and 2 expire on April 1, 2038, and August 21, 2040, respectively. The NRC will conduct a limited scoping process to gather information necessary to prepare a supplement to its DSEIS to evaluate the environmental impacts of SLR of the operating licenses for North Anna. The NRC is seeking public comment on the proper scope of the site-specific environmental impact statement (EIS) supplement to be prepared for this action.

DATES: Submit comments by December 15, 2022. Comments received after this date will be considered if it is practical to do so, but the NRC 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 (*https://www.regulations.gov*).

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0201. 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.
- *Email:* Comments may be submitted to the NRC electronically using the email address *NorthAnnaEnvironmental@nrc.gov.*
- *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, see ''Obtaining Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tam Tran, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3617; email: *Tam.Tran@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0201 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0201.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.
- *Public Library:* A copy of the subsequent license renewal Environmental Report, Supplement 1, for North Anna, is available for public review at the Louisa County Library, 881 Davis Highway, Mineral, VA 23117.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking Website (*https://www.regulations.gov*). Please include Docket ID NRC–2020–0201 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

By letter dated August 24, 2020, the NRC received an application from Dominion, filed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended (the Act), and Part 54 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'' to renew the operating licenses for North Anna. The North Anna units are pressurized water reactors designed by Westinghouse Electric Corporation and are located in Louisa County, Virginia. Each unit consists of a Westinghouse pressurized-water reactor nuclear steam supply system. A notice of receipt of the SLR application was published in the **Federal Register** on September 21, 2020 (85 FR 59334). A notice of acceptance for docketing of the application and opportunity for hearing regarding the SLR of the facility operating licenses was published in the **Federal Register** on October 15, 2020 (85 FR 65438). A public scoping meeting was held on November 4, 2020. In August 2021, the NRC staff issued its draft supplemental EIS for North Anna subsequent license renewal, in which it relied, in part, on the 2013 Generic Environmental Impact Statement (GEIS) and 10 CFR part 51, subpart A, Appendix B, Table B–1, to evaluate the environmental impacts of generic ''Category 1'' issues.

On February 24, 2022, the Commission issued several decisions, including CLI–22–02 and CLI–22–03, in which the Commission held that ''the 2013 GEIS did not consider the impacts from operations during the subsequent license renewal period and applicants for subsequent license renewal must evaluate Category 1 impacts in their environmental reports. Accordingly, these impacts must be addressed on a site-specific basis in the Staff's site-specific environmental impact statements.'' In addition, the Commission held that 10 CFR 51.53(c)(3) only applies to an initial license renewal applicant's preparation of an environmental report. As a result, the Commission determined, among other things, that the NRC staff's environmental reviews of pending subsequent license renewal applications are incomplete, and it directed the staff to prepare an update to the 2013 GEIS. In CLI–22–03, the Commission further stated that if an applicant does not wish to wait for the completion of the generic analysis and associated rulemaking, ''the applicant may submit a revised environmental report providing information on environmental impacts during the subsequent license renewal period.'' Following the issuance of CLI–22–03, the NRC received an Environmental Report, Supplement 1, from Dominion, dated September 28, 2022, related to the subsequent renewal of the operating licenses for North Anna.

Given recent circumstances requiring the preparation of a supplement to the previous DSEIS for subsequent license renewal for North Anna Units 1 and 2, the NRC staff will conduct an additional limited scoping process associated with this action. Consistent with Commission direction, the NRC staff intends to prepare a draft supplement to the North Anna DSEIS for public comment, in which it will review all applicable ''Category 1'' (generic) issues listed in the 2021 DSEIS at Table 3–1, for the purpose of making site-specific findings (*e.g.,* SMALL, MODERATE, LARGE) on those issues. The NRC staff also intends to review ''Category 2'' (site-specific) issues listed in the 2021 DSEIS at Table 3–2 for any significant new information that may have arisen following the issuance of the DSEIS (*i.e.,* August 2021) and will update the site-specific analyses, as appropriate. Environmental scoping comments should address matters that fit within these two categories; comments that do not fit into these two categories will not be considered.

III. Request for Comment

This notice informs the public of the NRC's intention to prepare a DSEIS supplement related to the subsequent license renewal application and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.''

Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the supplement to the DSEIS will be used to accomplish the following:

a. Define the proposed action, which is to be the subject of the supplement to the DSEIS, to the extent not addressed in the DSEIS;

b. Determine the scope of the supplement to the DSEIS and identify the significant issues to be analyzed in depth;

c. Identify and eliminate from detailed study those issues that are peripheral or are not significant; or were covered by a prior environmental review;

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of, the scope of the supplement to the DSEIS being considered;

e. Identify other environmental review and consultation requirements related to the proposed action;

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decisionmaking schedule;

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the DSEIS to the NRC and any cooperating agencies; and

h. Describe how the supplement to the DSEIS will be prepared, including any contractor assistance to be used.

The NRC invites the following entities to participate in scoping:

a. The applicant, Dominion;

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards;

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;

d. Any affected Indian Tribe;

e. Any person who requests or has requested an opportunity to participate in the scoping process; and

f. Any person who has petitioned or intends to petition for leave to intervene.

Participation in the scoping process for the North Anna subsequent license renewal supplement to the DSEIS does not entitle participants to become parties to the proceeding to which the supplement to the DSEIS relates. Matters related to participation in any hearing are outside the scope of matters to be discussed.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document description	ADAMS accession No.
Subsequent License Renewal Application—Appendix E Environmental Report, Supplement 1, dated September 28, 2022.	ML22272A041.
NUREG–1437 ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 7, Second Renewal, Regarding Subsequent License Renewal for North Anna Power Station Units 1 and 2, Draft Report,'' dated August 2021.	ML21228A084.
North Anna subsequent license renewal application, dated August 24, 2020	ML20246G703 (Package).
Commission Memorandum and Order CLI–22–03, dated February 24, 2022	ML22055A554.

Dated: November 8, 2022.

For the Nuclear Regulatory Commission.

John M. Moses,

Deputy Director, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Materials, Safety and Safeguards.

[FR Doc. 2022–24746 Filed 11–14–22; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Termination of Single-Employer Plans, Missing Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to request extension of OMB approval of information collection with modifications.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval, with modifications, under the Paperwork Reduction Act, of a collection of information under PBGC's regulations on Termination of Single-Employer Plans and Missing Participants. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments must be submitted on or before January 17, 2023.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Email: paperwork.comments@pbgc.gov*. Refer to OMB control number 1212–0036 in the subject line.
- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101.

Commenters are strongly encouraged to submit public comments electronically. PBGC expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable.

All submissions received must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and refer to OMB control number 1212–0036. All comments received will be posted without change to PBGC's website, *http://www.pbgc.gov,* including any personal information provided. Do not submit comments that include any personally identifiable information or confidential business information.

Copies of the collection of information may be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, or calling 202–229–4040 during normal business hours. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

FOR FURTHER INFORMATION CONTACT: Melissa Rifkin (*rifkin.melissa@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101; 202–229–6563. (If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.)

SUPPLEMENTARY INFORMATION: Under section 4041 of the Employee Retirement Income Security Act of 1974 (ERISA), a single-employer pension plan may terminate voluntarily only if it satisfies the requirements for either a standard or a distress termination. Pursuant to section 4041(b) of ERISA (for standard terminations), section 4041(c) of ERISA (for distress terminations), and PBGC's termination regulation (29 CFR part 4041), a plan administrator wishing to terminate a plan is required to submit specified information to PBGC in support of the proposed termination and to provide specified information regarding the proposed termination to third parties (participants, beneficiaries, alternate payees, and employee organizations). In the case of a plan with participants or beneficiaries who cannot be located when their benefits are to be distributed, the plan administrator is subject to the requirements of section 4050 of ERISA and PBGC's regulation on missing participants (29 CFR part 4050), including requirements to submit information to PBGC.

The collection of information has been approved under OMB control number 1212–0036 (expires March 31, 2023). PBGC intends to request that OMB extend its approval, with modifications, for another 3 years. PBGC is modifying the Standard Termination Filing Instructions to make clear that certain documents, already mentioned in the instructions, must be included with the submission of these forms. In addition, PBGC is making other editorial and clarifying changes to the instructions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that annually 1,654 plan administrators will be subject to the collection of information requirements in PBGC's regulations on termination and missing participants and the implementing forms and instructions, and that the total estimated annual burdens of complying with these requirements are 41,735 hours and $8,509,740.

PBGC is soliciting public comments to—

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodologies 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.

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2022–24825 Filed 11–14–22; 8:45 am]

BILLING CODE 7709–02–P

RAILROAD RETIREMENT BOARD

Appointment to the Senior Executive Service Performance Review Board

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: The Railroad Retirement Board (Board) is announcing the membership on its Senior Executive Service Performance Review Board.

DATES: These appointments are effective on the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Ana Kocur, General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611–1275, (312) 751–4948.

SUPPLEMENTARY INFORMATION: Under title 5, chapter 43, subchapter II, section 4314(c)(4) of the United States Code as added by section 405(a) of the Civil Service Reform Act of 1978, Public Law 95–454 (5 U.S.C. 4314(c)(4)), the Board must publish in the **Federal Register** a list of persons who may be named to serve on the Performance Review Board that oversees the evaluation of performance appraisals for Senior Executive Service members of the Railroad Retirement Board. The members of the Performance Review Board are:

Shawna Weekley

Arturo Cardenas

Keith Sartain

Dated: November 9, 2022.

By Authority of the Board.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2022–24808 Filed 11–14–22; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96270; File No. SR–ICEEU–2022–020]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the Clearing Rules, Collateral and Haircut Procedures, Collateral and Haircut Policy and Finance Procedures

November 8, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2022, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been primarily prepared by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(1) and (f)(4)[4] thereunder, such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') proposes to amend its Clearing Rules (''Rules''), Collateral and Haircut Procedures (''Collateral and Haircut Procedures''), Collateral and Haircut Policy (''Collateral and Haircut Policy'') and Finance Procedures (''Finance Procedures'') (each of the foregoing a ''Document'' and together the ''Documents'') to provide for the acceptance by the Clearing House of certain emission allowances provided by Clearing Members in respect of original margin requirements for F&O Contracts for which they are the underlier.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to update the Documents as described below to provide for the acceptance by ICE Clear Europe of certain emission allowances provided by Clearing Members as Permitted Cover in respect of original margin requirements for F&O Contracts for which the allowance is the relevant deliverable asset. The amendments make certain other clarifications to accommodate such collateral and similar collateral that ICE Clear Europe may determine to accept in the future. The amendments related to acceptance of emissions allowances are principally set forth in the Finance Procedures, with certain related and conforming changes being made in the Rules and the Collateral and Haircut Policy and Procedures.

Finance Procedures

The Finance Procedures would include a new paragraph 9 providing for the acceptance of Eligible Emission Allowances as Permitted Cover. Paragraph 9.1 would provide that such paragraph does not apply to FCM/BD Clearing Members (and accordingly such Clearing Members would not be permitted to provide Eligible Emission Allowances as Permitted Cover). Such paragraph would apply to each Sponsored Principal (or Sponsor appointed to make and receive transfers in respect of Eligible Emission Allowances as Original Margin on an Individually Segregated Sponsored Account) in the same way it would apply to a Clearing Member. Paragraph 9.2 would set out key definitions, specifically ''Eligible Emission Allowances'' (allowances that ICE Clear Europe has determined to accept in respect of Original Margin) and ''Emissions Margin Account'' (the Clearing House's account at a relevant emissions registry for receipt of Eligible Emission Allowances as margin). Eligible Emissions Allowances would not include allowances delivered to the Clearing House to physically settle a Contract.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(1), (f)(4).

Paragraph 9.3 would describe the circumstances under which Clearing Members would be permitted to use Eligible Emission Allowances as Original Margin. Specifically, Clearing Members would be able to use Eligible Emission Allowances only to satisfy Original Margin requirements for F&O Contracts in respect of which the Emission Allowances are the Deliverable. The Clearing House would be able to impose limits on the amount or value of Eligible Emission Allowances which would be provided as Original Margin and would communicate such limits to Clearing Members from time to time. Eligible Emission Allowances would be required to conform to eligibility criteria as set out by the Clearing House from time to time. Pursuant to paragraph 9.4, Clearing Members transferring Emission Allowances as Original Margin to the Clearing House would be required to have executed and delivered the Emission Allowances Supplement. The Emission Allowances Supplement is set forth as Exhibit 3. Paragraph 9.5 provides that Eligible Emission Allowances would have to be transferred to ICE Clear Europe's Emissions Margin Account in order to be accepted as Original Margin and all transfers to and from such account are to be in accordance with the terms, conditions and applicable procedures of the relevant Emissions Registry and Registry Regulations (as defined in the Clearing House's Delivery Procedures). Under paragraph 9.6, receipt and release of Eligible Emission Allowances as Original Margin would only be available on business days and working days (as applicable) as provided by the relevant Emission Registry, and the Clearing House is unable to receive transfers of or release such allowances on non-Clearing House business days. Eligible Emission Allowances would be valued for margin purposes at an exchange rate to be determined by the Clearing House in its discretion from time to time, pursuant to paragraph 9.7. The Clearing House is also entitled to modify the list of Permitted Cover as related to Eligible Emission Allowances, including by way of addition or removal of any class of Eligible Emission Allowances, not crediting previously transferred Eligible Emission Allowances or varying haircuts on Eligible Emission Allowances at any time, pursuant to paragraph 9.8.

Paragraphs 9.9–9.13 would establish procedures for transferring Eligible Emission Allowances to ICE Clear Europe as Original Margin. Prior to effecting such transfer, the Clearing Member would be required to provide details of an Emissions Registry Account from which it would make the transfer as well as the contact details of the person authorized to instruct the transfer on behalf of such Clearing Member. The Clearing Member would also have to submit a transfer request to the Clearing House via ECS. Transfer of Eligible Emission Allowances would be made through the Emission Registry's electronic system to the Emissions Margin Account. The Clearing House would have the right to not treat such Eligible Emission Allowances as Original Margin under specified circumstances, including if required information has not been provided to the Clearing House; any relevant limits set by the Clearing House are exceeded; or for any other reason that places or risks placing the Clearing House under additional risk or liability. The amendments would also specify the times by which Eligible Emissions Allowances must be received by the Clearing House in order to be credited, and state that the relevant record in the ECS would be adjusted after the Clearing House's confirmation of completion of the relevant transfer in the Emission Margin Account.

Paragraphs 9.14–9.17 would similarly establish procedures for release and return of Eligible Emission Allowances by the Clearing House. These provisions apply where a Clearing Member has surplus collateral with the Clearing House which it wishes to reduce via a return to it of Eligible Emission Allowances. To affect such return, such Clearing Member would be required to provide a release request to the Clearing House using the form specified by the Clearing House and submit release instructions to the Clearing House via ECS. Release instructions submitted through ECS would be required to be accepted by the Clearing House before the Eligible Emissions Allowances are released to the Clearing Member. The Clearing House would have the right to reject release instructions in specified circumstances, including if: required information has not been provided to the Clearing House; any relevant limits set by the Clearing House are exceeded; the transfer would result or risks resulting in an uncovered liability towards the Clearing House; or for any other reason that places or risks placing the Clearing House under additional risk or liability. The subsection would also specify the timing for update of the Clearing House's records in ECS upon an accepted request for release and for the instruction of the relevant Emissions Registry to release the Eligible Emission Allowances. In paragraph 11 of the Finance Procedures, certain non-substantive updates would be made to distinguish Emission Allowances from other non-cash collateral.

Rules

The definition of ''Clearing Membership Agreement'' would be updated to include in such definition Emission Allowances Supplement referenced above. The amendments would also add a definition of the foregoing and provide that ''Emission Allowances Supplement'' means an addendum to a Clearing Membership Agreement concerning the transfer of Emission Allowances to and from the Clearing House as Permitted Cover. An unrelated clarifying amendment would also be made to add the term ''Gold Addendum'', which would reference the addendum to a Clearing Membership Agreement that is currently used by the Clearing House and Clearing Members concerning the transfer of gold to and from the Clearing House as Permitted Cover in accordance with the existing Finance Procedures, and to add appropriate references to the Gold Addendum in the term Clearing Membership Agreement and other relevant terms.

A clarifying amendment would be made to Rule 502 (Margin) to state that Permitted Cover is required to be transferred in accordance with the Finance Procedures and would only be recognized by the Clearing House at or after the times stated in the Finance Procedures (in order to ensure the Rules are consistent with the Finance Procedures). A conforming amendment would be made to Rule 503(k) (Margin Calls and Return of Surplus Collateral) to provide that each Permitted Cover report would include details of other asset classes (in addition to securities) provided as margin. As amended, the report would thus reflect Emissions Allowances transferred as margin.

The settlement finality provisions in Part 12 of the Rules would be amended to address various matters relating to Emissions Allowances as Permitted Cover. In Rule 1201, definitions of ''Emission Allowance Collateral'' (defined as Permitted Cover in the form of an Emission Allowance) and a reference to Emission Allowance Collateral Transfer Order would be added. Rule 1202(b) (Transfer Orders Arising) would be updated to add a concept of Emission Allowance Collateral Transfer Order, which would arise from a request accepted by the Clearing House to transfer Emission Allowance Collateral to or from the Clearing House. The amendments also

specify in Rule 1202(g) that each Emission Allowance Collateral Transfer Order is to apply and have effect in respect of the Emission Allowance to be transferred to (or to the order of) the Clearing House or Clearing Member, in a manner similar to the treatment of Collateral Transfer Orders for other types of non-cash Permitted Cover.

Rule 1202(m) is similarly being amended to add a new clause (vii) to address the parties as to which an Emissions Allowance Collateral Transfer Order would have effect, including the relevant Clearing Member, the Clearing House, the Emissions Registry and any relevant SFD Custodian. Subsequent clauses of Rule 1202(m) would be renumbered. In Rule 1202(m)(vi)(A), a clarification would be made to state that for a Collateral Transfer Order, the relevant parties would include a Clearing Member that is the transferee of the relevant Non-Cash Collateral. This change does not represent a change in current practice.

Rule 1203(f) (Transfer Orders Becoming Irrevocable) would be updated to clarify that the time at which a Collateral Transfer Order to a Clearing Member becomes irrevocable (which was previously omitted). The change does not represent a change in current practice.

Rule 1203(g) would be amended to state when an Emission Allowance Collateral Transfer Order for transfer to each of the Clearing House and the Clearing Member would become irrevocable. In respect of an Emission Allowance Collateral Transfer Order for transfer to the Clearing House, such order would become irrevocable at the earlier of the time when: (i) the Clearing House accepts in accordance with the Finance Procedures the relevant transfer request submitted by the Clearing Member; (ii) the Clearing House receives the Emission Allowance into its account at the Emissions Registry; (iii) any related order becomes irrevocable within that other designated system or Emissions Registry; or (iv) the record of the Emissions Registry becomes conclusive evidence of the Clearing House's title to the relevant Emission Allowance under applicable law. In respect of an Emission Allowance Collateral Transfer Order for transfer to the Clearing Member, such order would become irrevocable when the Clearing Member receives the Emission Allowance in circumstances in which the record of the Emissions Registry becomes conclusive evidence of the Clearing Member's title to that Emission Allowance under applicable law.

Amendments to Rule 1203(l) would clarify that Emission Allowance Delivery Orders (which relate to transfer of Emission Allowances for settlement, rather than as Permitted Cover) for transfer to the Clearing House become irrevocable when the record of the Emissions Registry becomes conclusive evidence of the Clearing House's title to the relevant Emission Allowance under applicable law. Emission Allowance Delivery Orders for transfer to the Clearing Member would become irrevocable when the Clearing Member receives the Emission Allowance in circumstances in which the record of the Emissions Registry becomes conclusive evidence of the Clearing Member's title to that Emission Allowance under applicable law.

The amendments would include an update to Rule 1204(i) (Variations to or Cancellation of Transfer Orders) to provide that in addition to Emission Allowance Delivery Orders, Emission Allowance Collateral Transfer Orders would be cancelled immediately and automatically if, prior to become irrevocable, an Emissions Registry that is used by the Clearing House or Clearing Member becomes subject to Insolvency or otherwise permanently ceases operations. Rule 1205(c) (Termination of Transfer Orders) would be amended to provide that Emission Allowance Collateral Transfer Orders made to the Clearing House would be satisfied in the same manner as Collateral Transfer Orders. The amendments would also add a clarification to address satisfaction of Collateral Transfer Orders made to the Clearing Member (which was previously omitted and would not result in a change in practice). The amendments would also provide that Emission Allowance Collateral Transfer Orders to Clearing Members would be satisfied in the same manner. Non-substantive updates would be made to the numbering and section references in the Rules to account for the inclusion of the amendments.

Collateral and Haircut Policy

Related amendments would be made to the Collateral and Haircut Policy to provide that ICE Clear Europe may accept the underlier of a given futures or options contract as Permitted Cover to cover the margin requirement for positions in that contract. The amendment thus address acceptance of Emission Allowances as cover for margin requirements for related F&O Contracts. Eligibility criteria for the underlier, its haircuts and limits would take into account the credit market and liquidity risk of the underlying asset. Clarifications would be made to headings and section references to distinguish such margin cover from other types of Permitted Cover.

Collateral and Haircut Procedures

Corresponding changes relating to the use of the underlier as margin cover would be made to the Collateral and Haircut Procedures. The updates in the Collateral and Haircut Procedures would further provide the eligibility criteria that margin cover assets must meet as follows: (i) such assets are sufficiently liquid, (ii) the market for such assets must have sufficient price history to permit the Clearing House to analyze the statistical returns of the assets, (iii) the assets must be capable of daily revaluation, (iv) the Clearing House must be capable of managing the assets operationally, and (v) the assets must be an Eligible Currency (as set out in the Rules).

The amendments would provide that the Clearing House would typically use market pricing convention to determine the margin cover value calculation as follows: Cover Value = Nominal * Price * (1-Haircut). The amendments would also provide that relative limits for the use of margin cover would be established to provide that the Clearing Member has a balance between the margin cover and other acceptable collateral based on a qualitative assessment of the different types of margin cover and collateral.

(b) Statutory Basis

ICE Clear Europe believes that proposed amendments are consistent with the requirements of Section 17A of the Act [5] and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act [6] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest.

The amendments to the Documents are intended to permit the Clearing House to accept Emissions Allowances as Permitted Cover for F&O Contracts for which they are the underlier. The amendments set out the procedures for accepting such Permitted Cover and for the transfer of such assets to and from the Clearing House using the facilities of the relevant Emissions Register. The amendments also establish parameters,

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1(b)(3)(F).

eligibility criteria, rules and requirements (as applicable) applicable to the acceptance of such assets by the Clearing House as Permitted Cover. ICE Clear Europe believes Emissions Allowances are an appropriate form of Permitted Cover with respect to meeting the margin obligations for these related F&O Contracts and would thereby facilitate its ability to meet its obligations to Clearing Members in the event of a default by a Clearing Member. In ICE Clear Europe's view, the amendments hereby promote the efficient operation and stability of the Clearing House and the prompt and accurate clearance and settlement of cleared contracts. Such enhanced risk management is also generally consistent with the protection of investors and the public interest in the safe operation of the Clearing House. (ICE Clear Europe would not expect the adoption of the amendments to affect materially the safeguarding of securities and funds in ICE Clear Europe's custody or control or for which it is responsible.) Accordingly, the amendments to the Documents satisfy the requirements of Section 17A(b)(3)(F).[7]

The proposed amendments to each Document is also consistent with relevant provisions of Rule 17Ad–22. [8] Rule 17Ad–22(e)(3)(i) provides that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] identify, measure, monitor and manage the range of risks that arise in or are borne by the covered clearing agency''.[9] For similar reasons, the amendments are intended to enhance the Clearing House's overall risk management through margin requirements for emissions F&O Contracts. ICE Clear Europe believes that acceptance of Emission Allowances as Permitted Cover is appropriate for these specific F&O Contracts for which the Emission Allowance is the underlier, in light of the specific characteristics and risks of these assets. In the context of these contracts, acceptance of the underlying allowances to cover margin would serve to reduce the risk to the Clearing House of a default by a Clearing Member with respect to such contracts. The amendments provide appropriate mechanisms for transfer of such assets to the account of the Clearing House as cover for margin, and provide for appropriate eligibility criteria, parameters and limits to provide further protection to the Clearing House. The amendments will not otherwise change the margin model for the relevant contracts or the amount of initial margin that is required. In ICE Clear Europe's view, as set out above, the amendments would thus facilitate overall risk management with respect to the expansion of assets eligible to accepted as Permitted Cover, consistent with the requirements of Rule 17Ad–22(e)(3)(i).[10]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are intended to permit the Clearing House to accept Emissions Allowances as Permitted Cover for F&O Contracts for which they are the underlier. The amendments set out the procedures for accepting such Permitted Cover and for the transfer of such assets to and from the Clearing House using the facilities of the relevant Emissions Register, as well as the parameters, eligibility criteria, rules and requirements (as applicable) applicable to the acceptance of such assets by the Clearing House as Permitted Cover. ICE Clear Europe does not believe that proposed amendments would adversely affect competition among Clearing Members, materially affect the costs of clearing, adversely the ability of market participants to access clearing or the market for clearing services generally, or otherwise adversely affect competition in clearing services. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendment has not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2022–020 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2022–020. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.* All comments received will

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 240.17 Ad–22.

[9] 17 CFR 240.17 Ad–22(e)(3)(i).

[10] 17 CFR 240.17 Ad–22(e)(3)(i).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

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–ICEEU–2022–020 and should be submitted on or before December 6, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–24766 Filed 11–14–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96275; File No. SR–OCC–2022–010]

Self-Regulatory Organizations; The Options Clearing Corporation Notice of Designation of Longer Period for Commission Action on Proposed Rule Change by The Options Clearing Corporation Concerning a Risk Management Framework and Corporate Risk Management Policy

November 8, 2022.

On September 6, 2022, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2022–010 pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4[2] thereunder to replace OCC's current Risk Management Framework Policy (''RMFP'') with two new documents: a Risk Management Framework (''RMF'') as well as a Corporate Risk Management Policy (''CRMP'').[3] The proposed rule change was published for public comment in the **Federal Register** on September 26, 2022.[4] The Commission has not received comments regarding the proposal described in the Proposed Rule Change.

Section 19(b)(2) of the Exchange 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 of Filing is November 10, 2022. The Commission is extending this 45-day time period.

In order to provide the Commission with sufficient time to consider 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.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,[6] designates December 25, 2022 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–OCC–2022–010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–24769 Filed 11–14–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96260; File No. SR–NYSECHX–2022–24]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 10.9261 and 10.9830.

November 8, 2022.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 28, 2022, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes extending the expiration date of the temporary amendments to Rules 10.9261 and 10.9830 as set forth in SR–NYSECHX–2022–19 from October 31, 2022 to January 31, 2023, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of Rules 10.9261 and 10.9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes extending the expiration date of the temporary amendments as set forth in NYSECHX–2022–19[4] to Rules 10.9261 (Evidence and Procedure in Hearing) and 10.9830 (Hearing) from October 31, 2022 to January 31, 2023 to harmonize with recent changes by FINRA to extend the expiration of temporary amendments to its Rules 9261 and 9830. NYSECHX–2022–19 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by the current COVID–19 public health risks posed by in-person hearings. The proposed rule change would not make any changes to the text

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, 87 FR at 58409.

[4] Securities Exchange Act Release No. 95842 (Sept. 20, 2022), 87 FR 58409 (Sept. 26, 2022) (File No. SR–OCC–2022–010) (''Notice of Filing'').

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 95477 (August 11, 2022), 85 FR 50680 (August 17, 2022) (SR–NYSECHX–2022–19) (''SR–NYSECHX–2022–19'').

of Exchange Rules 10.9261 and 10.9830.[5]

Background

In 2022, NYSE Chicago adopted disciplinary rules that are, with certain exceptions, substantially the same as the disciplinary rules of its affiliate NYSE Arca, Inc., which are in turn substantially similar to the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.[6]

In adopting disciplinary rules modeled on FINRA's rules, NYSE Chicago adopted the hearing and evidentiary processes set forth in Rule 10.9261 and in Rule 10.9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 9800 Series. As adopted, the text of Rule 10.9261 and Rule 10.9830 are substantially the same as the FINRA rules with certain modifications.[7]

In 2020, in view of the ongoing spread of COVID–19 and its effect on FINRA's adjudicatory functions nationwide, FINRA filed a temporary rule change to grant FINRA's Office of Hearing Officers (''OHO'') and the National Adjudicatory Council (''NAC'') the authority to conduct certain hearings by video conference, if warranted by the current COVID–19-related public health risks posed by in-person hearings. Among the rules FINRA amended were Rules 9261 and 9830.[8]

FINRA represented in its filing that its protocol for conducting hearings by video conference would ensure that such hearings maintain fair process for the parties by, among other things, FINRA's use of a high quality, secure and user-friendly video conferencing service and provide thorough instructions, training and technical support to all hearing participants.[9] According to FINRA, the proposed changes were a reasonable interim solution to allow FINRA's critical adjudicatory processes to continue to function while protecting the health and safety of hearing participants as FINRA works towards resuming in-person hearings in a manner that is compliant with the current guidance of public health authorities.[10]

Since the Initial FINRA Filing (in 2020), FINRA periodically extended the temporary relief as the COVID–19 pandemic and concerns surrounding its spread persisted.[11] Due to the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond October 31, 2022.[12] On date, 2022, the Exchange filed to temporarily grants the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID–19 pandemic.[13]

According to FINRA, although there has been a downward trend in the number of COVID–19 cases since July 2022—when FINRA last filed to extend the temporary relief, COVID–19 still remains a public health concern.[14] For example, according to the Centers for Disease Control and Prevention (''CDC''), the 7-day moving average of new deaths from COVID–19 in the United States during September 2022 ranged from approximately 300 to 500 deaths per day,[15] and approximately 23 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[16] Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking[17] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.[18] Due to the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond October 31, 2022.[19] On October 17, 2022, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from October 31, 2022 to January 31, 2023.[20]

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE Chicago Rules 10.9261 and 10.9830 as set forth in SR–NYSECHX–2022–19 from October 31, 2022 to January 31, 2023.

As set forth in SR–FINRA–2022–029, although there has been a downward trend in the number of COVID–19 cases since July 2022—when FINRA last filed to extend the temporary relief, that COVID–19 still remains a public health concern. For example, according to the Centers for Disease Control and Prevention (''CDC''), the 7-day moving average of new deaths from COVID–19 in the United States during September 2022 ranged from approximately 300 to 500 deaths per day,[21] and approximately 23 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[22] Much uncertainty also remains as to

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed temporary amendments if the Exchange requires temporary relief from the rule requirements identified in this proposal beyond January 31, 2023. The amended NYSE Chicago rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release No. 95020 (June 1, 2022), 87 FR 35034, (June 8, 2022) (SR–NYSECHX–2022–10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Investigation, Disciplinary, Sanction, and Other Procedural Rules Modeled on the Rules of the Exchange's Affiliates) (''2022 Notice of Disciplinary Rules'').

[7] *See id.*

[8] *See* Securities Exchange Act Release Nos. 83289 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (''Initial FINRA Filing''). FINRA also proposed to temporarily amend FINRA Rules 1015 and 9524. FINRA Rule 1015 governs the process by which an applicant for new or continuing membership can appeal a decision rendered by FINRA's Department of Member Supervision under FINRA Rule 1014 or 1017 and request a hearing which would be conducted by a subcommittee of the NAC. *See id.* at 55714. The Exchange has not adopted FINRA Rule 1015. FINRA Rule 9524 governs the process by which a statutorily disqualified member firm or associated person can appeal the Department's recommendation to deny a firm or sponsoring firm's application to the NAC. *See id.* Under the Exchange's version of Rule 10.9524, if the CRO rejects the application, the ETP Holder or applicant may request a review by the Exchange Board of Directors. This differs from FINRA's process, which provides for a hearing before the NAC and further consideration by the FINRA Board of Directors.

[9] *See* Initial FINRA Filing, 85 FR at 55713.

[10] *See id.*

[11] *See, e.g.,* Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (SR–FINRA–2022–018) (earlier extension of temporary relief from July 31, 2022 until October 31, 2022).

[12] *See* Securities Exchange Act Release No. 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (SR–FINRA–2022–029) (''SR–FINRA–2022–029'').

[13] *See supra* note 4, SR–NYSECHX–2022–19.

[14] *See id.*

[15] *See* CDC, COVID Data Tracker—Trends in Number of COVID–19 Cases and Deaths in the U.S. Reported to CDC, by State/Territory, *https://covid.cdc.gov/covid-data-tracker/#trends_dailydeaths_select_00* (last visited Oct. 11, 2022).

[16] *See* CDC, COVID Data Tracker—COVID–19 Integrated County View, *https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels&null=CommunityLevels* (last visited Oct. 11, 2022).

[17] These new Omicron variants include BA.4.6, BF.7, and BA.2.75. *See* CDC, COVID Data Tracker—Variant Proportions, *https://covid.cdc.gov/covid-data-tracker/#variant-proportions* (last visited Oct. 11, 2022).

[18] A state-by-state comparison of vaccination rates is available at *https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-people-additional-dose-totalpop.*

[19] *See* SR–FINRA–2022–029, 87 FR at 64526–28.

[20] *See generally* SR–FINRA–2022–029.

[21] *See supra* note 15 (CDC, COVID Data Tracker—Trends in Number of COVID–19 Cases and Deaths in the U.S. Reported to CDC, by State/Territory).

[22] *See supra* note 16 (CDC, COVID Data Tracker—COVID–19 Integrated County View).

whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking [23] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.[24] Due to the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond October 31, 2022.[25] FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from October 31, 2022 to January 31, 2023.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE Chicago Rules 10.9261 and 10.9830 as set forth in SR–NYSECHX–2022–19 from October 31, 2022 to January 31, 2023. The Exchange agrees with FINRA that, although there has been a downward trend in the number of COVID–19 cases since July 2022—when FINRA last filed to extend the temporary relief, that COVID–19 still remains a public health concern. The Exchange also agrees that, due to the continued presence and uncertainty of COVID–19, for the reasons set forth in SR–FINRA–2022–029, there is a continued need for this temporary relief beyond October 31, 2022. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2022–029, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. Similarly, as noted in SR–FINRA–2022–029, in SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[26] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 10.9261 and 10.9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[27] in general, and furthers the objectives of Section 6(b)(5),[28] in particular, because 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. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[29]

The Exchange believes that the proposed rule change support the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 as set forth in SR–FINRA–2022–029, will permit the Exchange to continue to effectively conduct hearings given the continued presence and uncertainty of COVID–19. Given that COVID–19 remains a public health concern and the uncertainty around a potential spike in cases of the disease, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed. The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in NYSECHX–2022–19, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act [30] while striking an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like NYSECHX–2022–19, provides only temporary relief. As proposed, the changes would be in place through January 31, 2023. As noted in NYSECHX–2022–19 and above, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended to extend temporary relief necessitated by the continued presence and uncertainty of COVID–19 and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if

[23] *See supra* note 17 (regarding the new Omicron variants include BA.4.6, BF.7, and BA.2.75 described in CDC, COVID Data Tracker—Variant Proportions).

[24] *See supra* note 18 (regarding state-by-state comparison of COVID–19 vaccination rates).

[25] *See* SR–FINRA–2022–029, 87 FR at 64526–28.

[26] *See* SR–FINRA–2022–029, 87 FR at 64527, n. 15.

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78f(b)(7) and 78f(d).

[30] 15 U.S.C. 78f(b)(7) & 78f(d).

the temporary amendments were to expire on October 31, 2022.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [31] and Rule 19b–4(f)(6) thereunder.[32] 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 and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [33] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[34] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that there is a continued need to extend the temporary relief because the Exchange agrees with FINRA that the COVID–19 related health concerns necessitating this relief will continue beyond October 31, 2022.[35] The Exchange also states that the temporary relief provided in this proposal immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes so that the Exchange may continue to operate effectively and meet its critical investor protection goals, while also protecting the health and safety of hearing participants.[36] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–NYSECHX–2022–19.[37] As proposed, the temporary changes would be in place through January 31, 2023 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[38] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[39]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [40] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSECHX–2022–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2022–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2022–24 and should be submitted on or before December 6, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–24761 Filed 11–14–22; 8:45 am]

BILLING CODE 8011–01–P

[31] 15 U.S.C. 78s(b)(3)(A)(iii).

[32] 17 CFR 240.19b–4(f)(6).

[33] 17 CFR 240.19b–4(f)(6).

[34] 17 CFR 240.19b–4(f)(6)(iii).

[35] *See supra* Item II; *see also* SR–FINRA–2022–029, 87 FR 64526, at 64527.

[36] *See* 87 FR 64526, at 64528–29 (noting the same in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2022–029 would become operative immediately upon filing).

[37] *See supra* note 4.

[38] *See supra* note 5. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond January 31, 2023, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[39] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[40] 15 U.S.C. 78s(b)(2)(B).

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, November 17, 2022.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the

Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: November 10, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–24973 Filed 11–10–22; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96257; File No. SR–NYSEAMER–2022–50]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 9261 and 9830

November 8, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 28, 2022, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes extending the expiration date of the temporary amendments to Rules 9261 and 9830 as set forth in SR–NYSEAMER–2020–69 from October 31, 2022 to January 31, 2023, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE American Rules 9261 and 9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes extending the expiration date of the temporary amendments as set forth in SR–NYSEAMER–2020–69 [4] to Rules 9261 (Evidence and Procedure in Hearing) and 9830 (Hearing) from October 31, 2022 to January 31, 2023, to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSEAMER–2020–69 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by the current COVID–19 public health risks posed by in-person hearings. The proposed rule change would not make any changes to the text of Exchange Rules 9261 and 9830.[5]

Background

In 2016, NYSE American (then known as NYSE MKT LLC) adopted disciplinary rules that are, with certain exceptions, substantially the same as the Rule 8000 Series and Rule 9000 Series of FINRA and its affiliate the New York Stock Exchange LLC (''NYSE''), and which set forth rules for conducting investigations and enforcement actions.[6] The NYSE American disciplinary rules were implemented on April 15, 2016.[7]

In adopting disciplinary rules modeled on FINRA's rules, NYSE American adopted the hearing and evidentiary processes set forth in Rule 9261 and in Rule 9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 9800 Series. As adopted, the text of Rule 9261 and Rule 9830 are substantially the same as the FINRA rules with certain modifications.[8]

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, on August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–027, which allowed FINRA's Office of Hearing Officers (''OHO'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. Among the rules FINRA amended were Rules 9261 and 9830.[9]

Given that FINRA and OHO administers disciplinary hearings on the Exchange's behalf, and that the public health concerns addressed by FINRA's

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 90085 (October 2, 2020), 85 FR 63603 (October 8, 2020) (SR–NYSEAMER–2020–69) (''SR–NYSEAMER–2020–69'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond January 31, 2023 if the Exchange requires additional temporary relief from the rule requirements identified in SR–NYSEAMER–2020–69. The amended NYSE American rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release Nos. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR–NYSEMKT–2016–30) (''2016 Notice'').

[7] *See* NYSE MKT Information Memorandum 16–02 (March 14, 2016).

[8] *See* 2016 Notice, 81 FR at 11327 & 11332.

[9] *See* Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (''SR–FINRA–2020–027'').

amendments apply equally to Exchange disciplinary hearings, on September 15, 2020, the Exchange filed to temporarily amend Rule 9261 and Rule 9830 to permit FINRA to conduct virtual hearings on its behalf.[10] In December 2020, FINRA filed a proposed rule change, SR–FINRA–2020–042, to extend the expiration date of the temporary amendments in SR–FINRA–2020–027 from December 31, 2020, to April 30, 2021.[11] On December 22, 2020, the Exchange similarly filed to extend the temporary amendments to Rule 9261 and Rule 9830 to April 30, 2021.[12] On April 1, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–006, to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from April 30, 2021, to August 31, 2021.[13] On April 20, 2021, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to August 31, 2021.[14] On August 13, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–019, to extend the expiration date of the temporary amendments to, among other rules, FINRA Rule 9261 and 9830 from August 31, 2021, to December 31, 2021.[15] On August 27, 2021, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to December 31, 2021.[16] On December 7, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–031, to extend the expiration date of the temporary amendments in both SR–FINRA–2020–015 and SR–FINRA–2020–027 from December 31, 2021, to March 31, 2022.[17] On December 27, 2021, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to March 31, 2022, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[18] On March 7, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from March 31, 2022, to July 31, 2022.[19] On March 30, 2022, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to July 31, 2022.[20] On July 8, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from July 31, 2022 to October 31, 2022.[21] On July 29, 2022, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to October 31, 2022, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[22]

According to FINRA, although there has been a downward trend in the number of COVID–19 cases since July 2022—when FINRA last filed to extend the temporary relief, COVID–19 still remains a public health concern.[23] For example, according to the Centers for Disease Control and Prevention (''CDC''), the 7-day moving average of new deaths from COVID–19 in the United States during September 2022 ranged from approximately 300 to 500 deaths per day,[24] and approximately 23 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[25] Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking[26] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.[27] Due to the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond October 31, 2022.[28] On October 17, 2022, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from October 31, 2022 to January 31, 2023.[29]

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE American Rules 9261 and 9830 as set forth in SR–NYSEAMER–2020–69 from October 31, 2022 to January 31, 2023.

As set forth in SR–FINRA–2022–029, although there has been a downward trend in the number of COVID–19 cases since July 2022—when FINRA last filed to extend the temporary relief, that COVID–19 still remains a public health concern. For example, according to the Centers for Disease Control and Prevention (''CDC''), the 7-day moving average of new deaths from COVID–19 in the United States during September 2022 ranged from approximately 300 to 500 deaths per day,[30] and approximately 23 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[31] Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking[32] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.[33] Due to

[10] *See* note 4, *supra*.

[11] *See* Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR–FINRA–2020–042).

[12] *See* Securities Exchange Act Release No. 90823 (December 30, 2020), 86 FR 650 (January 6, 2021) (SR–NYSEAMER–2020–88).

[13] *See* Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR–FINRA–2021–006).

[14] *See* Securities Exchange Act Release No. 91631 (April 22, 2021), 86 FR 22471 (April 28, 2021) (SR–NYSEAMER–2021–23).

[15] *See* Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR–FINRA–2021–019).

[16] *See* Securities Exchange Act Release No. 92910 (September 9, 2021), 86 FR 51418 (September 15, 2021) (SR–NYSEAMER–2021–37).

[17] *See* Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (SR–FINRA–2021–31).

[18] *See* Securities Exchange Act Release No. 93917 (January 6, 2022), 87 FR 1825 (January 12, 2022) (SR–NYSEAMER–2021–49).

[19] *See* Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (SR–FINRA–2022–004).

[20] *See* Securities Exchange Act Release No. 94665 (April 11, 2022), 87 FR 22594 (April 15, 2022) (SR–NYSEAMER–2022–16).

[21] *See* Securities Exchange Act Release No. 95281 (July 14, 2022), 87 FR 43335 (July 20, 2022) (SR–FINRA–2022–018).

[22] *See* Securities Exchange Act Release No. 95475 (August 11, 2022), 87 FR 50673 (August 17, 2022) (SR–NYSEArca–2022–44).

[23] *See* Securities Exchange Act Release No. 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (SR–FINRA–2022–029) (''SR–FINRA–2022–029'').

[24] *See* CDC, COVID Data Tracker—Trends in Number of COVID–19 Cases and Deaths in the US Reported to CDC, by State/Territory, *https://covid.cdc.gov/covid-data-tracker/#trends_dailydeaths_select_00* (last visited Oct. 11, 2022).

[25] *See* CDC, COVID Data Tracker—COVID–19 Integrated County View, *https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels&null=CommunityLevels* (last visited Oct. 11, 2022).

[26] These new Omicron variants include BA.4.6, BF.7, and BA.2.75. *See* CDC, COVID Data Tracker—Variant Proportions, *https://covid.cdc.gov/covid-data-tracker/#variant-proportions* (last visited Oct. 11, 2022).

[27] A state-by-state comparison of vaccination rates is available at *https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-people-additional-dose-totalpop*.

[28] *See* SR–FINRA–2022–029, 87 FR at 64526–28.

[29] *See generally* SR–FINRA–2022–029.

[30] *See supra* note 24 (CDC, COVID Data Tracker—Trends in Number of COVID–19 Cases and Deaths in the US Reported to CDC, by State/Territory).

[31] *See supra* note 25 (CDC, COVID Data Tracker—COVID–19 Integrated County View).

[32] *See supra* note 26 (regarding the new Omicron variants include BA.4.6, BF.7, and BA.2.75 described in CDC, COVID Data Tracker—Variant Proportions).

[33] *See supra* note 27 (regarding state-by-state comparison of COVID–19 vaccination rates).

the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond October 31, 2022.[34] FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from October 31, 2022 to January 31, 2023.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE American Rules 9261 and 9830 as set forth in SR–NYSEAMER–2020–69 from October 31, 2022 to January 31, 2023. The Exchange agrees with FINRA that, although there has been a downward trend in the number of COVID–19 cases since July 2022—when FINRA last filed to extend the temporary relief, that COVID–19 still remains a public health concern. The Exchange also agrees that, due to the continued presence and uncertainty of COVID–19, for the reasons set forth in SR–FINRA–2022–029, there is a continued need for this temporary relief beyond October 31, 2022. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2022–029, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. Similarly, as noted in SR–FINRA–2022–029, in SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[35] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 9261 and 9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[36] in general, and furthers the objectives of Section 6(b)(5),[37] in particular, because 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. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[38]

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 as set forth in SR–FINRA–2022–029, will permit the Exchange to continue to effectively conduct hearings given the continued presence and uncertainty of COVID–19. Given that COVID–19 remains a public health concern and the uncertainty around a potential spike in cases of the disease, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed. The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in the SR–NYSEAMER–2020–69, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act[39] while striking an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like SR–NYSEAMER–2020–69, provides only temporary relief. As proposed, the changes would be in place through January 31, 2023. As noted in SR–NYSEAMER–2020–69 and above, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to extend temporary relief necessitated by the continued presence and uncertainty of COVID–19 and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on October 31, 2022.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[34] *See* SR–FINRA–2022–029, 87 FR at 64526–28.

[35] *See* SR–FINRA–2022–029, 87 FR at 64527, n. 15.

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(5).

[38] 15 U.S.C. 78f(b)(7) & 78f(d).

[39] 15 U.S.C. 78f(b)(7) & 78f(d).

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[40] and Rule 19b–4(f)(6) thereunder.[41] 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 and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[42] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[43] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that there is a continued need to extend the temporary relief because the Exchange agrees with FINRA that the COVID–19 related health concerns necessitating this relief will continue beyond by October 31, 2022.[44] The Exchange also states that extending the temporary relief provided in SR–NYSEAMER–2020–69 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes so that the Exchange may continue to operate effectively and meet its critical investor protection goals, while also protecting the health and safety of hearing participants.[45] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–NYSEAMER–2020–69.[46] As proposed, the temporary changes would be in place through January 31, 2023 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[47] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[48]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[49] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2022–50 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–NYSEAMER–2022–50. 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–NYSEAMER–2022–50 and should be submitted on or before December 6, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–24759 Filed 11–14–22; 8:45 am]

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[40] 15 U.S.C. 78s(b)(3)(A)(iii).

[41] 17 CFR 240.19b–4(f)(6).

[42] 17 CFR 240.19b–4(f)(6).

[43] 17 CFR 240.19b–4(f)(6)(iii).

[44] *See supra* Item II; *see also* SR–FINRA–2022–029, 87 FR 64526, at 64527.

[45] *See* 87 FR 64526, at 64528–29 (noting the same in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2022–029 would become operative immediately upon filing).

[46] *See supra* note 4.

[47] *See supra* note 5. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond January 31, 2023, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[48] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[49] 15 U.S.C. 78s(b)(2)(B).

[50] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96261; File No. SR–NYSEARCA–2022–73]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 10.9261 and 10.9830

November 8, 2022.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 28, 2022, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes extending the expiration date of the temporary amendments to Rules 10.9261 and 10.9830 as set forth in SR–NYSEArca–2020–85 from October 31, 2022 to January 31, 2023, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE Arca Rules 10.9261 and 10.9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes extending the expiration date of the temporary amendments as set forth in SR–NYSEArca–2020–85 [4] to Rules 10.9261 (Evidence and Procedure in Hearing) and 10.9830 (Hearing) from October 31, 2022 to January 31, 2023, to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSEArca–2020–85 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by the current COVID–19 public health risks posed by in-person hearings. The proposed rule change would not make any changes to the text of Exchange Rules 10.9261 and 10.9830.[5]

Background

In 2019, NYSE Arca adopted disciplinary rules based on the text of the Rule 8000 and Rule 9000 Series of its affiliate NYSE American LLC (''NYSE American''), with certain changes. The NYSE American disciplinary rules are, in turn, substantially the same as the Rule 8000 Series and Rule 9000 Series of FINRA and the New York Stock Exchange LLC.[6] The NYSE Arca disciplinary rules were implemented on May 27, 2019.[7]

In adopting disciplinary rules modeled on FINRA's rules, NYSE Arca adopted the hearing and evidentiary processes set forth in Rule 10.9261 and in Rule 10.9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 10.9800 Series. As adopted, the text of Rule 10.9261 and Rule 10.9830 are substantially the same as the FINRA rules with certain modifications.[8]

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, on August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–027, which allowed FINRA's Office of Hearing Officers (''OHO'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. Among the rules FINRA amended were Rules 9261 and 9830.[9]

Given that FINRA and OHO administers disciplinary hearings on the Exchange's behalf, and that the public health concerns addressed by FINRA's amendments apply equally to Exchange disciplinary hearings, on September 23, 2020, the Exchange filed to temporarily amend Rule 10.9261 and Rule 10.9830 to permit FINRA to conduct virtual hearings on its behalf.[10] In December 2020, FINRA filed a proposed rule change, SR–FINRA–2020–042, to extend the expiration date of the temporary amendments in SR–FINRA–2020–027 from December 31, 2020, to April 30, 2021.[11] On December 22, 2020, the Exchange similarly filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to April 30, 2021.[12] On April 1, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–006, to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from April 30, 2021, to August 31, 2021.[13] On April 20, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to August 31, 2021.[14] On August 13, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–019, to extend the expiration date of the temporary amendments to, among other rules, FINRA Rule 9261 and 9830 from August 31, 2021, to December 31, 2021.[15] On August 27, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to December 31, 2021.[16] On December 7, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–031, to extend the expiration date of the temporary amendments to, among other rules, FINRA Rule 9261 and 9830 from December 31, 2021, to March 31, 2022.[17] On December 27, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to March 31, 2022, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[18] On March 7, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from March

[4] *See* Securities Exchange Act Release No. 90088 (October 5, 2020), 85 FR 64186 (October 9, 2020) (SR–NYSEArca–2020–85) (''SR–NYSEArca–2020–85'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond January 31, 2023 if the Exchange requires additional temporary relief from the rule requirements identified in SR–NYSEArca–2020–85. The amended NYSE Arca rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release No. 85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR–NYSEArca–2019–15) (''2019 Notice'').

[7] *See* NYSE Arca Equities RB–19–060 & NYSE Arca Options RB–19–02 (April 26, 2019).

[8] *See* 2019 Notice, 84 FR at 16365 & 16373–4.

[9] *See* Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (''SR–FINRA–2020–027'').

[10] *See* note 4, *supra.*

[11] *See* Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR–FINRA–2020–042).

[12] *See* Securities Exchange Act Release No. 90820 (December 30, 2020), 86 FR 647 (January 6, 2021) (SR–NYSEArca–2020–116).

[13] *See* Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR–FINRA–2021–006).

[14] *See* Securities Exchange Act Release No. 91633 (April 22, 2021), 86 FR 22474 (April 28, 2021) (SR–NYSEArca–2021–27).

[15] *See* Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR–FINRA–2021–019).

[16] *See* Securities Exchange Act Release No. 92909 (September 9, 2021), 86 FR 51415 (September 15, 2021) (SR–NYSEArca–2021–76).

[17] *See* Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (SR–FINRA–2021–31).

[18] *See* Securities Exchange Act Release No. 93918 (January 6, 2022), 87 FR 1810 (January 12, 2022) (SR–NYSEArca–2021–107).

31, 2022, to July 31, 2022.[19] On March 29, 2022, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to July 31, 2022.[20] On July 8, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from July 31, 2022 to October 31, 2022.[21] On July 29, 2022, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to October 31, 2022, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[22]

According to FINRA, although there has been a downward trend in the number of COVID–19 cases since July 2022—when FINRA last filed to extend the temporary relief, COVID–19 still remains a public health concern.[23] For example, according to the Centers for Disease Control and Prevention (''CDC''), the 7-day moving average of new deaths from COVID–19 in the United States during September 2022 ranged from approximately 300 to 500 deaths per day,[24] and approximately 23 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[25] Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking [26] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.[27] Due to the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond October 31, 2022.[28] On October 17 2022, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from October 31, 2022, to January 31, 2023.[29]

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE Arca Rules 10.9261 and 10.9830 as set forth in SR–NYSEArca–2020–85 from October 31, 2022 to January 31, 2023.

As set forth in SR–FINRA–2022–029, although there has been a downward trend in the number of COVID–19 cases since July 2022—when FINRA last filed to extend the temporary relief, that COVID–19 still remains a public health concern. For example, according to the Centers for Disease Control and Prevention (''CDC''), the 7-day moving average of new deaths from COVID–19 in the United States during September 2022 ranged from approximately 300 to 500 deaths per day,[30] and approximately 23 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[31] Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking [32] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.[33] Due to the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond July 31, 2022.[34] FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from October 31, 2022 to January 31, 2023.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE Arca Rules 10.9261 and 10.9830 as set forth in SR–NYSEArca–2020–85 from October 31, 2022 to January 31, 2023. The Exchange agrees with FINRA that, although there has been a downward trend in the number of COVID–19 cases since July 2022—when FINRA last filed to extend the temporary relief, that COVID–19 still remains a public health concern. The Exchange also agrees that, due to the continued presence and uncertainty of COVID–19, for the reasons set forth in SR–FINRA–2022–029, there is a continued need for this temporary relief beyond October 31, 2022. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2022–029, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. Similarly, as noted in SR–FINRA–2022–029, in SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[35] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 10.9261 and 10.9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[36] in general, and furthers the objectives of Section 6(b)(5),[37] in particular, because it is designed to prevent fraudulent and manipulative

[19] *See* Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (SR–FINRA–2022–004).

[20] *See* Securities Exchange Act Release No. 94663 (April 11, 2022), 87 FR 22587 (April 15, 2022) (SR–NYSEARCA–2022–18).

[21] *See* Securities Exchange Act Release No. 95281 (July 14, 2022), 87 FR 43335 (July 20, 2022) (SR–FINRA–2022–018).

[22] *See* Securities Exchange Act Release No. 95474 (August 11, 2022), 87 FR 50665 (August 17, 2022) (SR–NYSEAMER–2022–34).

[23] *See* Securities Exchange Act Release No. 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (SR–FINRA–2022–029) (''SR–FINRA–2022–029'').

[24] *See* CDC, COVID Data Tracker—Trends in Number of COVID–19 Cases and Deaths in the US Reported to CDC, by State/Territory, *https://covid.cdc.gov/covid-data-tracker/#trends_dailydeaths_select_00* (last visited Oct. 11, 2022).

[25] *See* CDC, COVID Data Tracker—COVID–19 Integrated County View, *https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels&null=CommunityLevels* (last visited Oct. 11, 2022).

[26] These new Omicron variants include BA.4.6, BF.7, and BA.2.75. *See* CDC, COVID Data Tracker—Variant Proportions, *https://covid.cdc.gov/covid-data-tracker/#variant-proportions* (last visited Oct. 11, 2022).

[27] A state-by-state comparison of vaccination rates is available at *https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-people-additional-dose-totalpop.*

[28] *See* SR–FINRA–2022–029, 87 FR 64526–28.

[29] *See generally* SR–FINRA–2022–029.

[30] *See supra* note 24 (CDC, COVID Data Tracker—Trends in Number of COVID–19 Cases and Deaths in the US Reported to CDC, by State/Territory).

[31] *See supra* note 25 (CDC, COVID Data Tracker—COVID–19 Integrated County View).

[32] *See supra* note 27 (regarding the new Omicron variants include BA.4.6, BF.7, and BA.2.75 described in CDC, COVID Data Tracker—Variant Proportions).

[33] *See supra* note 27 (regarding state-by-state comparison of COVID–19 vaccination rates).

[34] *See* SR–FINRA–2022–018, 87 FR at 64526–28.

[35] *See* SR–FINRA–2022–029, 87 FR at 87 FR 64527, n. 15.

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(5).

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. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[38]

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 as set forth in SR–FINRA–2022–029, will permit the Exchange to continue to effectively conduct hearings given the continued presence and uncertainty of COVID–19. Given that COVID–19 remains a public health concern and the uncertainty around a potential spike in cases of the disease, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed. The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in the SR–NYSEArca–2020–85, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act[39] while striking an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like SR–NYSEArca–2020–85, provides only temporary relief. As proposed, the changes would be in place through January 31, 2023. As noted in SR–NYSEArca–2020–85 and above, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to extend temporary relief necessitated by the continued presence and uncertainty of COVID–19 and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on October 31, 2022.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[40] and Rule 19b–4(f)(6) thereunder.[41] 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 and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[42] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[43] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that there is a continued need to extend the temporary relief because the Exchange agrees with FINRA that the COVID–19 related health concerns necessitating this relief will continue beyond October 31, 2022.[44] The Exchange also states that extending the temporary relief provided in SR–NYSEArca–2022–44 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes so that the Exchange may continue to operate effectively and meet its critical investor protection goals, while also protecting the health and safety of hearing participants.[45] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–NYSEArca–2020–85.[46] As proposed, the temporary changes would be in place through January 31, 2023 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[47] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent

[38] 15 U.S.C. 78f(b)(7) & 78f(d).

[39] 15 U.S.C. 78f(b)(7) & 78f(d).

[40] 15 U.S.C. 78s(b)(3)(A)(iii).

[41] 17 CFR 240.19b–4(f)(6).

[42] 17 CFR 240.19b–4(f)(6).

[43] 17 CFR 240.19b–4(f)(6)(iii).

[44] *See supra* Item II; *see also* SR–FINRA–2022–029, 87 FR 64526, at 64527.

[45] *See* 87 FR 64526, at 64528–29 (noting the same in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2022–029 would become operative immediately upon filing).

[46] *See supra* note 4.

[47] *See supra* note 5. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond January 31, 2023, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[48]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[49] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2022–73 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–NYSEARCA–2022–73. 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–NYSEARCA–2022–73 and should be submitted on or before December 6, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–24762 Filed 11–14–22; 8:45 am]

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[48] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[49] 15 U.S.C. 78s(b)(2)(B).

[50] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96262; File No. SR–NYSENAT–2022–24]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 10.9261 and 10.9830

November 8, 2022.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 28, 2022, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes extending the expiration date of the temporary amendments to Rules 10.9261 and 10.9830 as set forth in SR–NYSENAT–2020–31 from October 31, 2022 to January 31, 2023, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE National Rules 10.9261 and 10.9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes extending the expiration date of the temporary amendments as set forth in SR–NYSENAT–2020–31[4] to Rules 10.9261 (Evidence and Procedure in Hearing) and 10.9830 (Hearing) from October 31, 2022 to January 31, 2023 to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSENAT–2020–31 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by the current COVID–19 public health risks posed by in-person hearings. The proposed rule change would not make any changes to the text of Exchange Rules 10.9261 and 10.9830.[5]

[4] *See* Securities Exchange Act Release No. 90137 (October 8, 2020), 85 FR 65087 (October 14, 2020) (SR–NYSENAT–2020–31) (''SR–NYSENAT–2020–31'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed

Background

In 2018, NYSE National adopted disciplinary rules that are, with certain exceptions, substantially the same as the disciplinary rules of its affiliate NYSE American LLC, which are in turn substantially similar to the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.[6]

In adopting disciplinary rules modeled on FINRA's rules, NYSE National adopted the hearing and evidentiary processes set forth in Rule 10.9261 and in Rule 10.9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 10.9800 Series. As adopted, the text of Rule 10.9261 and Rule 10.9830 are substantially the same as the FINRA rules with certain modifications.[7]

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, on August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–027, which allowed FINRA's Office of Hearing Officers (''OHO'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. Among the rules FINRA amended were Rules 9261 and 9830.[8]

Given that FINRA and OHO administers disciplinary hearings on the Exchange's behalf, and that the public health concerns addressed by FINRA's amendments apply equally to Exchange disciplinary hearings, on September 29, 2020, the Exchange filed to temporarily amend Rule 10.9261 and Rule 10.9830 to permit FINRA to conduct virtual hearings on its behalf.[9] In December 2020, FINRA filed a proposed rule change, SR–FINRA–2020–042, to extend the expiration date of the temporary amendments in SR–FINRA–2020–027 from December 31, 2020, to April 30, 2021.[10] On December 22, 2020, the Exchange similarly filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to April 30, 2021.[11] On April 1, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–006, to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from April 30, 2021, to August 31, 2021.[12] On April 20, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to August 31, 2021.[13] On August 13, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–019, to extend the expiration date of the temporary amendments to, among other rules, FINRA Rule 9261 and 9830 from August 31, 2021, to December 31, 2021.[14] On August 27, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to December 31, 2021.[15] On December 7, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–031, to extend the expiration date of the temporary amendments in both SR–FINRA–2020–015 and SR–FINRA–2020–027 from December 31, 2021, to March 31, 2022.[16] On December 27, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to March 31, 2022, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[17] On March 7, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from March 31, 2022, to July 31, 2022.[18] On March 29, 2022, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to July 31, 2022.[19] On July 8, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from July 31, 2022 to October 31, 2022.[20] On July 29, 2022, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to October 31, 2022, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[21]

According to FINRA, although there has been a downward trend in the number of COVID–19 cases since July 2022—when FINRA last filed to extend the temporary relief, COVID–19 still remains a public health concern.[22] For example, according to the Centers for Disease Control and Prevention (''CDC''), the 7-day moving average of new deaths from COVID–19 in the United States during September 2022 ranged from approximately 300 to 500 deaths per day,[23] and approximately 23 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[24] Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking [25] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.[26] Due to the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond October 31, 2022.[27] On October

extension beyond January 31, 2023 if the Exchange requires additional temporary relief from the rule requirements identified in SR–NYSENAT–2020–31. The amended NYSE National rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968, 23976 (May 23, 2018) (SR–NYSENAT–2018–02) (''2018 Approval Order'').

[7] *See id.*

[8] *See* Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (''SR–FINRA–2020–027'').

[9] *See* note 4, *supra.*

[10] *See* Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR–FINRA–2020–042).

[11] *See* Securities Exchange Act Release No. 90822 (December 30, 2020), 86 FR 627 (January 6, 2021) (SR–NYSENAT–2020–39).

[12] *See* Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR–FINRA–2021–006).

[13] *See* Securities Exchange Act Release No. 91634 (April 22, 2021), 86 FR 22477 (April 28, 2021) (SR–NYSENAT–2021–11).

[14] *See* Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR–FINRA–2021–019).

[15] *See* Securities Exchange Act Release No. 92908 (September 9, 2021), 86 FR 51424 (September 15, 2021) (SR–NYSENAT–2021–16).

[16] *See* Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (SR–FINRA–2021–31).

[17] *See* Securities Exchange Act Release No. 93919 (January 6, 2022), 87 FR 1804 (January 12, 2022) (SR–NYSENAT–2021–25).

[18] *See* Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (SR–FINRA–2022–004).

[19] *See* Securities Exchange Act Release No. 94662 (April 11, 2022), 87 FR 22601 (April 15, 2022) (SR–NYSENAT–2022–03).

[20] See Securities Exchange Act Release No. 95281 (July 14, 2022), 87 FR 43335 (July 20, 2022) (SR–FINRA–2022–018).

[21] *See* Securities Exchange Act Release No. 95476 (August 11, 2022), 87 FR 50668 (August17, 2022) (SR–NYSENAT–2022–14).

[22] *See* Securities Exchange Act Release No. 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (SR–FINRA–2022–029) (''SR–FINRA–2022–029'').

[23] *See* CDC, COVID Data Tracker—Trends in Number of COVID–19 Cases and Deaths in the US Reported to CDC, by State/Territory, *https://covid.cdc.gov/covid-data-tracker/#trends_dailydeaths_select_00* (last visited Oct. 11, 2022).

[24] *See* CDC, COVID Data Tracker—COVID–19 Integrated County View, *https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels&null=CommunityLevels* (last visited Oct. 11, 2022).

[25] These new Omicron variants include BA.4.6, BF.7, and BA.2.75. *See* CDC, COVID Data Tracker—Variant Proportions, *https://covid.cdc.gov/covid-data-tracker/#variant-proportions* (last visited Oct. 11, 2022).

[26] A state-by-state comparison of vaccination rates is available at *https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-people-additional-dose-totalpop.*

[27] *See* SR–FINRA–2022–029, 87 FR at 64526–28.

17, 2022, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from October 31, 2022 to January 31, 2023.[28]

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE National Rules 10.9261 and 10.9830 as set forth in SR–NYSENAT–2020–31 from October 31, 2022 to January 31, 2023.

As set forth in SR–FINRA–2022–029, although there has been a downward trend in the number of COVID–19 cases since July 2022—when FINRA last filed to extend the temporary relief, that COVID–19 still remains a public health concern. For example, according to the Centers for Disease Control and Prevention (''CDC''), the 7-day moving average of new deaths from COVID–19 in the United States during September 2022 ranged from approximately 300 to 500 deaths per day,[29] and approximately 23 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[30] Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking [31] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.[32] Due to the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond October 31, 2022.[33] FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from October 31, 2022 to January 31, 2023.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE National Rules 10.9261 and 10.9830 as set forth in SR–NYSENAT–2020–31 from October 31, 2022 to January 31, 2023. The Exchange agrees with FINRA that, although there has been a downward trend in the number of COVID–19 cases since July 2022—when FINRA last filed to extend the temporary relief, that COVID–19 still remains a public health concern. The Exchange also agrees that, due to the continued presence and uncertainty of COVID–19, for the reasons set forth in SR–FINRA–2022–029, there is a continued need for this temporary relief beyond October 31, 2022. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2022–029, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. Similarly, as noted in SR–FINRA–2022–029, in SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[34] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 10.9261 and 10.9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[35] in general, and furthers the objectives of Section 6(b)(5),[36] in particular, because 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. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[37]

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 as set forth in SR–FINRA–2022–029, will permit the Exchange to continue to effectively conduct hearings given the continued presence and uncertainty of COVID–19. Given that COVID–19 remains a public health concern and the uncertainty around a potential spike in cases of the disease, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed. The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in SR–NYSENAT–2020–31, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act [38] while striking an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and

[28] *See generally* SR–FINRA–2022–029.

[29] *See supra* note 23 (CDC, COVID Data Tracker—Trends in Number of COVID–19 Cases and Deaths in the US Reported to CDC, by State/Territory).

[30] *See supra* note 24 (CDC, COVID Data Tracker—COVID–19 Integrated County View).

[31] *See supra* note 25 (regarding the new Omicron variants include BA.4.6, BF.7, and BA.2.75 described in CDC, COVID Data Tracker—Variant Proportions).

[32] *See supra* note 26 (regarding state-by-state comparison of COVID–19 vaccination rates).

[33] *See* SR–FINRA–2022–029, 87 FR at 64526–28.

[34] *See* SR–FINRA–2022–029, 87 FR at 64527, n. 15.

[35] 15 U.S.C. 78f(b).

[36] 15 U.S.C. 78f(b)(5).

[37] 15 U.S.C. 78f(b)(7) & 78f(d).

[38] 15 U.S.C. 78f(b)(7) & 78f(d).

maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like SR–NYSENAT–2020–31, provides only temporary relief. As proposed, the changes would be in place through January 31, 2023. As noted in SR–NYSENAT–2020–31 and above, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to extend temporary relief necessitated by the continued presence and uncertainty of COVID–19 and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on October 31, 2022.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [39] and Rule 19b–4(f)(6) thereunder.[40] 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 and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [41] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii), [42] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that there is a continued need to extend the temporary relief because the Exchange agrees with FINRA that the COVID–19 related health concerns necessitating this relief will continue beyond October 31, 2022.[43] The Exchange also states that extending the temporary relief provided in SR–NYSENAT–2020–31 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes so that the Exchange may continue to operate effectively and meet its critical investor protection goals, while also protecting the health and safety of hearing participants.[44] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–NYSENAT–2020–31.[45] As proposed, the temporary changes would be in place through January 31, 2023 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[46] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[47]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [48] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2022–24 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–NYSENAT–2022–24. 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

[39] 15 U.S.C. 78s(b)(3)(A)(iii).

[40] 17 CFR 240.19b–4(f)(6).

[41] 17 CFR 240.19b–4(f)(6).

[42] 17 CFR 240.19b–4(f)(6)(iii).

[43] *See supra* Item II; *see also* SR–FINRA–2022–029, 87 FR 64526, at 64527.

[44] *See* 87 FR 64526, at 64528–29 (noting the same in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2022–029 would become operative immediately upon filing).

[45] *See supra* note 4.

[46] *See supra* note 5. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond January 31, 2023, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[47] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[48] 15 U.S.C. 78s(b)(2)(B).

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–NYSENAT–2022–24 and should be submitted on or before December 6, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–24763 Filed 11–14–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96259; File No. SR–NYSE–2022–50]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 9261 and 9830

November 8, 2022.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 28, 2022, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes extending the expiration date of the temporary amendments to Rules 9261 and 9830 as set forth in SR–NYSE–2020–76 from October 31, 2022 to January 31, 2023, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE Rules 9261 and 9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes extending the expiration date of the temporary amendments as set forth in SR–NYSE–2020–76[4] to Rules 9261 (Evidence and Procedure in Hearing) and 9830 (Hearing) from October 31, 2022 to January 31, 2023 to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSE–2020–76 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by the current COVID–19 public health risks posed by in-person hearings. The proposed rule change would not make any changes to the text of Exchange Rules 9261 and 9830.[5]

Background

In 2013, the NYSE adopted disciplinary rules that are, with certain exceptions, substantially the same as the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.[6] The NYSE disciplinary rules were implemented on July 1, 2013.[7]

In adopting disciplinary rules modeled on FINRA's rules, the NYSE adopted the hearing and evidentiary processes set forth in Rule 9261 and in Rule 9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 9800 Series. As adopted, the text of Rule 9261 is identical to the counterpart FINRA rule. Rule 9830 is substantially the same as FINRA's rule, except for conforming and technical amendments.[8]

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, on August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–027, which allowed FINRA's Office of Hearing Officers (''OHO'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. Among the rules FINRA amended were Rules 9261 and 9830.[9]

Given that FINRA and OHO administers disciplinary hearings on the Exchange's behalf, and that the public health concerns addressed by FINRA's amendments apply equally to Exchange disciplinary hearings, on September 15, 2020, the Exchange filed to temporarily amend Rule 9261 and Rule 9830 to permit FINRA to conduct virtual hearings on its behalf.[10] In December 2020, FINRA filed a proposed rule change, SR–FINRA–2020–042, to extend the expiration date of the temporary amendments in SR–FINRA–2020–027 from December 31, 2020, to April 30, 2021.[11] On December 22, 2020, the Exchange similarly filed to extend the temporary amendments to Rule 9261 and Rule 9830 to April 30, 2021.[12] On

[49] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 90024 (September 28, 2020), 85 FR 62353 (October 2, 2020) (SR–NYSE–2020–76) (''SR–NYSE–2020–76'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond January 31, 2023 if the Exchange requires additional temporary relief from the rule requirements identified in NYSE–SR–2020–76. The amended NYSE rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release No. 68678 (January 16, 2013), 78 FR 5213 (January 24, 2013) (SR–NYSE–2013–02) (''2013 Notice''), 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR–NYSE–2013–02) (''2013 Approval Order''), and 69963 (July 10, 2013), 78 FR 42573 (July 16, 2013) (SR–NYSE–2013–49).

[7] *See* NYSE Information Memorandum 13–8 (May 24, 2013).

[8] *See* 2013 Approval Order, 78 FR at 15394, n.7 & 15400; 2013 Notice, 78 FR at 5228 & 5234.

[9] *See* Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (the ''August 31 FINRA Filing'').

[10] *See* note 4, *supra.*

[11] *See* Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR–FINRA–2020–042).

[12] *See* Securities Exchange Act Release No. 90821 (December 30, 2020), 86 FR 644 (January 6, 2021) (SR–NYSE–2020–107).

April 1, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–006, to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from April 30, 2021, to August 31, 2021.[13] On April 20, 2021, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to August 31, 2021.[14] On August 13, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–019, to extend the expiration date of the temporary amendments to, among other rules, FINRA Rule 9261 and 9830 from August 31, 2021, to December 31, 2021.[15] On August 27, 2021, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to December 31, 2021.[16] On December 7, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–031, to extend the expiration date of the temporary amendments to, among other rules, FINRA Rule 9261 and 9830 from December 31, 2021, to March 31, 2022.[17] On December 27, 2021, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to March 31, 2022, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[18]

On March 7, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from March 31, 2022, to July 31, 2022.[19] On March 29, 2022, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to July 31, 2022.[20] On July 8, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from July 31, 2022 to October 31, 2022.[21] On July 29, 2022, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to October 31, 2022, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[22]

According to FINRA, although there has been a downward trend in the number of COVID–19 cases since July 2022—when FINRA last filed to extend the temporary relief, COVID–19 still remains a public health concern.[23] For example, according to the Centers for Disease Control and Prevention (''CDC''), the 7-day moving average of new deaths from COVID–19 in the United States during September 2022 ranged from approximately 300 to 500 deaths per day,[24] and approximately 23 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[25] Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking [26] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.[27] Due to the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond October 31, 2022.[28] On October 17, 2022, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from October 31, 2022 to January 31, 2023.[29]

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE Rules 9261 and 9830 as set forth in SR–NYSE–2020–76 from October 31, 2022 to January 31, 2023.

As set forth in SR–FINRA–2022–029, although there has been a downward trend in the number of COVID–19 cases since July 2022—when FINRA last filed to extend the temporary relief, that COVID–19 still remains a public health concern. For example, according to the Centers for Disease Control and Prevention (''CDC''), the 7-day moving average of new deaths from COVID–19 in the United States during September 2022 ranged from approximately 300 to 500 deaths per day,[30] and approximately 23 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[31] Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking [32] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.[33] Due to the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond October 31, 2022.[34] FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from October 31, 2022 to January 31, 2023.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE Rules 9261 and 9830 as set forth in SR–NYSE–2020–76 from October 31, 2022 to January 31, 2023. The Exchange agrees with FINRA that, although there has been a downward trend in the number of COVID–19 cases since July 2022—when FINRA last filed to extend the temporary relief, that COVID–19 still

[13] *See* Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR–FINRA–2021–006).

[14] *See* Securities Exchange Act Release No. 91629 (April 22, 2021), 86 FR 22505 (April 28, 2021) (SR–NYSE–2020–27).

[15] *See* Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR–FINRA–2021–019).

[16] *See* Securities Exchange Act Release No. 92907 (September 9, 2021), 86 FR 51421 (September 15, 2021) (SR–NYSE–2021–47).

[17] *See* Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (SR–FINRA–2021–31).

[18] *See* Securities Exchange Act Release No. 93920 (January 6, 2022), 87 FR 1794 (January 12, 2022) (SR–NYSE–2021–78).

[19] *See* Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (SR–FINRA–2022–004).

[20] *See* Securities Exchange Act Release No. 94585 (April 1, 2022), 87 FR 20479 (April 7, 2022) (SR–NYSE–2022–17).

[21] *See* Securities Exchange Act Release No. 95281 (July 14, 2022), 87 FR 43335 (July 20, 2022) (SR–FINRA–2022–018).

[22] *See* Securities Exchange Act Release No. 95473 (August 11, 2022), 87 FR 50648 (August17, 2022) (SR–NYSE–2022–35).

[23] *See* Securities Exchange Act Release No. 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (SR–FINRA–2022–029) (''SR–FINRA–2022–029'').

[24] *See* CDC, COVID Data Tracker—Trends in Number of COVID–19 Cases and Deaths in the US Reported to CDC, by State/Territory, *https://covid.cdc.gov/covid-data-tracker/#trends_dailydeaths_select_00* (last visited Oct. 11, 2022).

[25] *See* CDC, COVID Data Tracker—COVID–19 Integrated County View, *https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels&null=CommunityLevels* (last visited Oct. 11, 2022).

[26] These new Omicron variants include BA.4.6, BF.7, and BA.2.75. *See* CDC, COVID Data Tracker—Variant Proportions, *https://covid.cdc.gov/covid-data-tracker/#variant-proportions* (last visited Oct. 11, 2022).

[27] A state-by-state comparison of vaccination rates is available at *https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-people-additional-dose-totalpop.*

[28] *See* SR–FINRA–2022–029, 87 FR at 64526–28.

[29] *See generally* SR–FINRA–2022–029.

[30] *See supra* note 24 (CDC, COVID Data Tracker—Trends in Number of COVID–19 Cases and Deaths in the US Reported to CDC, by State/Territory).

[31] *See supra* note 25 (CDC, COVID Data Tracker—COVID–19 Integrated County View).

[32] *See supra* note 26 (regarding the new Omicron variants include BA.4.6, BF.7, and BA.2.75 described in CDC, COVID Data Tracker—Variant Proportions).

[33] *See supra* note 27 (regarding state-by-state comparison of COVID–19 vaccination rates).

[34] *See* SR–FINRA–2022–029, 87 FR at 87 FR at 64526–28.

remains a public health concern. The Exchange also agrees that, due to the continued presence and uncertainty of COVID–19, for the reasons set forth in SR–FINRA–2022–029, there is a continued need for this temporary relief beyond October 31, 2022. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2022–029, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. Similarly, as noted in SR–FINRA–2022–029, in SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[35] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 9261 and 9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[36] in general, and furthers the objectives of Section 6(b)(5),[37] in particular, because 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. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[38]

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 as set forth in SR–FINRA–2022–029, will permit the Exchange to continue to effectively conduct hearings given the continued presence and uncertainty of COVID–19. Given that COVID–19 remains a public health concern and the uncertainty around a potential spike in cases of the disease, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed.

The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in the SR–NYSE–2020–76, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act[39] while striking an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like SR–NYSE–2020–76, provides only temporary relief. As proposed, the changes would be in place through January 31, 2023. As noted in SR–NYSE–2020–76 and above, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to extend temporary relief necessitated by the continued presence and uncertainty of COVID–19 and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on October 31, 2022.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[40] and Rule 19b–4(f)(6) thereunder.[41] 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 and Rule 19b–4(f)(6)(iii) thereunder.

[35] *See* SR–FINRA–2022–029, 87 FR at 64527, n. 15.

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(5).

[38] 15 U.S.C. 78f(b)(7) & 78f(d).

[39] 15 U.S.C. 78f(b)(7) & 78f(d).

[40] 15 U.S.C. 78s(b)(3)(A)(iii).

[41] 17 CFR 240.19b–4(f)(6).

A proposed rule change filed under Rule 19b–4(f)(6) [42] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[43] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that there is a continued need to extend the temporary relief because the Exchange agrees with FINRA that the COVID–19 related health concerns necessitating this relief will continue beyond October 31, 2022.[44] The Exchange also states that extending the temporary relief provided in SR–NYSE–2020–76 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes so that the Exchange may continue to operate effectively and meet its critical investor protection goals, while also protecting the health and safety of hearing participants.[45] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–NYSE–2020–76.[46] As proposed, the temporary changes would be in place through January 31, 2023 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[47] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[48]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [49] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2022–50 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2022–50. 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–NYSE–2022–50 and should be submitted on or before December 6, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

J. Matthew DeLesDernier,

Deputy Secretary.

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[42] 17 CFR 240.19b–4(f)(6).

[43] 17 CFR 240.19b–4(f)(6)(iii).

[44] *See supra* Item II; *see also* SR–FINRA–2022–029, 87 FR 64526, at 64527.

[45] *See* 87 FR 64526, at 64528–29 (noting the same in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2022–029 would become operative immediately upon filing).

[46] *See supra* note 4.

[47] *See supra* note 5. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond January 31, 2023, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[48] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[49] 15 U.S.C. 78s(b)(2)(B).

[50] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96264; File No. SR–MRX–2022–24]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Options 7, Section 5

November 8, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2022, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend MRX's Pricing Schedule at Options 7, Section 5 related to Membership Fees.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

MRX proposes to amend its Pricing Schedule at Options 7, Section 5, Other Options Fees and Rebates, to assess membership fees, which were not assessed until this year. Prior to this year, MRX did not assess its Members any membership fees. MRX launched its options market in 2016 and Members did not pay any membership fees until 2022.[3]

The proposed changes are designed to update fees for MRX's services to reflect their current value—rather than their value when it was a new exchange six years ago—based on MRX's ability to deliver value to its customers through technology, liquidity and functionality. Newly-opened exchanges often charge no fees for certain services such as membership, in order to attract order flow to an exchange, and later amend their fees to reflect the true value of those services.[4] Allowing newly-opened exchanges time to build and sustain market share before charging non-transactional fees encourages market entry and promotes competition. The proposed changes to membership fees within Options 7, Section 5; Other Options Fees and Rebates, are described below.

This proposal reflects MRX's assessment that it has gained sufficient market share to compete effectively against the other 15 options exchanges without waiving fees for membership. These types of fees are assessed by options exchanges that compete with MRX in the sale of exchange services—indeed, as of the date of the initial filing of these membership fees, MRX was the only options exchange (out of the 16 current options exchanges) not assessing membership fees today. New exchanges commonly waive membership fees to attract market participants, facilitating their entry into the market and, once there is sufficient depth and breadth of liquidity, ''graduate'' to compete against established exchanges and charge fees that reflect the value of their services.[5] If MRX is incorrect in this assessment, that error will be reflected in MRX's ability to compete with other options exchanges.[6]

Access Fees

As noted above, MRX Members were not assessed fees for membership until this year. Under the proposed fee change, MRX Members will pay a monthly Access Fee, which entitles MRX Members to trade on the Exchange based on their membership type. Specifically, MRX proposes to assess Electronic Access Members[7] and Market Makers,[8] which could be either a Primary Market Maker (''PMM'') or a Competitive Market Maker (''CMM''), an Access Fee of $200 per month. A Member would pay each applicable fee (an Electronic Access Fee or a Market Maker Access Fee). For example, an Electronic Access Member who desires to submit orders and also act as a Market Maker and submit quotes would pay the Electronic Access Member Access Fee and Market Maker Access Fee. The proposed Access Fee for submitting orders and quotes is the same fee of $200 per month.

CMM Trading Rights Fee

In order to receive market making appointments to quote in any options class, CMMs will also be assessed a CMM Trading Right Fee identical to GEMX.[9] CMM trading rights entitle a CMM to enter quotes in options symbols that comprise a certain percentage of industry volume. On a quarterly basis, the Exchange assigns points to each options class equal to its percentage of overall industry volume (not including exclusively traded index options), rounded down to the nearest one hundredth of a percentage with a maximum of 15 points (''CMM Trading Right''). A new listing is assigned a point value of zero for the remainder of the quarter in which it was listed. CMMs may seek appointments to options classes that total 20 points for the first CMM Trading Right it holds, and 10 points for the second and each subsequent CMM Trading Right it holds.[10] In order to encourage CMMs to quote on the Exchange, MRX launched CMM Trading Rights without any fees, allowing CMMs to freely quote in all options classes.

The Exchange is now proposing to adopt a monthly CMM Trading Right Fee. Under the proposed fee structure, CMMs will be assessed a CMM Trading Right Fee of $850 per month for the first trading right, which will entitle the CMM to quote in 20 percent of industry volume.Each additional CMM Trading Right will cost $500 per month, and will entitle the CMM to quote an additional 10 percent of volume. Similar to GEMX's trading rights fee, [11] a new CMM would pay $850 for the first CMM Trading Right and all CMMs would thereafter pay $500 for each additional CMM Trading Right. For example, if a CMM desired to quote in all options series listed on MRX, the CMM would need to obtain 9 CMM Trading Rights at a cost of $4,850. The Exchange is proposing this pricing model to encourage CMMs to obtain a greater number of CMM Trading Rights in order that they may add more liquidity on MRX. With this model, each subsequent

[3] The Exchange initially filed proposed pricing changes on May 2, 2022 (SR–MRX–2022–04) instituting fees for membership, ports and market data. On June 29, 2022, the Exchange withdrew that filing, and submitted separate filings for membership, ports and market data. SR–MRX–2022–07 replaced the membership fees set forth in SR–MRX–2022–04. Thereafter, SR–MRX–2022–13 replaced the membership fees set forth in SR–MRX–2022–07. On October 5, 2022, SR–MRX–2022–13 which withdrawn and replaced with SR–MRX–2022–19. The instant filing replaces SR–MRX–2022–19, which was withdrawn on November 1, 2022.

[4] *See also* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19) (introduction of membership fees by MEMX).

[5] For example, MIAX Emerald commenced operations as a national securities exchange registered on March 1, 2019. *See* Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10–233) (order approving application of MIAX Emerald, LLC for registration as a national securities exchange). MIAX Emerald filed to adopt its transaction fees and certain of its non-transaction fees in its filing SR–EMERALD–2019–15. *See* Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR–EMERALD–2019–15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish the MIAX Emerald Fee Schedule). MIAX Emerald waived its one-time application fee and monthly Trading Permit Fees assessable to EEMs and Market Makers among other fees within SR–EMERALD–2019–15.

[6] Nasdaq announced that, beginning in 2022, it plans to migrate its North American markets to Amazon Web Services in a phased approach, starting with MRX. The MRX migration will take place in November 2022. The proposed fee changes are entirely unrelated to this effort.

[7] The term ''Electronic Access Member'' or ''EAM'' means a Member that is approved to exercise trading privileges associated with EAM Rights. *See* General 1, Section 1(a)(6).

[8] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21). The term ''Competitive Market Maker'' means a Member that is approved to exercise trading privileges associated with CMM Rights. *See* Options 1, Section 1(a)(12). The term ''Primary Market Maker'' means a Member that is approved to exercise trading privileges associated with PMM Rights. *See* Options 1, Section 1(a)(35).

[9] *See* GEMX Options 7, Section 6.B. (CMM Trading Rights Fees).

[10] A CMM may request changes to its appointments at any time upon advance notification to the Exchange in a form and manner prescribed by the Exchange. *See* MRX Options 2, Section 3(c)(3).

[11] *See* GEMX Options 7, Section 6.B.

CMM Trading Right of $500 per month costs less than the initial CMM Trading Right of $850 per month. As noted, the maximum expense would be $4,850 for a CMM to obtain the ability to quote in all option series listed on MRX. All CMMs have the opportunity to purchase additional CMM Trading Rights beyond the initial CMM Trading Right in order to quote in some or all options series on MRX.

With this proposal, PMMs would not be assessed a Trading Rights Fee. PMMs have additional obligations on MRX as compared to CMMs. PMMs are required to open options series in which they are assigned each day on MRX. Specifically, PMMs must submit a Valid Width Quote each day to open their assigned options series.[12] PMMs are integral to providing liquidity during MRX's Opening Process.[13] Intra-day, PMMs must provide two-sided quotations in a certain percentage of their assigned options series.[14] In contrast, a CMM is not required to enter quotations in the options classes to which it is appointed; however, if a CMM initiates quoting in an options class, the CMM is required to provide two-sided quotations in a certain of their assigned options class, which percentage is less than that required of PMMs (60% for CMMs compared to 90% for PMMs).[15] While there can be multiple CMMs in an options series, there is only one PMM assigned per options series. The Exchange desires to encourage Market Makers to compete for appointments as PMMs in an options series. The Exchange believes that PMMs serve an important role on MRX in opening an option series and ensuring liquidity in that option series throughout the trading day. This liquidity benefits the market through, for example, more robust quoting. Additionally, all market participants may interact with the liquidity.

Finally, the Exchange is proposing only to charge the $200 Access Fee to Electronic Access Members, and no trading rights fee, as the technical, regulatory, and administrative services associated with an Electronic Access Member's use of the Exchange are not as comprehensive as those associated with Market Makers' use.[16] As noted above, a Member would pay each applicable fee (an Electronic Access Fee or a Market Maker Access Fee). A Competitive Market Maker or Primary Market Maker who does not enter orders would only pay $200 per month Access Fee.

MRX believes that its membership fees, which have been in effect since May 2, 2022, are in line with or less than those of other options exchanges. The Exchange believes it is notable that during this time, there have been no comment letters submitted to the Commission arguing that the Exchange's new fees are unreasonable. The membership fees are constrained by competition. For example, since the inception of the membership fees on May 2, 2022, one firm cancelled nine CMM trading rights as well as their membership on MRX.[17] Also, another firm decreased their CMM trading rights from nine to four CMM trading rights.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[19] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to the Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [20]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [21]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.' '' [22] As a result, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [23] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the

[12] *See* Options 3, Section 8(c)(1) and 8(c)(3).

[13] The Exchange notes that most options markets do not require their primary or lead market maker to open their assigned options series.

[14] *See* Options 2, Section 5(e)(2) which states, ''Primary Market Makers, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. Primary Market Makers shall be required to make two-sided markets pursuant to this Rule in any Quarterly Options Series, any Adjusted Options Series, and any option series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options.''

[15] *See* Options 2, Section 5(e)(1) which states, that ''On any given day, a Competitive Market Maker is not required to enter quotations in the options classes to which it is appointed. A Competitive Market Maker may initiate quoting in options classes to which it is appointed intra-day. If a Competitive Market Maker initiates quoting in an options class, the Competitive Market Maker, associated with the same Member, is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading . . .''.

[16] The Exchange notes that all MRX Members may submit orders; however, only Market Makers may submit quotes. The Exchange surveils Market Maker quoting to ensure these participants have met their obligations. The regulatory oversight for Market Makers is in addition to the regulatory oversight which is administered for all Electronic Access Members.

[17] The Exchange notes that this Member was not active on MRX prior to the cancellation.

[18] *See* 15 U.S.C. 78f(b).

[19] *See* 15 U.S.C. 78f(b)(4) and (5).

[20] *See NetCoalition,* 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[22] *See NetCoalition,* 615 F.3d at 534–35; *see also* H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[23] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [24] In its 2019 guidance on fee proposals, Commission staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a ''proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.'' [25]

History of MRX Operations

Over the years, MRX has amended its transactional pricing to remain competitive and attract order flow to the Exchange.[26]

In June 2019, MRX commenced offering complex orders.[27] With the addition of complex order functionality, MRX offered Members certain order types, an opening process, auction capabilities, and other trading functionality that was nearly identical to functionality available on ISE.[28] By way of comparison, ISE, unlike MRX, assessed membership fees in 2019 [29] while offering the same suite of functionality as MRX, with a limited exception.[30]

Membership is Subject to Significant Substitution-Based Competitive Forces.

An exchange can show that a product is ''subject to significant substitution-based competitive forces'' by introducing evidence that customers can substitute the product for products offered by other exchanges.

Chart 1 below shows the January 2022 market share for multiply-listed options by exchange. Of the 16 operating options exchanges, none currently has more than a 13.1% market share, and MRX has the smallest market share at 1.8%. Customers widely distribute their transactions across exchanges according to their business needs and the ability of each exchange to meet those needs through technology, liquidity and functionality. Average market share for the 16 options exchanges is 6.26 percent, with the median at 5.8, and a range between 1.8 and 13.1 percent.

Chart 1: Market Share by Exchange for January 2022

[24] *Id.*

[25] *See* U.S. Securities and Exchange Commission, ''Staff Guidance on SRO Rule filings Relating to Fees'' (May 21, 2019), available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

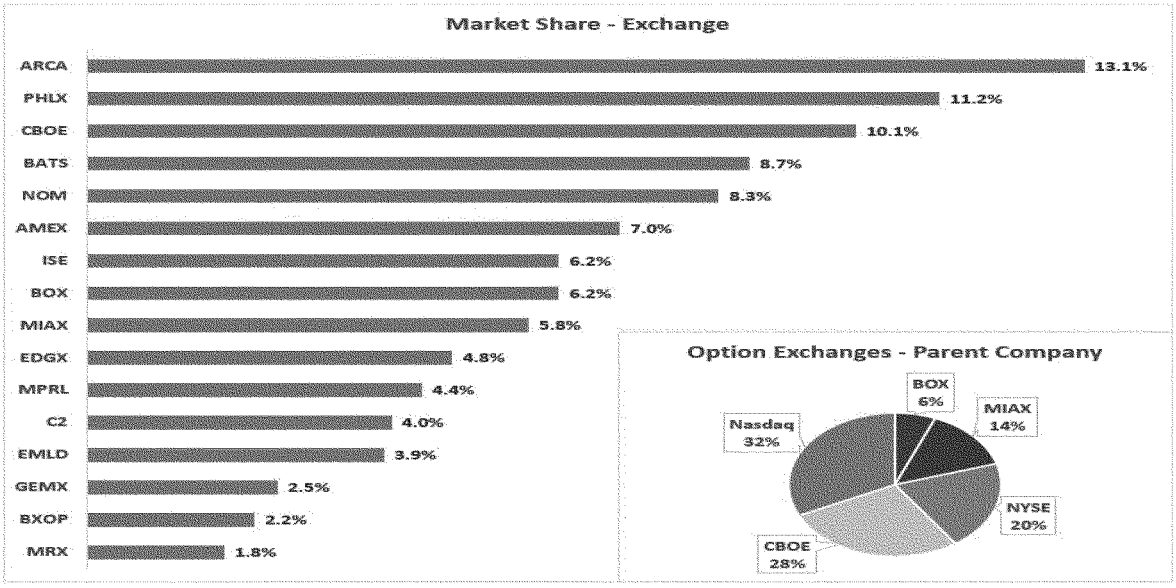
[26] *See e.g.* Securities Exchange Act Release Nos. 77292 (March 4, 2016), 81 FR 12770 (March 10, 2016) (SR–ISEMercury–2016–02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the Schedule of Fees); 77409 (March 21, 2016), 81 FR 16240 (March 25, 2016) (SR–ISEMercury–2016–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 81 FR 16238 (March 21, 2016), 81 FR 16238 (March 25, 2016) (SR–ISEMercury–2016–06) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 77841 (May 16, 2016), 81 FR 31986 (SR–ISEMercury–2016–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 82537 (January 19, 2018), 83 FR 3784 (January 26, 2018) (SR–MRX–2018–01) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees To Introduce a New Pricing Model); 82990 (April 4, 2018), 83 FR 15434 (April 10, 2018) (SR–MRX–2018–10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter IV of the Exchange's Schedule of Fees); 28677 (June 14, 2018), 83 FR 28677 (June 20, 2018) (SR–MRX–2018–19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Certain Route-Out Fees Set Forth in Section II.A of the Schedule of Fees); 84113 (September 13, 2018), 83 FR 47386 (September 19, 2018) (SR–MRX–2018–27) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the Exchange's Schedule of Fees); 85143 (February 14, 2019), 84 FR 5508 (February 21, 2019) (SR–MRX–2019–02) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Pricing Schedule at Options 7, Section 3); 85313 (March 14, 2019), 84 FR 10357 (March 20, 2019) (SR–MRX–2019–05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to PIM Fees and Rebates); 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR–MRX–2019–14) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Complex Order Pricing); 88022 (January 23, 2020), 85 FR 5263 (January 29, 2020) (SR–MRX–2020–02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Pricing Schedule); 89046 (June 11, 2020), 85 FR 36633 (June 17, 2020) (SR–MRX–2020–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7); 89320 (July 15, 2020), 85 FR 44135 (July 21, 2020) (SR–MRX–2020–14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7, Section 5, Other Options Fees and Rebates, in Connection With the Pricing for Orders Entered Into the Exchanges Price Improvement Mechanism); 90503 (November 24, 2020), 85 FR 77317 (December 1, 2020) (SR–MRX–2020–18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7 for Orders Entered Into the Exchange's Price Improvement Mechanism); 90434 (November 16, 2020), 85 FR 74473 (November 20, 2020) (SR–MRX–2020–19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To the Exchange's Pricing Schedule at Options 7 To Amend Taker Fees for Regular Orders); 90455 (November 18, 2020), 85 FR 75064 (November 24, 2020) (SR–MRX–2020–21) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Pricing Schedule); and 91687 (April 27, 2021), 86 FR 23478 (May 3, 2021) (SR–MRX–2021–04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Options 7). Note that ISE Mercury is an earlier name for MRX.

[27] *See* Securities Exchange Act Release No. 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR–MRX–2019–14) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Complex Order Pricing).

[28] One distinction is that ISE offered its Members access to Nasdaq Precise in 2019 and since that time. MRX has never offered Precise. ''Nasdaq Precise'' or ''Precise'' is a front-end interface that allows Electronic Access Members and their Sponsored Customers to send orders to the Exchange and perform other related functions. Features include the following: (1) order and execution management: enter, modify, and cancel orders on the Exchange, and manage executions (*e.g.,* parent/child orders, inactive orders, and post-trade allocations); (2) market data: access to real-time market data (*e.g.,* NBBO and Exchange BBO); (3) risk management: set customizable risk parameters (*e.g.,* kill switch); and (4) book keeping and reporting: comprehensive audit trail of orders and trades (*e.g.,* order history and done away trade reports). *See* ISE Supplementary Material .03(d) of Options 3, Section 7. Precise is also available on GEMX.

[29] In 2019, ISE assessed the following Access Fees: $500 per month, per membership to an Electronic Access Member, $5,000 per month, per membership to a Primary Market Maker and $2,500 per month, per membership to a Competitive Market Maker. ISE does not assess Trading Rights Fees to Competitive Market Makers. See Securities Exchange Act Release No. 82446 (January 5, 2018), 83 FR 1446 (January 11, 2018) (SR–ISE–2017–112) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Non-Transaction Fees in the Exchange's Schedule of Fees). Of note, ISE assessed Access Fees prior to 2019 as well.

[30] Unlike ISE, MRX does not offer Precise. *See* note 30, *supra.*



Market share is the percentage of volume on a particular exchange relative to the total volume across all exchanges, and indicates the amount of order flow directed to that exchange. High levels of market share enhance the value of trading and membership. MRX has the smallest number of Members relative to its GEMX, ISE, NOM and Phlx affiliates, with approximately 40 members. This demonstrates that customers can and will choose where to become members, need not become members of all exchanges, and do not need to become Members of MRX and instead may utilize a third party.[31]

The Exchange established these lower (when compared to other options exchanges in the industry) membership fees in order to encourage market participants to become MRX Members and register as MRX Market Makers. As noted above, MRX has grown its market share since inception and seeks to continue to grow its membership base. The Exchange believes that there are many factors that may cause a market participant to decide to become a member of a particular exchange in addition to its pricing.

As noted herein, MRX filed its membership fees on May 2, 2022 and has not received a comment with respect to the proposed membership fee changes. MRX Members may elect to cancel their membership on MRX. Since the inception of the membership fees on May 2, 2022, one firm cancelled nine CMM trading rights as well as their membership on MRX. Also, another firm decreased their CMM trading rights from nine to four CMM trading rights. Also, no MRX Member is required by rule, regulation, or competitive forces to be a Member on the Exchange.

Fees for Membership

The proposed membership fees described below are in line with or less than those of other markets. Setting a fee above competitors is likely to drive away customers, so the most efficient price-setting strategy is to set prices at the same level as other firms.

The Exchange's proposal to adopt membership fees is reasonable, equitable and not unfairly discriminatory. As a self-regulatory organization, MRX's membership department reviews applicants to ensure that each application complies with the rules specified within MRX General 3 [32] as well as other requirements for membership.[33] Applicants must meet the Exchange's qualification criteria prior to approval. The membership review includes, but is not limited to, the registration and qualification of associated persons, financial health, the validity of the required clearing relationship, and the history of disciplinary matters. Approved Members would be required to comply with MRX's By-Laws and Rules and would be subject to regulation by MRX. The proposed membership fees are in line with or lower than similar fees assessed on other options markets.[34]

Access Fees

MRX's flat rate Access Fee to Electronic Access Members and Market Makers of $200 per month is reasonable. The Exchange would assess the same fee to Electronic Access Members who submit orders and Market Makers who submit quotes.[35] The Exchange believes that it is reasonable to assess an Access Fee because there are technical, regulatory, and administrative services associated with being an Electronic Access Member or a Market Maker.

Any Electronic Access Member entering orders or Market Maker entering quotes on MRX would pay the same $200 per month Access Fee. MRX's flat rate Access Fee to Electronic Access Members and Market Makers of $200 per month is equitable and not unfairly discriminatory as all Members would be subject to this same fee.

Additionally, the Exchange believes that the proposed change will better align MRX's membership fees with rates charged by competing options exchanges.[36] Further, the Exchange believes that the proposal is reasonably designed to continue to compete with

[31] Of course, that third party must itself become a Member of MRX, so at least some market participants must become Members of MRX for any trading to take place at all. Nevertheless, because some firms would be able to exercise the option of not becoming Members, excessive membership fees would cause the Exchange to lose members.

[32] MRX General 3, Membership and Access, incorporates by reference Nasdaq General 3.

[33] The Exchange's Membership Department must ensure, among other things, that an applicant is not statutorily disqualified.

[34] *See* Cboe's Fees Schedule. Cboe assesses permit fees as follows: Market-Maker Electronic Access Permit of $5,000 per month; Electronic Access Permits of $3,000 per month; and Clearing TPH Permit of $2,000 per month. *See also* Miami International Securities Exchange, LLC's (''MIAX'') Fee Schedule. MIAX assesses an Electronic Exchange Member Fee of $1,500 per month.

[35] All MRX Members may submit orders; however, only Market Makers may submit quotes.

[36] *See* GEMX Options 7, Section 7. GEMX's Access Fees are within the range of fees proposed by MRX. Additionally, MRX assesses a Trading Rights Fees to CMMs and not PMMs.

other options exchanges by incentivizing market participants to register as both Electronic Access Members and Market Makers on MRX in a manner than enables MRX to improve its overall competitiveness and strengthen market quality for all market participants.

CMM Trading Right Fee

The Exchange believes that it is reasonable to assess CMMs a CMM Trading Right Fee because these Market Makers are not required to enter quotations in the options classes to which it is appointed unless the CMM initiates quoting in an options class.[37] With respect to the CMM Trading Rights Fee, the proposed fees compare favorably with those of other options exchanges. For example, a market maker on MIAX is assessed a $3,000 one-time fee and then a tiered monthly fee from $7,000 for up to 10 classes to $22,000 for over 100 classes.[38] By comparison, under the proposed fee structure, a CMM can be granted access on the Exchange for as little as $950 per month (*i.e.,* a $100 access fee and an $850 trading right), and could quote in all options classes on the Exchange by paying the access fee and obtaining nine CMM trading rights for a total of $4,950 per month. The Exchange notes that its tiered model for CMM trading rights is consistent with the pricing practices of other exchanges, such as NYSE Arca, which charges $6,000 per month for the first market maker trading permit, down to $1,000 per month for the fifth and additional trading permits, with various tiers in-between. Like other options exchanges, the Exchange is proposing a tiered pricing model because it may encourage CMM firms to purchase additional trading rights and quote more options series because subsequent CMM Trading Rights are priced lower than the initial CMM Trading Right.

The Exchange believes that it is equitable and not unfairly discriminatory to assess only CMMs a CMM Trading Right Fee. While there can be multiple CMMs in an options series, there is only one PMM assigned per options series. Unlike PMMs who must open each option series to which they are assigned,[39] CMMs have no opening obligations. Intra-day, unlike PMMs, a CMM is not required to enter quotations in the options classes to which it is appointed; however, if a CMM initiates quoting in an options class, the CMM is required to provide two-sided quotations in a certain of their assigned options class, which percentage is less than that required of PMMs (60% for CMMs as compared to 90% for PMMs).[40] Because PMMs have an obligation to open an options series and higher quoting obligations, and also because there can be only one PMM whereas there are multiple CMMS, the Exchange believes that it is equitable and not unfairly discriminatory to incentivize Market Makers to act as PMMs by assessing no Trading Right Fees to PMMs and only assessing CMMs such fees.

Similar to a recent proposal by BOX Exchange LLC (''BOX'')[41] and Cboe Exchange, Inc. (''Cboe''),[42] the Exchange notes that there is no regulatory requirement that market makers connect and access any one options exchange or that any market participant connect to any one options exchange. Moreover, a Market Maker membership is not a requirement to participate on the Exchange and participation on an exchange is completely voluntary.

Additionally, Cboe noted that several broker-dealers are members of only a single exchange that lists options for trading and it identified numerous broker-dealers that are members of other options exchanges, but not the Exchange.[43] BOX noted in its rule change that it reviewed membership details at three options exchanges and found that there are 62 market making firms across these three exchanges.[44] Further, BOX found that 42 of the 62 market making firms access only one of the three exchanges.[45] Additionally, BOX identified numerous market makers that are members of other options exchanges, but not BOX.[46]

Not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no ''de facto'' or practical requirement as well, as further evidenced by the Cboe membership analysis and market maker membership analysis by BOX of three options exchanges discussed above. Indeed, Electronic Access Members and Market Makers choose if and how to access a particular exchange and because it is a choice, MRX must set reasonable pricing, otherwise prospective members and market makers would not connect and existing Electronic Access Members and Market Makers would disconnect from the Exchange.

As noted above, one MRX Member cancelled their membership on MRX as well as nine CMM Trading Rights.[47] Also, another MRX Member decreased their CMM Trading Rights from nine to four CMM Trading Rights. The Exchange believes the Commission has a sufficient basis to determine that MRX was subject to significant competitive forces in setting the terms of its proposed fees. Moreover, the Commission has found that, if an exchange meets the burden of demonstrating it was subject to significant competitive forces in setting its fees, the Commission ''will find that its fee rule is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the rule violate the Act or the rules thereunder.''[48] The Exchange is not aware of, nor has the Commission articulated, a substantial countervailing

[37] *See* Options 2, Section 5(e)(2).

[38] *See* Miami International Securities Exchange, LLC Fee Schedule at 20 and 21: *https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_03012022.pdf.*

[39] *See* Options 3, Section 8(c)(1) and 8(c)(3).

[40] *See* Options 2, Section 5(e)(1) which states, that ''On any given day, a Competitive Market Maker is not required to enter quotations in the options classes to which it is appointed. A Competitive Market Maker may initiate quoting in options classes to which it is appointed intra-day. If a Competitive Market Maker initiates quoting in an options class, the Competitive Market Maker, associated with the same Member, is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. . .''.

[41] *See* Securities and Exchange Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility To Adopt Electronic Market Maker Trading Permit Fees). BOX amended its fees on January 3, 2022 to adopt an electronic market maker trading permit fee.

[42] *See* Securities Exchange Act Release No. 90333 (November 4, 2020), 85 FR 71666 (November 10, 2020) (SR–CBOE–2020–105) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule in Connection With Migration).

[43] *Id.* Cboe notes it has identified approximately 25 broker-dealers that are members of ISE, but not Cboe, both options only exchanges. Similarly, Cboe identified at least 4 broker-dealers that trade options and are members of one or more of the Exchange's affiliated options exchanges, but not Cboe. Cboe mentioned that the number of members at each exchange that trades options varies greatly. Particularly, the number of members of exchanges that trade options vary between approximately 9 and 171 broker-dealers. Even the number of members between the Exchange and its 3 other options exchange affiliates vary. Particularly, while the Exchange currently has 92 members, Cboe C2 has 54 members, Cboe EDGX has 52 members that trade options and Cboe BZX has 66 members that trade options.

[44] *Id.*

[45] *Id.*

[46] *Id.* For example, BOX identified 47 market makers that are members of Cboe (an exchange that only lists options), but not the Exchange (which also lists only options).

[47] The Exchange notes that this Member was not active on MRX prior to the cancellation.

[48] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (''2008 ArcaBook Approval Order'') (approving proposed rule change to establish fees for a depth-of-book market data product).

basis for finding the proposal violates the Act or the rules thereunder.

Membership fees were charged by all options exchanges except MRX until May 2, 2022. In 2022, similar to MRX, MEMX LLC (''MEMX'') commenced assessing a monthly membership fee.[49] MEMX reasoned in that rule change that there is value in becoming a member of the exchange.[50] MEMX stated that it believed that its proposed membership fee ''is not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange.'' [51] Moreover, ''neither the trade-through requirements under Regulation NMS nor broker-dealers' best execution obligations require a broker-dealer to become a member of every exchange.'' [52] In this respect, MEMX is correct; a monthly membership fee is reasonable, equitably allocated and not unfairly discriminatory. Market participants may choose to become a member of one or more options exchanges based on the market participant's business model. A very small number of market participants choose to become a member of all sixteen options exchanges. It is not a requirement for market participants to become members of all options exchanges, in fact, certain market participants conduct an options business as a member of only one options market.

MRX makes the same arguments herein as were proposed by MEMX in similarly adopting membership fees. The Exchange notes that MRX's ability to assess membership fees similar to MEMX and all other options markets permits it to compete with other options markets on an equal playing field. MRX was the only options market prior to May 2, 2022 that did not assess membership fees. Most firms that actively trade on options markets are not currently Members of MRX. Using options markets that Nasdaq operates as points of comparison, less than a third of the firms that are members of at least one of the options markets that Nasdaq operates are also Members of MRX (approximately 29%). The Exchange notes that no firm is a Member of MRX only. Few, if any, firms have become Members at MRX, notwithstanding the fact that MRX membership is currently free, because MRX currently has less liquidity than other options markets. As explained above, MRX has the smallest market share of the 16 options exchanges, representing only approximately 1.8% of the market, and, for certain market participants, the current levels of liquidity may be insufficient to justify the costs associated with becoming a Member and connecting to the Exchange, notwithstanding the fact that membership is free.

The decision to become a member of an exchange, particularly for registered market makers, is complex, and not solely based on the non-transactional costs assessed by an exchange. Becoming a member of an exchange does not ''lock'' a potential member into a market or diminish the overall competition for exchange services. The decision to become a member of an exchange is made at the beginning of the relationship, and is no less subject to competition than trading fees.

In lieu of becoming a member at each options exchange, a market participant may join one exchange and elect to have their orders routed in the event that a better price is available on an away market. Nothing in the Order Protection Rule requires a firm to become a Member at MRX.[53] If MRX is not at the NBBO, MRX will route an order to any away market that is at the NBBO to prevent a trade-through and also ensure that the order was executed at a superior price.[54]

In lieu of joining an exchange, a third-party may be utilized to execute an order on an exchange. For example, a third-party broker-dealer Member of MRX may be utilized by a retail investor to submit orders into an Exchange. An institutional investor may utilize a broker-dealer, a service bureau,[55] or request sponsored access [56] through a member of an exchange in order to submit a trade directly to an options exchange.[57] A market participant may either pay the costs associated with becoming a member of an exchange or, in the alternative, a market participant may elect to pay commissions to a broker-dealer, pay fees to a service bureau to submit trades, or pay a member to sponsor the market participant in order to submit trades directly to an exchange. Market participants may elect any of the above models and weigh the varying costs when determining how to submit trades to an exchange. Depending on the number of orders to be submitted, technology, ability to control submission of orders, and projected revenues, a market participant may determine one model is more cost efficient as compared to the alternatives.

After 6 years, MRX proposes to commence assessing membership fees, just as all other options exchanges.[58] The introduction of these fees will not impede a Member's access to MRX, but rather will allow MRX to continue to compete and grow its marketplace so that it may continue to offer a robust trading architecture, a quality opening process, an array of simple and complex order types and auctions, and competitive transaction pricing. If MRX is incorrect in its assessment of the value of its services, that assessment will be reflected in MRX's ability to compete with other options exchanges.

Similar to Cboe,[59] MRX believes that the proposed changes are consistent with the Act because they are reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition, as they are supported by evidence (including data and analysis) and are constrained by significant competitive forces. The Exchange also believes the proposed fees are reasonable as they are in line with the amounts assessed by other exchanges for membership. Accordingly, the Exchange believes that the Commission should find that the Proposed Fee Increases are consistent with 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 intermarket burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[49] *See* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19). The Monthly Membership Fee is assessed to each active Member at the close of business on the first day of each month.

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *See* Options Order Protection and Locked/Crossed Market Plan (August 14, 2009), available at *https://www.theocc.com/getmedia/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/options_order_protection_plan.pdf.*

[54] MRX Members may elect to not route their orders by marking an order as ''do-not-route.'' In this case, the order would not be routed. *See* Options 3, Section 7(m).

[55] Service bureaus provide access to market participants to submit and execute orders on an exchange. On MRX, a Service Bureau may be a Member. Some MRX Members utilize a Service Bureau for connectivity and that Service Bureau may not be a Member. Some market participants utilize a Service Bureau who is a Member to submit orders. As noted herein only MRX Members may submit orders or quotes through ports.

[56] Sponsored Access is an arrangement whereby a member permits its customers to enter orders into an exchange's system that bypass the member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third-party technology provider.

[57] This may include utilizing a Floor Broker and submitting the trade to one of the five options trading floors.

[58] Today, MRX is the only options exchange that does not assess membership fees.

[59] *See* Securities Exchange Act Release No. 90333 (November 4, 2020), 85 FR 71666 (November 10, 2020) (SR–CBOE–2020–105).

The Exchange believes its proposal remains competitive with other options markets, and will offer market participants with another choice of venue to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The Exchange notes that other options markets have adopted membership fees. MEMX recently reasoned that it should be permitted to adopt membership fees because MEMX's proposed membership fees would be lower than the cost of membership on other exchanges, and therefore,

> . . . may stimulate intramarket competition by attracting additional firms to become Members on the Exchange or at least should not deter interested participants from joining the Exchange. In addition, membership fees are subject to competition from other exchanges. Accordingly, if the changes proposed herein are unattractive to market participants, it is likely the Exchange will see a decline in membership as a result. The proposed fee change will not impact intermarket competition because it will apply to all Members equally. The Exchange operates in a highly competitive market in which market participants can determine whether or not to join the Exchange based on the value received compared to the cost of joining and maintaining membership on the Exchange.'' [60]

The Exchange also notes that Cboe amended access fees [61] in a fee change that was filed subsequent to the D.C. Circuit decision in *Susquehanna Int'l Grp., LLC* v. *SEC,* 866 F.3d 442 (D.C. Cir. 2017), meaning that such fee filings were subject to the same (and current) standard for SEC review and approval as the instant filing. The Commission permitted Cboe to amend their trading permit fees [62] based on competitive arguments. Cboe stated in its proposal that,

> The rule structure for options exchanges are also fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements. Gone are the days when the retail brokerage firms (such as Fidelity, Schwab, and eTrade) were members of the options exchanges—they are not members of the Exchange or its affiliates, they do not purchase connectivity to the Exchange, and they do not purchase market data from the Exchange. Accordingly, not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no ''de facto'' or practical requirement as well, as further evidenced by the recent significant reduction in the number of broker-dealers that are members of all options exchanges.[63]

The Cboe proposal also referenced the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan''),[64] wherein the Commission discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models. In that filing, the Commission acknowledged that, even if an exchange were to exit the marketplace due to its proposed fee-related change, it would not significantly impact competition in the market for exchange trading services because these markets are served by multiple competitors.[65] Further, the Commission explicitly stated that ''[c]onsequently, demand for these services in the event of the exit of a competitor is likely to be swiftly met by existing competitors.'' [66] Finally, the Commission recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if a competitor did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.[67]

Cboe concluded in its fee filing that the Exchange is subject to significant substitution-based competitive forces in pricing its connectivity and access fees.[68] Cboe stressed that the proof of competitive constraints does not depend on showing that members walked away, or threatened to walk away, from a product due to a pricing change. Rather, the very absence of such negative feedback (in and of itself, and particularly when coupled with positive feedback) is indicative that the proposed fees are, in fact, reasonable and consistent with the Exchange being subject to competitive forces in setting fees.[69]

MRX requests the Commission apply the same standard of review to its proposed fee change that was applied to the Cboe fee filing which permitted Cboe to amend its membership fees. If the Commission were to apply a different standard of review to MRX's membership fee filing than it applied to other exchange fee filings it would create a burden on competition such that it would impair MRX's ability to compete among other options markets. MRX's ability to assess membership fees, similar to MEMX, Cboe and all other options markets, would permit it to compete with other options markets on an equal playing field. As noted herein, MRX is the only options market that did not have membership fees until May 2, 2022.

The Exchange does not believe that the proposed rule change will impose any intramarket burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Any Electronic Access Member entering orders or Market Maker submitting quotes on MRX would pay the same $200 per month Access Fee. MRX's flat

[60] *See* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19).

[61] *See* Securities Exchange Act Release No. 90333 (November 4, 2020), 85 FR 71666 (November 10, 2020) (SR–CBOE–2020–105).

[62] Pre-migration, the Exchange issued the following three types of Trading Permits: (1) Market-Maker Trading Permits, which were assessed a monthly fee of $5,000 per permit; (2) Floor Broker Trading Permits, which were assessed a monthly fee of $9,000 per permit; and (3) Electronic Access Permits (''EAPs''), which were assessed a monthly fee of $1,600 per permit. The Exchange also offered separate Market-Maker and Electronic Access Permits for the Global Trading Hours (''GTH'') session, which were assessed a monthly fee of $1,000 per permit and $500 per permit respectively. In connection with the migration, the Exchange adopted separate on-floor and off-floor Trading Permits for Market-Makers and Floor Brokers, adopted a new Clearing TPH Permit, and proposes to modify the corresponding fees and discounts. Among other fees, Cboe amended its Electronic Access Permit to a monthly fee of $3,000, and amended its Clearing TPH Permit, for TPHs acting solely as a Clearing TPH, to a monthly fee of $2,000. Also, Cboe adopted progressive monthly fees for MM Appointment Units.

[63] *Id.* at 71677.

[64] *See* Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19).

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *See* Securities Exchange Act Release No. 90333 (November 4, 2020), 85 FR 71666 at 71669 (November 10, 2020) (SR–CBOE–2020–105).

[69] *Id.* at 71680.

rate Access Fee to Electronic Access Members and Market Makers of $200 per month does not impose an undue burden on competition as all Members would be subject to the same fee.

With respect to the CMM Trading Rights Fee, the proposed fees compare favorably with those of other options exchanges.[70] Like other options exchanges, the Exchange is proposing a tiered pricing model because it may encourage CMM firms to purchase additional Trading Rights and quote more issues because subsequent trading rights are priced lower than the initial Trading Right. The Exchange notes that it is not proposing Trading Right Fees for PMMs. As compared to CMMs, PMMs have additional obligations on MRX. PMMs are required to open options series in which they are assigned each day on MRX. Specifically, PMMs must submit a Valid Width Quote each day to open their assigned options series.[71] PMMs are integral to providing liquidity during MRX's Opening Process.[72] Intra-day, PMMs must provide two-sided quotations in a certain percentage of their assigned options series.[73] In contrast, a CMM is not required to enter quotations in the options classes to which it is appointed; however, if a CMM initiates quoting in an options class, the CMM is required to provide two-sided quotations in a certain of their assigned options class, which percentage is less than that required of PMMs (60% for CMMs as compared to 90% for PMMs).[74] While there can be multiple CMMs in an options series, there is only one PMM assigned per options series. The Exchange desires to encourage Members to compete for appointments as PMMs in an options series. The Exchange believes that PMMs serve an important role on MRX in opening an option series and ensuring liquidity in that option series throughout the trading day. This liquidity benefits the market through, for example, more robust quoting.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[75] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2022–24 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–MRX–2022–24. 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–MRX–2022–24 and should be submitted on or before December 6, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[76]

J. Matthew DeLesDernier,

Assistant Secretary.

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[70] *See* NYSE Arca Fees and Charges, General Options and Trading Permit (OTP) Fees (comparing CMM Trading Rights Fees to the Arca Market Maker fees).

[71] *See* Options 3, Section 8(c)(1) and 8(c)(3).

[72] The Exchange notes that most options markets do not require their primary or lead market maker to open their assigned options series.

[73] *See* Options 2, Section 5(e)(2) which states, ''Primary Market Makers, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. Primary Market Makers shall be required to make two-sided markets pursuant to this Rule in any Quarterly Options Series, any Adjusted Options Series, and any option series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options.''

[74] *See* Options 2, Section 5(e)(1) which states, that ''On any given day, a Competitive Market Maker is not required to enter quotations in the options classes to which it is appointed. A Competitive Market Maker may initiate quoting in options classes to which it is appointed intra-day. If a Competitive Market Maker initiates quoting in an options class, the Competitive Market Maker, associated with the same Member, is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading . . .''.

[75] 15 U.S.C. 78s(b)(3)(A)(ii).

[76] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96263; File No. SR–NYSE–2022–11]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Withdrawal of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the NYSE Listed Company Manual To Provide a Limited Exemption From the Shareholder Approval Requirements for Closed-End Management Investment Companies With Equity Securities Listed Under Section 102.04 of the Listed Company Manual

November 8, 2022.

On February 23, 2022, the New York Stock Exchange LLC (''Exchange'' or

''NYSE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Section 312.03 of the NYSE Listed Company Manual to provide an exemption from certain shareholder approval requirements of that rule for listed registered closed-end management investment companies and business development companies under certain circumstances. On March 8, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on March 15, 2022.[3] The Commission has received no comments on the proposed rule change, as modified by Amendment No. 1.

On April 26, 2022, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On June 13, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act[6] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[7] On September 9, 2022, the Commission designated a longer period for Commission action on the proposed rule change to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8]

On November 4, 2022, the Exchange withdrew the proposed rule change, as modified by Amendment No. 1 (SR–NYSE–2022–11).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

J. Matthew DeLesDernier,

Deputy Secretary.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 94388 (Mar. 9, 2022), 87 FR 14589 (Mar. 15, 2022).

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 94795 (Apr. 26, 2022), 87 FR 25689 (May 2, 2022).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 95093 (June 13, 2022), 87 FR 36548 (June 17, 2022).

[8] *See* Securities Exchange Act Release No. 95716 (Sept. 9, 2022), 87 FR 56716 (Sept. 15, 2022).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96274; File No. SR–ICEEU–2022–022]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice and Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to Part GG of the ICE Clear Europe Delivery Procedures

November 8, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 28, 2022, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4) thereunder,[4] such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') proposes to amend Part GG of its Delivery Procedures to update certain documentation, timing and other requirements relating to delivery under ICE Futures Abu Dhabi Murban Crude Oil Futures Contracts (''Murban Crude Oil Futures Contracts'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe 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.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to amend Part GG of its Delivery Procedures to clarify certain delivery specifications relating to Murban Crude Oil Futures Contracts. The proposed changes include amendments to the delivery timetable in respect of delivery of Murban Crude Oil Futures Contracts to modify certain time periods to be more consistent with underlying cash markets, at the request of market participants, and to make other drafting clarifications and improvements. Specifically, the amendments would extend the date by which Buyers would be required to send the Clearing House and Seller Delivery Range Nomination Form stating the Buyer's preferred three-delay delivery range from the 5th calendar day of the month preceding the Delivery Period (or the following day if such 5th calendar day is not a Clearing Day) to the 25th calendar day prior to the first calendar day of the delivery month. In practice, the change will extend the deadline up to two days. In light of this extension, ICE Clear Europe does not believe it is necessary to provide a further extension if the relevant day is not a Clearing Day. The amendments would also move the deadline to 14:00 LPT on the relevant day rather than 16:00 LPT. Such amendments are intended to align the deadline with that specified for the cash market in the Abu Dhabi National Oil Company's (ADNOC's) General Terms and Conditions for the Sale of Crude Oil/Condensate and Liquefied Petroleum Gas (the ''ADNOC's GTCs'').[5] Market participants have requested these changes to reduce the operational burden on Buyers of having different deadlines for the Murban Crude Oil Futures Contracts and the cash market. The timing updates would also be reflected in the delivery documentation summary.

The Clearing House also proposes to amend the delivery timetable to change the timing the finalization of the loading programme for the Delivery Period and the delivery range determination to the 15th calendar day prior to the first calendar day of the Delivery Month and the 15th calendar day prior to the first calendar cay of the Delivery Month +1

[5] ADNOC's General Terms and Conditions for the Sale of Crude Oil/Condensate and Liquefied Petroleum Gas is available at the following link: *https://www.adnoc.ae/-/media/adnoc-v2/files/adnoc_crude-and-lpg_gtcs_january-2020-edition-final_v1.ashx?la=en&hash=C9551678CC5CBBBAB30DFE83A495800E8AD540A1.*

Clearing Day, respectively. Such amendments are also intended to align such timing with the timing specified in ADNOC's GTCs for the cash market. Such updates are also intended to ease the delivery operational burden on Sellers by harmonizing the delivery specifications applicable to Murban Crude Oil Futures Contracts under Part GG of the Delivery Procedure's with the requirements of ADNOC's GTCs in the cash market.

The amendments would also make certain drafting corrections and clarifications. An incorrect reference in the delivery timetable to delivery range nomination under Section 4 of Part GG has been removed and a correct reference to vessel nomination has been added in the appropriate section of the delivery timetable. Additionally, the amendments would add to the portion of the delivery timetable that discusses finalization of the delivery range determination that the Terminal Operator would be able to shorten the delivery range from three consecutive Terminal Loading Days to two consecutive Terminal Loading Days at any time, provided that the Terminal Operator gives notice to the Buyer, Seller and the Clearing House. This change is consistent with the existing contractual specifications of the Murban Crude Oil Futures Contracts.

Minor updates would be made to Section 4 of Part GG. The title preceding the table in such section would be changed from ''ICE Murban Crude Oil Delivery Vessel Nomination Table'' to ''ICE Murban Crude Oil Vessel Nomination Table'', for consistency with other documentation. Information regarding Clearing Days would also be removed from the section as unnecessary since such deadlines are calculated using calendar days and not Clearing Days.

Other typographical and similar corrections would be made throughout Part GG.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to Part GG of the Delivery Procedures are consistent with the requirements of Section 17A of the Act[6] and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act[7] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. As discussed above, the proposed changes to Part GG of the Delivery Procedures are designed to more closely align the timing for certain delivery-related documentation and processes relating to Murban Crude Oil Futures Contracts with the underlying cash market terms and conditions. Other updates would be made to improve clarity and readability. The amendments do not otherwise change the terms and conditions of Murban Crude Oil Futures Contracts, and the contracts will continue to be cleared by ICE Clear Europe in the same manner as they are currently. In ICE Clear Europe's view, the amendments are thus consistent with the prompt and accurate clearance and settlement of cleared contracts and the protection of investors and the public interest. (ICE Clear Europe would not expect the amendments to affect the safeguarding of securities and funds in ICE Clear Europe's custody or control or for which it is responsible). Accordingly, the amendments satisfy the requirements of Section 17A(b)(3)(F).[8]

In addition, Rule 17Ad–22(e)(10)[9] requires that each covered clearing agency ''establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor and manage the risks associated with such physical deliveries.'' As discussed above, the amendments would clarify certain delivery specifications for Murban Crude Oil Futures Contracts relating to the determination of delivery ranges and certain other documentation and timing matters, consistent with the ADNOC's GTCs. The amendments would not otherwise change the manner in which the contracts are cleared or in which delivery is made, as supported by ICE Clear Europe's existing financial resources, risk management, systems and operational arrangements. The amendments thus appropriately clarify the role and responsibilities of the Clearing House and Clearing Members with respect to physical delivery. As a result, ICE Clear Europe believes the amendments are consistent with the requirements of Rule 17Ad–22(e)(10).[10]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted to update and clarify the delivery specifications in Part GG of the Delivery Procedures in connection with Murban Crude Oil Futures Contracts, and will not otherwise affect the contract. ICE Clear Europe does not expect that the proposed changes will adversely affect access to clearing or the ability of Clearing Members, their customers or other market participants to continue to clear contracts. ICE Clear Europe also does not believe the amendments would materially affect the cost of clearing or otherwise impact competition among Clearing Members or other market participants or limit market participants' choices for selecting clearing services. Accordingly, ICE Clear Europe does not believe the amendments would impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendment has not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and paragraph (f) of Rule 19b–4[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(e)(10).

[10] 17 CFR 240.17Ad–22(e)(10).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

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–ICEEU–2022–022 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–ICEEU–2022–022. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.*

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–ICEEU–2022–022 and should be submitted on or before December 6, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–24768 Filed 11–14–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96272; File No. SR–NYSE–2022–14]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 2, To Modify Certain Pricing Limitations for Securities Listed on the Exchange Pursuant to a Primary Direct Floor Listing

November 8, 2022.

On April 7, 2022, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') 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 allow companies to modify certain pricing limitations for securities listed on the Exchange pursuant to a Primary Direct Floor Listing. The proposed rule change was published for comment in the **Federal Register** on April 19, 2022.[3] On May 26, 2022, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to either approve or disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On July 18, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.[7] On October 11, 2022, the Commission designated a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change.[8]

On November 4, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed.[9] On November 8, 2022, the Exchange filed Amendment No. 2 to the proposed rule change. Amendment No. 2 to the proposed rule change is 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, as modified by Amendment No. 2, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify certain pricing limitations for securities listed on the Exchange pursuant to a Primary Direct Floor Listing. This Amendment No. 2 to SR–NYSE–2022–14 replaces SR–NYSE–2022–14 and Amendment No 1 thereto as originally filed and supersedes such filings in their entirety.[10] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently amended Chapter One of the Listed Company Manual (the ''Manual'') to modify the provisions relating to direct listings to

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 94708 (April 13, 2022), 87 FR 23300 (April 19, 2022). Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2022-14/srnyse202214.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 94991 (May 26, 2022), 87 FR 33518 (June 2, 2022). The Commission designated July 18, 2022, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 95312 (July 18, 2022), 87 FR 43914 (July 22, 2022).

[8] *See* Securities Exchange Act Release No. 96023 (October 11, 2022), 87 FR 62902 (October 17, 2022).

[9] On November 8, 2022, the Exchange withdrew Amendment No. 1. *See infra* note 10.

[10] The Exchange filed Amendment No. 1 to SR–NYSE–2022–14 on November 4, 4022 and withdrew such filing on November 8, 2022.

permit a primary offering in connection with a direct listing and to specify how a direct listing qualifies for initial listing if it includes both sales of securities by the company and possible sales by selling shareholders (a ''Primary Direct Floor Listing'').[11] The Exchange also adopted Rule 7.31(c)(1)(D) defining the Issuer Direct Offering (''IDO'') Order for use by a company that wishes to sell its shares through a Primary Direct Floor Listing and modified Rule 7.35A to describe how the IDO Order would participate in a Direct Listing Auction, establish additional requirements for a DMM conducting a Direct Listing Auction for a Primary Direct Floor Listing, and specify how the Indication Reference Price would be determined for a security to be opened in a Direct Listing.[12] Currently, under Rule 7.35A(g)(2), the DMM will not conduct a Direct Listing Auction for a Primary Direct Floor Listing if (i) the Auction Price [13] would be outside of the price range specified by the company in its effective registration statement (the ''Price Range Limitation'') [14] and (ii) if there is insufficient interest to satisfy both the IDO Order and all better-priced sell orders in full.

In this Amendment No. 1 [sic] and as discussed further below, the Exchange proposes to modify the Price Range Limitation to provide that a Direct Listing Auction for a Primary Direct Floor Listing may be conducted if the Auction Price is outside of the price range established by the issuer in its effective registration statement (the ''Issuer Price Range''), but is at or above the price that is 20% below the lowest price of the Issuer Price Range [15] and at or below the price that is 80% above the highest price of the Issuer Price Range.[16] The Exchange proposes that a Direct Listing Auction for a Primary Direct Floor Listing could proceed in these circumstances at a price outside of the Issuer Price Range (whether lower or higher), provided that the issuer has specified the quantity of shares registered in its registration statement, as permitted by Securities Act Rule 457, and certified to the Exchange and publicly disclosed that: (i) it does not expect that the Auction Price would materially change the issuer's previous disclosure in its effective registration statement; (ii) the price range in the preliminary prospectus included in the effective registration statement is a bona fide price range in accordance with Item 501(b)(3) of Regulation S–K; and (iii) such registration statement contains a sensitivity analysis explaining how the issuer's plans would change if the actual proceeds from the offering differ from the amount assumed in the price range established by the issuer in its effective registration statement. In addition, if the issuer certifies to the Exchange a price limit that is below the price that is 80% above the highest price of the Issuer Price Range, the Exchange proposes that the Direct Listing Auction for a Primary Direct Floor Listing may not proceed if the Auction Price determined by the DMM exceeds such price limit. The Exchange also proposes to require that a company offering securities for sale in a Primary Direct Floor Listing must retain an underwriter with respect to the primary sales of shares by the company and identify the underwriter in its effective registration statement. This Amendment No. 1 [sic] supersedes the original filing in its entirety.[17]

Background

The Exchange believes that, while many companies are interested in alternatives to the traditional initial public offering (''IPO''), companies and their advisors may be reluctant to use the Primary Direct Floor Listing under current Exchange rules because of concerns about the Price Range Limitation.

One potential benefit of a Primary Direct Floor Listing as an alternative to a traditional IPO is that it could maximize the chances of more efficient price discovery of the initial public sale of securities for issuers and investors. Unlike an IPO, where the offering price is informed by underwriter engagement with potential investors to gauge interest in the offering, but ultimately decided through negotiations between the issuer and the underwriters for the offering, the initial sale price in a Primary Direct Floor Listing is determined based on market interest and the matching of buy and sell orders in an auction open to all market participants.

In that regard, the Commission noted in the Approval Order that:

> [B]ecause the price of securities issued by a company in a Primary Direct Floor Listing will be determined based on market interest and the matching of buy and sell orders, Primary Direct Floor Listings will provide an alternative way to price securities offerings that may better reflect prices in the aftermarket, and thus may allow for efficiencies in IPO pricing and allocation. . . . The opening auction in a Primary Direct Floor Listing provides for a different price discovery method for IPOs which may reduce the spread between IPO price and subsequent market trades, a potential benefit to existing and potential investors.[18]

A successful IPO of shares requires sufficient investor interest. If an offering cannot be completed due to lack of investor interest, a company is likely to receive negative publicity, and the offering may be delayed or cancelled. The Price Range Limitation—which is imposed on a Primary Direct Floor Listing but not on an IPO—increases the probability of a failed offering because it contemplates there also being too much investor interest. In other words, if investor interest is greater than the company and other advisors anticipated, an offering would need to be delayed or cancelled.

As the Commission has noted with respect to traditional firm commitment

[11] *See* Securities Exchange Act Release No. 90768 (December 22, 2020), 85 FR 85807 (December 29, 2020) (SR–NYSE–2019–67) (Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendment No. 2, to Amend Chapter One of the Listed Company Manual to Modify the Provisions Relating to Direct Listings) (the ''Approval Order'').

[12] *Id.*

[13] *See* Rule 7.35(a)(6) (defining Auction Price as the price at which an Auction is conducted); Rule 7.35A (setting forth requirements relating to the determination of the Auction Price by the DMM). For purposes of this filing, ''Auction Price'' refers to the price at which trading would commence in a security to be opened in a Direct Listing Auction for a Primary Direct Floor Listing.

[14] The Exchange notes that references in this rule filing to the price range established by the issuer in its effective registration statement are to the price range disclosed in the prospectus in such registration statement.

[15] As discussed further below, the Exchange proposes to define the ''Primary Direct Floor Listing Auction Price Range'' in Rule 7.31(c)(1)(D)(ii) as the price range that includes 20% below the lowest price and 80% above the highest price of the Issuer Price Range.

[16] As provided in proposed Rule 7.31(c)(1)(D)(ii) (discussed in further detail below), the Exchange proposes to calculate the 20% and 80% thresholds to determine the Primary Direct Floor Listing Price Range based on the highest price of the Issuer Price Range. For example, if the Issuer Price Range is $28.00 to $30.00, the Primary Direct Floor Listing Price Range would be $22.00 to $54.00.

[17] The Exchange believes that this Amendment No. 1 [sic] addresses the issues raised by the Commission in its Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Modify Certain Pricing Limitations for Securities Listed on the Exchange Pursuant to a Primary Direct Floor Listing. *See* Securities Exchange Act Release No. 95312 (July 18, 2022), 87 FR 43914 (July 22, 2022) (the ''OIP''). Specifically, the Exchange believes that its proposal addresses the potential lack of a named underwriter in a Primary Direct Floor Listing and the usefulness and reliability of the price range disclosure provided to investors, as further discussed below. The Exchange also believes that this Amendment No. 1 [sic] addresses the concerns raised in the comment letter submitted by the Council of Institutional Investors, which the Exchange believes raised concerns substantively similar to those raised by the Commission in the OIP. *See* Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, dated July 28, 2022, available at: *https://www.sec.gov/comments/sr-nyse-2022-14/srnyse202214-20135103-306084.pdf.*

[18] *See* Approval Order, 85 FR at 85816–17 (footnote omitted).

underwritten offerings, the IPO price, which is established through negotiation between the underwriters and the issuer, is often lower than the price that the issuer could have obtained for the securities, based on a comparison of the IPO price to the closing price on the first day of trading.[19] The Exchange believes that the price range in a company's effective registration statement for a Primary Direct Floor Listing is similarly determined by the company and other advisors and, therefore, there may be instances of offerings where the price determined by the Direct Listing Auction would exceed the highest price of the price range in the company's effective registration statement.

As described above, under current Exchange Rules, the DMM would not conduct a Direct Listing Auction for a security subject to a Primary Direct Floor Listing if the Auction Price determined is above the highest price of the price range established by the issuer in its effective registration statement. In this case, the offering would be cancelled or postponed until the company amends its effective registration statement. At a minimum, such a delay could expose the company to risks associated with changing investor sentiment in the event of an adverse market event. As a result, the Exchange believes that companies may be reluctant to use this alternative method of going public despite its expected potential benefits because of the restrictions of the Price Range Limitation.

Proposed Rule Change

In light of the above, the Exchange proposes to modify the Price Range Limitation such that a Direct Listing Auction for a Primary Direct Floor Listing could proceed if the Auction Price is at or above the price that is 20% below the lowest price of the Issuer Price Range and at or below the price that is 80% above the highest price of such price range. In other words, the Exchange proposes that the DMM could conduct the Direct Listing Auction, provided all other necessary conditions are satisfied, even if the Auction Price is outside of the Issuer Price Range, if the Auction Price would not be more than 20% below the lowest price or more than 80% above the highest price of such range. In such cases (whether the Auction Price is lower or higher than the Issuer Price Range), the Exchange proposes that the company must have, in its effective registration statement, specified the quantity of shares registered, as permitted by Securities Act Rule 457.[20]

The Exchange further proposes that, when the Auction Price is outside of the Issuer Price Range but not more than 20% below such price range and not more than 80% above the highest price of such price range, the Direct Listing Auction would not proceed unless the company has publicly disclosed and certified to the Exchange that (i) the company does not expect that such offering price would materially change the company's previous disclosure in its effective registration statement; (ii) the price range in the preliminary prospectus included in the effective registration statement is a bona fide price range in accordance with Item 501(b)(3) of Regulation S–K; and (iii) the company's registration statement contains a sensitivity analysis explaining how the company's plans would change if the actual proceeds from the offering differ from the amount assumed in the price range established by the issuer in its effective registration statement.[21] In addition, if the company's certification submitted to the Exchange includes a price limit that is below the price that is 80% above the highest price of the Issuer Price Range, the Direct Listing Auction would not take place if the Auction Price is determined by the DMM to be above such limit. When the Auction Price is outside of the Issuer Price Range (whether it is lower or higher than such price range), the Exchange also proposes to provide the issuer with the opportunity to provide any necessary additional disclosures that are dependent on the price of the offering so that any such disclosures would be available to investors prior to the completion of the offering. Thus, the Exchange proposes that a Direct Listing Auction for a Primary Direct Floor Listing would not take place until the issuer confirms to the Exchange that no additional disclosures are required under federal securities laws based on the Auction Price determined by the DMM.

The Exchange believes that the additional requirements to permit a Direct Listing Auction to take place at an Auction Price that is outside of the Issuer Price Range (whether it is lower or higher than such price range), as proposed, would provide sufficient disclosures to allow investors to evaluate whether to participate in the Direct Listing Auction for a Primary Direct Floor Listing, including the opportunity to see how changes in share price may impact the company's disclosures.

The Exchange believes that its proposal with respect to the Price Range Limitation for a Primary Direct Floor Listing can be analogized to SEC Rule 430A and question 227.03 of the SEC Staff's Compliance and Disclosure Interpretations, which generally allow a company to price a public offering 20% outside of the disclosed price range without regard to the materiality of the changes to the disclosure contained in the company's registration statement.[22] The Exchange believes such guidance would also allow for deviation of greater than 20% above the highest price of the price range in a company's registration, provided that such change would not materially change the previous disclosure. Accordingly, the Exchange believes that a company listing in connection with a Primary Direct Floor Listing could specify the quantity of shares registered, as permitted by Securities Act Rule 457, and, if the Direct Listing Auction prices outside of the disclosed price range, use a Rule 424(b) prospectus, rather than a post-effective amendment, when either (i) the 20% threshold noted in Rule 430A is not exceeded, regardless of the materiality or non-materiality of resulting changes to the registration statement disclosure that would be contained in the Rule 424(b) prospectus, or (ii) there is a deviation above the price range beyond the 20% threshold noted in Rule 430A if such deviation would not materially change the previous disclosures, in each case assuming the number of shares issued is not increased from the number of shares disclosed in the prospectus.

The Exchange notes that the Commission previously stated that while Securities Act 430A permits companies to omit specified price-related information from the prospectus included in the registration statement at the time of effectiveness, and later file

[19] *See, e.g.,* Approval Order, 85 FR at 85816, n. 113.

[20] Securities Act Rule 457 permits issuers to register securities either by specifying the quantity of shares registered, pursuant to Rule 457(a), or the proposed maximum aggregate offering amount. The Exchange proposes to require that companies selling shares through a Primary Direct Floor Listing will register securities by specifying the quantity of shares registered and not a maximum offering amount.

[21] Sensitivity analysis disclosure may include, but is not limited to, use of proceeds; balance sheet and capitalization; and the company's liquidity position after the offering. A company could state, for example: ''We will apply the net proceeds from this offering first to repay all borrowings under our credit facility and then, to the extent of any proceeds remaining, to general corporate purposes.''

[22] *See* Compliance & Disclosure Interpretation of Securities Act Rules #227.03 at *https://www.sec.gov/corpfin/securities-act-rules.*

the omitted information with the Commission as specified in the rule, it neither prohibits a company from conducting a registered offering at prices beyond those that would permit a company to provide pricing information through a Securities Act Rule 424(b) prospectus supplement nor absolves any company relying on the rule from any liability for potentially misleading disclosure under the federal securities laws.[23] Accordingly, the burden of complying with the disclosures required under federal securities laws, including providing any disclosure necessary to avoid any material misstatements or omissions, remains with the issuer. In that regard, the Exchange believes that, in circumstances where the Auction Price would be outside of the Issuer Price Range, providing the issuer with the opportunity, prior to the completion of the offering, to provide any necessary additional disclosures that are dependent on the price of the offering, if any, and/or determine and confirm to the Exchange that no additional disclosures are required under federal securities laws based on the Auction Price determined by the DMM.

The Exchange believes that an underwriter plays an important role in a traditional IPO and, therefore, proposes to require that a company listing securities on the Exchange in connection with a Primary Direct Floor Listing must retain an underwriter with respect to the primary sales of shares by the company and identify the underwriter in its registration statement. Describing the roles and responsibilities of an underwriter, the Commission recently explained that:

> [a]s intermediaries between an issuer and the investing public, underwriters play a critical role as ''gatekeepers'' to the public markets. Historically, in initial public offerings, where the investing public might be unfamiliar with a particular issuer, financial firms that act as underwriters would lend their well-known name to support that issuer's offering. Where public investors may not have been inclined to invest with the company seeking to conduct a public offering, they could take comfort in the fact that a large, well-known financial institution, acting as underwriter was including its name on the first page of the issuer's prospectus . . .
>
> An underwriter's participation in an issuer's offering also exposes the underwriter to potential liability under the Securities Act. The civil liability provisions of the Securities Act reflect the unique position underwriters occupy in the chain of distribution of securities and provide strong incentives for underwriters to take steps to help ensure the accuracy of disclosure in a registration statement. Section 11 of the Securities Act imposes on underwriters, among other parties identified in Section 11(a), civil liability for any part of the registration statement, at effectiveness, which contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, to any person acquiring such security. Similarly, Section 12(a)(2) imposes liability upon anyone, including underwriters, who offers or sells a security, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in light of the circumstances under which they were made, not misleading, to any person purchasing such security from them. These provisions provide significant investor protections to those who acquire securities sold pursuant to a registration statement by providing tools to hold companies, underwriters, and other parties accountable for misstatements and omissions in connection with public offerings of securities. As a result, anyone who might be named as a potential defendant in these suits has strong incentives to take the necessary steps to avoid such liability.
>
> One defense available to an underwriter in a distribution is the ''due diligence'' defense, which shields an underwriter from liability if it can establish that, after reasonable investigation, the underwriter had reasonable ground to believe and did believe, at the time the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading.[24]

The Exchange believes that these significant investor protection provisions are necessary in a Primary Direct Floor Listing if an offering can price outside of the price range established in the issuer's effective registration statement, subject to the proposed limitations, because such provisions allow investors to make reasonable pricing decisions with clarity that the company's underwriter would face statutory liability, as described above. Accordingly, the Exchange proposes to require that a company listing securities on the Exchange through a Primary Direct Floor Listing must retain an underwriter with respect to the primary sales of shares by the company and identify the underwriter in its effective registration statement.

The Exchange also believes that the requirement to retain a named underwriter, as described above, may mitigate concerns raised by the Commission in the OIP regarding challenges to bringing claims under Section 11 of the Securities Act due to the potential assertion of tracing defenses because an underwriter may choose to impose lock-up arrangements, as described below.

As a preliminary matter, the Exchange notes that, in the Approval Order, the Commission explained that the issue of traceability:

> is potentially implicated anytime securities that are not the subject of a recently effective registration statement trade in the same market at those that are so subject. Where a registration statement, at the time of effectiveness, contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, Section 11(a) of the Securities Act provides a cause of action to ''any person acquiring such security,'' unless it is proved at the time of the acquisition the person ''knew of such untruth or omission.'' Courts have interpreted this statutory provision to permit aftermarket purchases (*i.e.,* those who acquire their securities in secondary market transactions rather than in the initial distribution from the issuer or underwriter) to recover damages under Section 11, but only if they can trace the acquired shares back to the offering covered by the false or misleading registration statement. Tracing is not set forth in Section 11 and is judicially-developed doctrine. As such, the application of this doctrine and, in particular, the pleading standards and factual proof that potential claimants must satisfy vary depending on the particular facts of the distribution and judicial district.[25]

The Commission then reaffirmed its position that ''concerns regarding shareholders' ability to pursue claims pursuant to Section 11 of the Securities Act due to traceability issues are not exclusive to nor necessarily inherent in Primary Direct Floor Listings'' and further stated that it ''is not aware of . . . any precedent to date in the direct listing context which prohibits plaintiffs from pursuing Section 11 claims.'' [26] The Exchange believes that no such precedent exists as of the date of this Amendment and that the modifications to the Price Range Limitation in this proposal do not, in any way, exacerbate the tracing issues.

However, as stated above, the Exchange believes that the requirement to retain a named underwriter may mitigate traceability concerns that could arise in the context of a Primary Direct Floor Listing. As in a traditional firm commitment underwritten IPO, in which lock-up arrangements are often imposed, an underwriter in connection with a Primary Direct Floor Listing, as

[23] Securities Exchange Act Release No. 93119 (September 24, 2021), 86 FR 54262 (September 30, 2021).

[24] Special Purpose Acquisition Companies, Shell Companies, and Projections (Proposed Rule), 87 FR 29458 (May 13, 2022).

[25] *See* Approval Order, 85 FR at 85815–16 (internal citations omitted).

[26] *See id.* at 85816.

required by the Amendment, would be able to impose lock-up agreements for the same reasons that make lock-up agreements common in an IPO.

The Exchange also believes that the requirement to retain a named underwriter, as described above, mitigates concerns raised by the Commission in the OIP regarding the usefulness of price range disclosure provided to investors in a Securities Act registration statement filed in connection with a Primary Direct Floor Listing. The Exchange believes that an underwriter retained in connection with a Primary Direct Floor Listing would perform substantially similar functions, including those related to establishing and adjusting the price range, to those performed by an underwriter in a typical IPO because the underwriter would be subject to similar liability and reputational risk.

To further mitigate concerns regarding the usefulness of price range disclosure provided to investors, the Exchange proposes to require that the securities of a company listing in connection with a Primary Direct Floor Listing cannot price above an ''Upper Limit,'' which would not be higher than 80% above the highest price of the Issuer Price Range. The Upper Limit would incentivize the company and its underwriter to set the disclosed price range to avoid the failed offering consequences described above. The Upper Limit would also encourage an issuer to adjust the price range disclosed in their registration statement prior to effectiveness in response to pricing feedback received from market analysts and potential investors.

To determine an appropriate Upper Limit, the Exchange analyzed operation companies' IPOs on the NYSE and the Nasdaq Global Select Market for 2020 and 2021.[27] This analysis indicated that the vast majority of IPOs opened at a price above the highest price of the issuer's disclosed price range and, moreover, that 90% of these IPOs opened at a price that was no more than the Upper Limit. Based on this data, the Exchange believes that, on balance, capital formation and investor protection goals would be best served by a pricing limitation equal to the Upper Limit.

Given that, as proposed, there may be a Primary Direct Floor Listing that could price outside of the price range of the company's effective registration statement, subject to the Upper Limit above which the Direct Listing Auction could not proceed,[28] the Exchange proposes to support price discovery transparency by providing readily available, real time pricing information to investors. Specifically, the DMM's pre-opening indications for a security to be opened in a Direct Listing Auction for a Primary Direct Floor Listing would continue to be published via the securities information processor (''SIP'') and proprietary data feeds.[29] In addition, the Exchange would make the Indication Reference Price available, free of charge, on a public website (such as *www.nyse.com*) on the day such Auction is anticipated to take place.[30]

In addition, to protect investors and enhance disclosure in connection with a Primary Direct Floor Listing, the Exchange proposes to adopt certain requirements for member organizations with respect to Primary Direct Floor Listings. Specifically, the Exchange proposes to require member organizations to provide to a customer, before that customer places an order to participate in the Direct Listing Auction for a Primary Direct Floor Listing, a notice describing the mechanics of pricing a security subject to a Direct Listing Auction for a Primary Direct Floor Listing, including information regarding the availability of pre-opening indications via the SIP and proprietary data feeds and the location of the public website where the Exchange will disseminate information relating to the Indication Reference Price.

The Exchange further proposes to distribute, at least one business day prior to the commencement of trading of a security listing in connection with a Primary Direct Floor Listing, a regulatory bulletin that describes any special characteristics of the offering and the Exchange rules that apply to the pricing of a Primary Direct Floor Listing. The regulatory bulletin would also include information about the notice that member organizations would be required to provide customers, as proposed, and remind member organizations of their obligations pursuant to the Exchange rules that:

- Require member organizations to use reasonable diligence in regard to the opening and maintenance of every account, to know (and retain) the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer (Rule 2090); and
- Require member organizations in recommending transactions for a security subject to a Direct Listing Auction for a Primary Direct Floor Listing to have a reasonable basis to believe that: (i) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member organizations, and (ii) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in such security (Rule 2111).

These member organization requirements are intended to remind members of their obligations to ''know their customers'' and would also serve to increase transparency regarding the pricing mechanisms applicable to a Primary Direct Floor Listing and help provide investors with sufficient price discovery information.

For each Primary Direct Floor Listing, the Exchange proposes that its regulatory bulletin would also inform market participants that the Auction Price could be up to 20% below the lowest price of the price range in the company's effective registration statement and specify what that price is. The Exchange's regulatory bulletin would also indicate the price above which the Direct Listing Auction for the Primary Direct Floor Listing could not proceed (*i.e.,* the Upper Limit or other lower price based on the company's certification as described above).

Amendments to the Manual

Section 102.01B(E) of the Manual provides that companies may be listed on the Exchange through a Primary Direct Floor Listing. More specifically, a company that has not previously had its common equity securities registered under the Act may list its common equity securities on the Exchange at the time of effectiveness of a registration statement pursuant to which the company itself will sell shares in the opening auction on the first day of trading on the Exchange. A Primary Direct Floor Listing is any such listing in which either (i) only the company

[27] This data set included approximately 600 records and includes IPOs that took place between January 2020 and December 2021.

[28] In addition, if the company's certification to the Exchange includes a price limit that is lower than the Upper Limit and the Auction Price determined by the DMM exceeds such lower price limit, the Exchange would not conduct the Direct Listing Auction.

[29] The Exchange notes that its dissemination of pre-opening indications for a security to be opened in a Direct Listing Auction for a Primary Direct Floor Listing via the SIP and proprietary data feeds is consistent with the availability of the same for securities opened in IPOs and believes that interested investors have found pre-opening indications to be readily accessible and to provide useful real time pricing information to inform their participation in such auctions. The Exchange thus believes that its proposal addresses the concerns raised in the OIP regarding the sufficiency of price discovery transparency for investors.

[30] The Indication Reference Price for a security to be opened in a Primary Direct Floor Listing is the lowest price of the Primary Direct Floor Listing Price Range. *See* Rule 7.35A(d)(2)(A)(v).

itself is selling shares in the opening auction on the first day of trading or (ii) the company is selling shares and selling shareholders may also sell shares in such opening auction.

Section 102.01B(E) of the Manual also provides that, with respect to a Primary Direct Floor Listing, the Exchange will deem a company to have met the applicable aggregate market value of publicly-held shares requirement if the company will sell at least $100,000,000 in market value of shares in the Exchange's opening auction on the first day of trading on the Exchange. The Manual further provides that, where a company is conducting a Primary Direct Floor Listing and will sell shares in the opening auction with a market value of less than $100,000,000, the Exchange will determine that such company has met its market-value of publicly-held shares requirement if the aggregate market value of the shares the company will sell in the opening auction on the first day of trading and the shares that are publicly held immediately prior to the listing is at least $250,000,000 with such market value calculated using a price per share equal to the lowest price of the price range established by the issuer in its registration statement.

To effect the changes to the Price Range Limitation described above and facilitate the possibility of a Direct Listing Auction for a Primary Direct Floor Listing pricing up to 20% below the price range disclosed in an issuer's effective registration statement, the Exchange proposes to modify Section 102.01B(E) of the Manual to provide that the Exchange would calculate the market value of such company's shares using a price per share equal to the lowest price of the price range established by the issuer in its effective registration statement, minus an amount equal to 20% of the highest price included in such price range, which will be referred to as the ''Primary Direct Floor Listing Minimum Price.'' As noted above, the Exchange proposes that a company listing its securities on the Exchange pursuant to a Primary Direct Floor Listing must have (1) specified the quantity of shares registered, as permitted by Securities Act Rule 457, in its effective registration statement, and (2) retained an underwriter with respect to the primary sales of shares by the company and identified the underwriter in its effective registration statement. Accordingly, the Exchange further proposes to amend Section 102.01B(E) to include this requirement.

Amendments to Exchange Rules

To implement the changes to the Price Range Limitation described above, the Exchange also proposes the following changes to Rules 7.31 and 7.35A.

Proposed Changes to Rule 7.31

The Exchange proposes to modify Rule 7.31(c)(1)(D), which defines the IDO Order. Rule 7.31(c)(1)(D) currently provides that an IDO Order is a Limit Order to sell that is to be traded only in a Direct Listing Auction for a Primary Direct Floor Listing, and Rule 7.31(c)(1)(D)(ii) currently provides that the limit price of an IDO Order must be equal to the lowest price of the price range established by the issuer in its effective registration statement. The Exchange proposes to modify Rule 7.31(c)(1)(D)(ii) to provide that the limit price of an IDO Order would be equal to the lowest price of the ''Primary Direct Floor Listing Auction Price Range'' and to redefine the ''Primary Direct Floor Listing Auction Price Range'' as 20% below the lowest price and 80% above the highest price of the price range established by the issuer in its effective registration statement. The Exchange also proposes to define ''Issuer Price Range'' as the price range established by the issuer in its effective registration statement. Thus, Rule 7.31(c)(1)(D)(ii), as modified, would facilitate the proposed changes to the Price Range Limitation by providing that the limit price of an IDO Order would be equal to the price that is 20% below the lowest price of the Issuer Price Range.

The Exchange further proposes to specify in Rule 7.31(c)(D)(ii) that, for purposes of determining the Primary Direct Floor Listing Price Range, the 20% and 80% thresholds would be calculated based on the highest price of the Issuer Price Range.

Proposed Changes to Rule 7.35A

Rule 7.35A sets forth rules pertaining to Core Open Auctions and Trading Halt Auctions facilitated by a DMM. Rule 7.35A(d) sets forth Exchange rules relating to pre-opening indications published by a DMM in connection with a DMM-facilitated auction. This Rule currently provides that a pre-opening indication will include the security and the price range within which the Auction Price is anticipated to occur and that a pre-opening indication—including for a Direct Listing Auction for a Primary Direct Floor Listing—will be published via the securities information processor and proprietary data feeds.

Rule 7.35A(d)(2)(A) and the subparagraphs thereunder describe the Indication Reference Price for a security to be opened in a DMM-facilitated auction. The Exchange proposes to amend Rule 7.35A(d)(2)(A)(v), which currently provides that, for a security that is a Primary Direct Floor Listing, the Indication Reference Price will be the lowest price of the Primary Direct Floor Listing Auction Price Range. To effect the proposed requirement described above that the Exchange disseminate the Indication Reference Price on a public website, the Exchange proposes to add this requirement to Rule 7.35A(d)(2)(A)(v). The Exchange also notes that, based on the proposed revision to the definition of Primary Direct Floor Listing Auction Price Range in Rule 7.31(c)(1)(D)(ii), the Indication Reference Price for a Primary Direct Floor Listing would be the price that is 20% below the lowest price of the Issuer Price Range, consistent with the proposed changes to the Price Range Limitation described above.

Next, the Exchange proposes to modify Rule 7.35A(g)(2), which specifies the circumstances under which a DMM may not conduct a Direct Listing Auction for a Primary Direct Floor Listing. Structurally, the Exchange proposes to amend Rule 7.35A(g)(2) such that the rule would specify requirements for a Direct Listing Auction for a Primary Direct Floor Listing to proceed, rather than specifying circumstances under which a DMM would not conduct a Direct Listing Auction for a Primary Direct Floor Listing.

Rule 7.35A(g)(2)(A) currently provides that the DMM will not conduct a Direct Listing Auction for a Primary Direct Floor Listing if the Auction Price would be below the lowest price or above the highest price of the Primary Direct Floor Listing Auction Price Range. The Exchange proposes to modify this rule to specify that the Auction Price for a Direct Listing Auction for a Primary Direct Floor Listing may not be lower than the price that is 20% below the lowest price of the Issuer Price Range or higher than the price that is 80% above the highest price of the Issuer Price Range. In other words, the Auction Price may not be outside of the Primary Direct Floor Listing Auction Price Range, as defined in amended Rule 7.31(c)(1)(D)(ii). The Exchange proposes that Rule 7.35A(g)(2)(A) would further provide that, if an issuer has certified to the Exchange a maximum Auction Price that is lower than 80% above the highest price of the Issuer Price Range, the Auction Price may not exceed such lower price.

The Exchange proposes to amend Rule 7.35A(g)(2)(B) to provide that a Direct Listing Auction could proceed when the Auction Price is outside of the Issuer Price Range but within the Primary Direct Floor Listing Auction Price Range (as described in proposed Rule 7.35A(g)(2)(A)) if the issuer has previously certified to the Exchange and publicly disclosed that:

- The issuer does not expect that the Auction Price would materially change its previous disclosure in its effective registration statement (proposed Rule 7.35A(g)(2)(B)(i)(a));
- The price range in the preliminary prospectus included in the effective registration statement is a bona fide price range in accordance with Item 501(b)(3) of Regulation S–K (proposed Rule 7.35A(g)(2)(B)(i)(b)); and
- The registration statement contains a sensitivity analysis explaining how the issuer's plans would change if the actual proceeds from the offering differ from the amount assumed in the price range established by the issuer in its effective registration statement (proposed Rule 7.35A(g)(2)(B)(i)(c)).

Proposed Rule 7.35A(g)(2)(B)(ii) would further provide that, when the Auction Price determined by the DMM is outside of the Issuer Price Range (whether lower or higher), the issuer would be required to confirm to the Exchange that no additional disclosures are required under the federal securities laws based on such price. This proposed change would permit issuers to comply with their disclosure obligations under federal securities laws and provide investors with access to the requisite disclosures before the offering would proceed, as detailed above. Upon receiving confirmation from the issuer that any such obligations have been met, the Exchange would relay that information to the DMM to proceed with the Direct Listing Auction.

Finally, the Exchange proposes to add new subparagraph (C) under Rule 7.35A(g)(2). Proposed Rule 7.35A(g)(2)(C)(i) would reflect the requirement set forth in current Rule 7.35A(g)(2)(B) that the DMM may not conduct a Direct Listing Auction for a Primary Direct Floor Listing if there is insufficient buy interest to satisfy both the IDO Order and all better-priced sell orders in full. The Exchange does not propose to change this requirement, other than adding clarifying text to specify that such orders would be satisfied at the Auction Price.

Proposed Rule 7.35A(g)(2)(C)(ii) would set forth an additional requirement that must be satisfied before the DMM could conduct a Direct Listing Auction for a Primary Direct Floor Listing. This proposed change would reflect the proposed requirements described above regarding the regulatory bulletin to be distributed by the Exchange. Proposed Rule 7.35A(g)(2)(C)(ii) would provide that the DMM would not proceed with a Direct Listing Auction for a Primary Direct Floor Listing until it has been notified by the Exchange that the additional conditions set forth in new Commentary .20 to Rule 7.35A have been satisfied. Proposed Commentary .20 to Rule 7.35A would provide that the Direct Listing Auction for a Primary Direct Floor Listing for a security may not be conducted until the Exchange has notified the DMM that, at least one business day prior to the commencement of trading in such security, the Exchange has distributed a regulatory bulletin describing any special characteristics of the offering and the Exchange rules that apply to the pricing of the Primary Direct Floor Listing; the obligations of member organizations pursuant to Exchange Rules 2090 and 2111; and the requirement that a member organization provide its customers with a notice with information regarding the Direct Listing Auction for a Primary Direct Floor Listing. This proposed change would (i) facilitate the requirements described above to provide member organizations with sufficient information so that they may in turn inform their customers, (ii) remind member organizations of their obligations to ''know their customers,'' (iii) increase transparency around the pricing mechanisms of a Primary Direct Floor Listing, and (iv) help provide investors with sufficient price discovery information.

Proposed Rule 7.35A(g)(2)(C)(iii) would provide that the DMM would not conduct a Direct Listing Auction for a Primary Direct Floor Listing if the Auction Price is outside of the Issuer Price Range and the issuer has not satisfied the conditions set forth in proposed Rules 7.35A(g)(2)(A), 7.35A(g)(2)(B)(i), and 7.35A(g)(2)(B)(ii). The Exchange proposes this rule to reinforce that a Direct Listing Auction for a Primary Direct Floor Listing could not proceed in these circumstances unless the Auction Price meets the requirements of proposed Rule 7.35A(g)(2)(A) and the issuer has made the requisite disclosures described in proposed Rule 7.35A(g)(2)(B).

1. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[31] in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,[32] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed modification of the Price Range Limitation would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because the proposed approach is similar to the pricing of an IPO, where the issuer is permitted to price outside of the price range disclosed in its effective registration statement in accordance with the SEC Staff's guidance, as described above.[33] Specifically, the Exchange believes that it is reasonable to permit the Direct Listing Auction for a Primary Direct Floor Listing to proceed if the Auction Price is as low as 20% below the lowest price of the Issuer Price Range or as high as 80% above the highest price of such price range (or as high as the upper price limit set by the issuer in its certification to the Exchange)—because a company listing in connection with a Primary Direct Floor Listing could specify the quantity of shares registered, as permitted by Securities Act Rule 457, and, when the Auction Price is outside of the disclosed price range, use a Rule 424(b) prospectus, rather than a post-effective amendment, when either (i) the 20% threshold noted in Rule 430A is not exceeded, regardless of the materiality or non-materiality of resulting changes to the registration statement disclosure that would be contained in the Rule 424(b) prospectus, or (ii) there is a deviation above the price range beyond the 20% noted in Rule 430A if such deviation would not materially change the previous disclosure, in each case assuming the

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

[33] *See* Compliance & Disclosure Interpretation of Securities Act Rules #227.03, *supra* note 15. The Exchange also notes that, in a recent speech, SEC Chair Gary Gensler emphasized that an overarching principle of regulation is that like activities ought to be treated alike. *See https://www.sec.gov/news/speech/gensler-healthy-markets-associationconference-120921* (''Gensler Speech'').

number of shares issued is not increased from the number of shares disclosed in the prospectus.

In addition, in the event that the Auction Price is outside of the Issuer Price Range, the Exchange proposes that the Direct Listing Auction for a Primary Direct Floor Listing could still proceed, but would not be conducted until the issuer has met disclosure requirements that would help provide investors with additional information regarding the offering, including a requirement that the issuer's effective registration statement contain a sensitivity analysis explaining how the issuer's plans would change if the actual proceeds from the Primary Direct Floor Listing are lower or higher than the amount assumed by the price range set forth in the registration statement. The Exchange also proposes to require that an issuer must have confirmed to the Exchange that no additional disclosures are required under the federal securities laws based on the Auction Price determined. The issuer would thus have the opportunity to provide any necessary additional disclosures that are dependent on the price of the offering prior to the completion of the offering. Accordingly, the Exchange believes that this proposed change is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market because it would allow an offering to proceed under certain circumstances when the Auction Price is outside of the Issuer Price Range—including where investor interest is greater than the company and its advisors anticipated (thereby promoting capital formation)—while protecting investors by requiring that a company listing shares through a Primary Direct Floor Listing make applicable disclosures under the federal securities laws. The Exchange also believes that its proposal to allow a Direct Listing Auction for a Primary Direct Floor Listing to price above the Issuer Price Range but below the Upper Limit is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market because this approach is similar to, but more stringent than, that of pricing a traditional IPO. The Exchange also believes that the proposed Upper Limit and requirement that the securities of a company listing in connection with a Primary Direct Floor Listing cannot price above such Upper Limit is designed to protect investors and the public interest because it would incentivize the company, its underwriter, and other advisors to avoid a failed offering by taking steps to ensure the accuracy of price range disclosure in a registration statement, thereby providing the investing public with a useful and reliable price range in connection with the planned Primary Direct Floor Listing.

The Exchange also believes that the proposed requirement that a company offering securities for sale in connection with a Primary Direct Floor Listing must retain an underwriter with respect to the primary sales of shares by the company and identify the underwriter in its effective registration statement would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest because the requirement would facilitate holding underwriters accountable for potential misstatements and omissions in connection with a Primary Direct Floor Listing. The Exchange also believes that an underwriter would be incentivized to take necessary steps to support accurate price range disclosure to avoid exposure to statutory liability, thereby offering the investing public greater assurances with respect to the reliability of the price range disclosure for a Primary Direct Floor Listing.

The Exchange also believes that the proposed change is designed to promote investor protection because the Exchange would support price discovery transparency by providing readily available, real time pricing information to investors by disseminating pre-opening indications via the SIP and proprietary data feeds on the day on which the Direct Listing Auction for a Primary Direct Floor Listing is anticipated to take place. Market participants would thus have ready access to up-to-date pricing information leading up to a Direct Listing Auction for a Primary Direct Floor Listing.

In particular, the Exchange believes that making pre-opening indications readily available to market participants would provide price transparency to the market in connection with Primary Direct Floor Listings. Pre-opening indications, which are based on the DMM's assessment of interest eligible to participate in the Direct Listing Auction for a Primary Direct Floor Listing, would provide notice of when price volatility has subsided and price equilibrium has been met with respect to the orders that wish to participate in such Auction. In addition, Exchange rules establishing pre-opening indication procedures already include requirements supporting the precision and reliability of pre-opening indications, such as those set forth in Rule 7.35A(d)(4)(C), which provides that DMMs should aim to publish a pre-opening indication with a spread of less than $1.00 before opening a security; Rule 7.35A(d)(4)(D), which provides that the DMM must wait for certain minimum specified periods after publishing a pre-opening indication and before opening a security; and Rule 7.35A(d)(4)(G), which provides that the DMM may not open a security outside of the last-published pre-opening indication. As the table below shows, the DMMs in the Selling Shareholder Direct Floor Listings that took place in 2020 and 2021 indicated very tight and reliable anticipated opening price ranges irrespective of the amount of time between the last indication and opening auction:

Date of direct listing auction	Symbol	Last pre-opening indication	Auction price	Time elapsed between last pre-opening indication and auction open
9/30/2020	PLTR	9.95–10.05	10	10 minutes, 19 seconds.
9/30/2020	ASAN	26.75–27	27	2 minutes, 24 seconds.
3/10/2021	RBLX	64.25–64.75	64.5	3 minutes, 2 seconds.
5/19/2021	SQSP	47.5–48	48	2 minutes, 31 seconds.
5/26/2021	ZIP	19.75–20.25	20	16 minutes, 29 seconds.
9/29/2021	WRBY	54–54.5	54.05	12 minutes, 31 seconds.

The Exchange thus believes that its existing pre-opening indication process provides significant investor protection measures based on the Exchange rules governing the publishing of pre-opening indications and the judgment applied by the DMM in refining the anticipated price range of a security to be opened in a Direct Listing Auction as

appropriate and in determining that the price has reached stability, such that the Direct Listing Auction should proceed.[34]

The Exchange believes that its proposal to issue a regulatory bulletin as outlined above would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and promote investor protection because it would provide member organizations with the necessary information to share with their customers regarding the Primary Direct Floor Listing. Specifically, the proposed regulatory bulletin would be distributed at least one business day prior to the commencement of trading in a security to be listed in connection with a Direct Listing Auction for a Primary Direct Floor Listing and would describe any special characteristics of the offering, as well as the Exchange Rules that apply to the pricing of a Direct Listing Auction for a Primary Direct Floor Listing. The regulatory bulletin would inform prospective participants in the Direct Listing Auction that the Auction Price could be up to 20% below the lowest price of the Issuer Price Range (and specify what that price is) and indicate the price above which the Direct Listing Auction for a Primary Direct Floor Listing could not proceed, which would be either the Upper Limit or a lower limit based on the company's certification as described above. The Exchange also believes that the regulatory bulletin would further the protection of investors by reminding member organizations of their obligations pursuant to Exchange Rules 2090 and 2111 to ''know their customers,'' providing member organizations and their customers with information regarding the pricing mechanism of a Direct Listing Auction for a Primary Direct Floor Listing, and helping investors receive sufficient price discovery information.

The Staff of the Commission in a Compliance and Disclosure Interpretation has indicated that pricing up to 20% below the lowest price and at a price above the highest price of the price range set forth in the company's effective registration statement is appropriate for a company conducting an IPO, notwithstanding that the price would be outside of the range stated in the company's effective registration. The Exchange believes that investors have become familiar with this approach at least since the Staff last revised Compliance and Disclosure Interpretation 227.03 in January 2009.[35] Accordingly, the Exchange believes that allowing Direct Listing Auctions in connection with a Primary Direct Floor Listing to similarly price up to 20% below the lowest price and at a price not more than 80% above the highest price of the price range in the company's effective registration statement would be consistent with both Chair Gensler's recent call to treat ''like cases alike'' [36] and the protection of investors.

The Exchange also believes that the proposed changes to the Manual are consistent with the protection of investors. Specifically, the proposed change to Section 102.01B(E) to specify that a company offering securities for sale in connection with a Primary Direct Floor Listing must register securities by specifying the quantity of shares registered, as permitted by Securities Act Rule 457(a), would promote investor protection because it would provide certainty regarding the number of shares available in connection with the Primary Direct Floor Listing, even if the Auction Price of such shares may be outside of the price range specified in the issuer's effective registration statement. The Exchange also believes that the proposed change to Section 102.01B(E) to specify that a company offering securities for sale in connection with a Primary Direct Floor Listing must retain an underwriter with respect to the primary sales of shares by the Company and identify the underwriter in its effective registration statement would support the protection of investors for the reasons described above. The Exchange also believes that the proposed change to Section 102.01B(E) to reflect that the market value calculation of a company's shares would be based on a price per share equal to the lowest price of the price range established by the issuer in its registration statement, less an amount equal to 20% of the highest price included in such price range, is consistent with the protection of investors because it would not modify any other applicable listing requirements and would update the Manual to align with the proposed changes to the Price Range Limitation described herein.

Finally, the Exchange believes that its proposed changes with respect to the Price Range Limitation would remove impediments to and perfect the mechanism of a free and open market and a national market system because they would not change the existing process for a DMM-facilitated Direct Listing Auction for a Primary Direct Floor Listing, but would eliminate a potential impediment to companies considering a Primary Direct Floor Listing, thereby encouraging capital formation. In addition, the proposed changes are designed to protect investors and the public interest because they would provide an expanded opportunity for a Primary Direct Floor Listing to proceed so that the issuer's securities can be listed and begin trading on the secondary market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed change would increase competition by continuing to facilitate new pathways for companies to access the public markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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

[34] The Exchange believes that it would be appropriate to permit Market Orders and MOO Orders (as defined in Rules 7.31(a)(1) and 7.31(c)(1)(B)) to participate in a Direct Listing Auction for a Primary Direct Floor Listing, given the safeguards provided by the pre-opening indication process. Although Market Orders and MOO Orders are unpriced orders, the Exchange believes that Market Orders and MOO Orders that participate in a Direct Listing Auction for a Primary Direct Listing would not be subject to extreme price volatility due to the DMM's role in refining pre-opening indications and determining the Auction Price, as well as the DMM's obligation under Rule 7.35A(g) to fill all better-priced interest. Moreover, investors submitting Market Orders and MOO Orders would have the benefit of readily available, real time pricing information to inform their decision to participate in the Auction. The Exchange also notes that data from IPOs (which are not subject to the Price Range Limitation) that took place in the last six calendar months indicates that MOOs made up a significant portion of opening auction volume and thus believes that allowing MOOs to participate in a Direct Listing Auction for a Primary Direct Floor Listing could encourage investor participation.

[35] *See* Compliance & Disclosure Interpretation of Securities Act Rules #227.03, *supra* note 15.

[36] *See* Gensler Speech, *supra* note 26.

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2022–14 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2022–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2022–14, and should be submitted on or before December 6, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–24767 Filed 11–14–22; 8:45 am]

BILLING CODE 8011–01–P

[37] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17642 and #17643; Alaska Disaster Number AK–00055]

Presidential Declaration Amendment of a Major Disaster for the State of Alaska

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Alaska (FEMA–4672–DR), dated 09/23/2022.

Incident: Severe Storm, Flooding, and Landslides.

Incident Period: 09/15/2022 through 09/20/2022.

DATES: Issued on 11/05/2022.

Physical Loan Application Deadline Date: 12/06/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 06/23/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Alaska, dated 09/23/2022, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 12/06/2022.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–24869 Filed 11–14–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Request for Nominations; Invention, Innovation, and Entrepreneurship Advisory Committee

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Solicitation of nominations.

SUMMARY: The SBA Office of Investment and Innovation is issuing this notice to solicit nominations of current or former small business owner, community leader, official from a small business trade association or academic institution, or member of the innovation community to be considered for appointment by the SBA Administrator as a member of the Invention, Innovation, and Entrepreneurship Advisory Committee (IIEAC). The Committee serves as an independent source to provide information, advice, and recommendations to the Administrator on matters broadly related the U.S. startup and small business innovation ecosystem, and more specifically supporting innovation across the U.S.; developing and/or evolving SBA programs and services to address commercialization hurdles; addressing vulnerabilities and gaps in funding domestic invention and innovation; facilitating and enabling broad access and participation in Federal innovation support and funding programs.

DATES: Nominations for membership on the IIEAC will be accepted on a rolling basis. After initial committee member selection, membership will be filled as positions become available.

ADDRESSES: All nominations should be emailed to *IIEAC@sba.gov* with the subject line: IIEAC Nomination.

FOR FURTHER INFORMATION CONTACT: Nathaniel Putnam, Policy Analyst, Office of Investment and Innovation, (202)714–1632, *IIEAC@sba.gov.*

SUPPLEMENTARY INFORMATION: The Committee is tasked with examining the issues, challenges, and obstacles facing U.S. innovation economy stakeholders in these subject areas. Nominations of qualified candidates are being sought to fill vacancies on the IIEAC. IIEAC members are appointed by and serve at the pleasure of the SBA Administrator for terms of no longer than two years. IIEAC members serve without compensation but will be reimbursed for authorized travel-related expenses at per diem rates established by GSA when asked to perform official duties as an IIEAC member.

The SBA is seeking nominations from members of the public.

Qualifications

The requirements for nominations to the IIEAC include:

- Current or former small business owner;
- Community leader;
- Official from a small business trade association or academic institution;
- Member of the innovation community.

Nomination Process

Nominees should send a letter of self-nomination or a letter of nomination from a peer, professional organization,

society, or member of Congress. The letter should highlight accomplishments and experience working with small businesses in relevant subject matter areas relating to innovation and investment. Along with the *Nominee Information Form* and resume, nominees should include the following:

- Full name of nominee
- Occupation
- Physical address
- Telephone number
- Email address

Please email all nomination information to *IIEAC@sba.gov.*

Authority: The Invention, Innovation, and Entrepreneurship Advisory Committee (IIEAC) is a discretionary advisory committee permitted by section 8(b)(13) of the Small Business Act (15 U.S.C. 637(b)) and was created at the discretion of the SBA Administrator. The Committee is being established in accordance with the provisions of theFederal Advisory Committee Act,as amended, 5 U.S.C. app.

Dated: November 9, 2022.

Andrienne Johnson,

Committee Management Officer.

[FR Doc. 2022–24842 Filed 11–14–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Request for Nominations; Investment Capital Advisory Committee

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Solicitation of nominations.

SUMMARY: The SBA Office of Investment and Innovation is issuing this notice to solicit nominations of current or former small business owners, community leaders, officials from trade associations, investment institutions, and members of the investment community to be considered for appointment by the SBA Administrator as a member of the Investment Capital Advisory Committee (ICAC). The Committee serves as an independent source of advice, insights, and recommendations to SBA on matters broadly related to facilitating greater access and availability of patient investment capital for small business; promoting greater awareness of SBA investment and innovation division programs and services; cultivating greater public-private engagement, cooperation, and collaboration; developing and/or evolving SBA programs and services to address long-term capital access gaps faced by small businesses and the investment managers that seek to support them. Nominations of qualified candidates are being sought to fill vacancies on the ICAC. ICAC members are appointed by and serve at the pleasure of the SBA Administrator for terms of no longer than two years. ICAC members serve without compensation but will be reimbursed for authorized travel-related expenses at per diem rates established by GSA when asked to perform official duties as an ICAC member.

DATES: Nominations for membership on the ICAC will be accepted on a rolling basis. After initial committee member selection, membership will be filled as positions become available.

ADDRESSES: All nominations should be emailed to *ICAC@sba.gov* with the subject line: ICAC Nomination.

FOR FURTHER INFORMATION CONTACT: Nathaniel Putnam, Policy Analyst, Office of Investment and Innovation, (202) 714–1632, *ICAC@sba.gov.*

SUPPLEMENTARY INFORMATION:

The SBA is seeking nominations from members of the public.

Qualifications

The requirements for nominations to the ICAC include:

- Former or current small business owner;
- Community leader;
- Official from a trade association or investment institution;
- Member of the investment community.

Nomination Process

Nominees should send a letter of self-nomination or a letter of nomination from a peer, professional organization, society, or member of Congress. The letter should highlight accomplishments and experience working with small businesses in relevant subject matter areas relating to innovation and investment. Along with the *Nominee Information Form* and resume, nominees should include the following:

- Full name of nominee
- Occupation
- Physical address
- Telephone number
- Email address

Please email all nomination information to *ICAC@sba.gov.*

Authority: The Investment Capital Advisory Committee is a discretionary advisory committee created by the Administrator of the U.S. Small Business Administration pursuant to section 8(b)(13) of the Small Business Act (15 U.S.C. 637(b)). The ICAC is being established in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. app.

Dated: November 9, 2022.

Andrienne Johnson,

Committee Management Officer.

[FR Doc. 2022–24843 Filed 11–14–22; 8:45 am]

BILLING CODE P

SURFACE TRANSPORTATION BOARD

[Docket Nos. AB 1320X and AB 1325X]

Growth Resources of Wellsboro Foundation—Abandonment Exemption—in Tioga County, Pa.; Wellsboro & Corning Railroad, LLC—Discontinuance of Lease and Operation Authority—in Tioga County, Pa.

On July 28, 2022, Growth Resources of Wellsboro Foundation (GROW) and Wellsboro & Corning Railroad, LLC (WCOR) (collectively, Applicants), jointly filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments & Discontinuances of Service* for GROW to abandon, and WCOR to discontinue lease and operation authority over, an approximately 3.27-mile rail line between milepost 0.624 and milepost 3.9 in Wellsboro, Tioga County, Pa. (the Line).[1] GROW is the owner of the Line, and WCOR is the lessee of the Line. The Line traverses U.S. Postal Service Zip Code 16901.

Applicants certify that (1) during the past two years, neither of the Applicants has provided, or been requested to provide, local or overhead common carrier service over the Line; (2) no formal complaint filed by a user of rail service on the Line (or by a state or local government acting on behalf of a user or potential user) regarding cessation of service over the Line is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the past two years; and (3) the requirements at 49 CFR 1105.11 (advance notice requirements for environmental and historic reports), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met. Applicants also state that GROW has prepared a combined Environmental and Historic Report that conforms to the requirements of 49 CFR 1105.7 and 1105.8.

As a condition to these exemptions, any employee adversely affected by the

[1] These dockets were held in abeyance to permit the Board to consider issues raised by an earlier verified notice and other filings submitted in Docket No. AB 1320X. Those issues were addressed and the abeyance lifted by decision served November 9, 2022.

abandonment and discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[2] the exemptions will be effective on December 15, 2022, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 25, 2022.[4] Petitions to reopen and requests for public use conditions under 49 CFR 1152.28 must be filed by December 5, 2022.

All pleadings, referring to Docket Nos. AB 1320X and AB 1325X, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on GROW's representative, Brian S. Duff, Owlett & Lewis, P.C., One Charles Street, P.O. Box 878, Wellsboro, PA 16901, and WCOR's representative, Eric M. Hocky, Clark Hill PLC, 2001 Market Street, Suite 2620, Philadelphia, PA 19103.

If the verified notice contains false or misleading information, the exemptions are void ab initio.

GROW has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by November 16, 2022. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0294. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or interim trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), GROW shall file a notice of consummation with the Board to signify that it has exercised the abandonment authority granted and fully abandoned the Line. If consummation has not been effected by GROW's filing of a notice of consummation by November 15, 2023, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: November 9, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2022–24846 Filed 11–14–22; 8:45 am]

BILLING CODE 4915–01–P

[2] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemptions' effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemptions' effective date.

[4] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

TENNESSEE VALLEY AUTHORITY

Notice of Consideration of Demand Response and Electric Vehicle Standards

AGENCY: Tennessee Valley Authority.

ACTION: Notice with request for comments.

SUMMARY: The Tennessee Valley Authority (TVA) is considering adopting for itself and the distributors of TVA power certain demand response and electric vehicle standards. The standards being considered are the Demand Response Practices (hereinafter ''Demand Response'') and Electric Vehicle Charging Programs standards (hereinafter ''Electric Vehicles'') listed in the Public Utility Regulatory Act of 1978, as amended by the Infrastructure Investment and Jobs Act. The standards will be considered on the basis of their effect on conservation of energy, efficient use of facilities and resources, equity among electric consumers, TVA's existing demand response and electric vehicle programs, and the objectives of the Tennessee Valley Authority Act. Comments are requested from the public on whether TVA should adopt these standards or any variations on them.

DATES: All comments on these standards must be received by March 31, 2023. Written comments may be mailed to:

ADDRESSES: Troy Eichenberger, Tennessee Valley Authority, 1101 Market Street, BR 5B–C, Chattanooga, TN 37402, (423) 751–6187 (Demand Response) or Andrew Frye, Tennessee Valley Authority, 1101 Market Street, BR 5A–C, Chattanooga, TN 37402, (423) 751–7060 (Electric Vehicles). Information about submitting comments electronically is available at *https://www.tva.com/purpa.*

FOR FURTHER INFORMATION CONTACT: Troy Eichenberger (Demand Response), (423) 751–6187, or Andrew Frye (Electric Vehicles), (423) 751–7060, Tennessee Valley Authority.

SUPPLEMENTARY INFORMATION: Written data, views, and comments on the standards or variations of the standards, as well as views for or against their adoption are requested from the public. All material relating to the standards must be received by 5 p.m. EST on March 31, 2023. Materials received by TVA before this designated time will be considered by TVA. Written statements of TVA staff concerning the standards will be made part of the official record at least 30 days before the date the record closes, at which time they will be made available to the public on request. In order to assist interested consumers in preparing written data, views, and comments for the record, TVA will operate a website (*https://www.tva.com/purpa*) on which interested parties can be informed about the standards set out in this notice, on which interested parties can obtain information about submitting comments and materials on the standards electronically, and on which TVA will make available background information regarding TVA's demand response and electric vehicle programs. Following the end of the public comment period, TVA staff will provide an update on its review of the Demand Response and Electric Vehicle standards to the Regional Energy Resource Council, an advisory committee established under the authority of the TVA in accordance with the provisions of the Federal Advisory Committee Act. Meetings of the council are open to the public and typically include a public listening session. The TVA staff presentation will include a summary of public and TVA staff comments. The official record will include comments and materials submitted electronically and written materials submitted within the time set forth above. The record will be used by the Board in making its determinations, in compliance with the Public Utility

Regulatory Policies Act of 1978 (Authority: Sec. 111(d), Pub. L. 95–617, 92 Stat. 3117) as amended by the Infrastructure Investment and Jobs Act (Authority: Sec. 111(d), Pub. L. 117– 58, 135 Stat. 429) and the Board's obligations under the Tennessee Valley Authority Act. Individual copies of the record will be available to the public at the cost of reproduction. Copies will also be kept on file for public inspection at the following locations: Tennessee Valley Authority, 400 W Summit Hill Drive, WT 6C–K, Knoxville, TN 37902, and on the web at *https://www.tva.com/purpa.*

Standards: The standards about which a determination will be made are:

(1) Demand Response Practices.

(A) In general. Each electric utility shall promote the use of demand-response and demand flexibility practices by commercial, residential, and industrial consumers to reduce electricity consumption during periods of unusually high demand.

(B) Rate Recovery.

(i) In general. Each State regulatory authority shall consider establishing rate mechanisms allowing an electric utility with respect to which the State regulatory authority has ratemaking authority to timely recover the costs of promoting demand-response and demand flexibility practices in accordance with subparagraph (A).

(ii) Nonregulated Electric Utilities. A nonregulated electric utility may establish rate mechanisms for the timely recovery of the costs of promoting demand-response and demand flexibility practices in accordance with subparagraph (A).

(2) Electric Vehicle Charging Programs. Each State shall consider measures to promote greater electrification of the transportation sector, including the establishment of rates that

(A) promote affordable and equitable electric vehicle charging options for residential, commercial, and public electric vehicle charging infrastructure;

(B) improve the customer experience associated with electric vehicle charging, including by reducing charging times for light-, medium-, and heavy-duty vehicles;

(C) accelerate third-party investment in electric vehicle charging for light-, medium-, and heavy-duty vehicles; and

(D) appropriately recover the marginal costs of delivering electricity to electric vehicles and electric vehicle charging infrastructure. Authority: Sec. 111(d), Public Law 117–58, 135 Stat. 429.

David Fountain, Executive Vice President and General Counsel of the Tennessee Valley Authority, hereby delegates to the undersigned the authority to sign this notice on behalf of the Tennessee Valley Authority.

Dated: November 8, 2022.

Christopher C. Chandler,

Senior Counsel.

[FR Doc. 2022–24857 Filed 11–14–22; 8:45 am]

BILLING CODE 8120–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–1502]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Renewal, Maintenance, Preventive Maintenance, Rebuilding, and Alteration

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The Information to be collected is necessary to insure the safety of the flying public. Documentation of maintenance repair actions record who, what, when, where and how of the task performed. This collection focuses on the Form 337 which is collected by the FAA. Other records for preventative maintenance, and logbook entries are not collected by the FAA serve as a responsibility of the owner to maintain in case of verification of airworthiness when seeking approvals or sale of the aircraft. This insures proper certification of personnel; proper tooling is utilized and accurate measures to insure safety. Total form 337s submitted in 2017 is 54,237. Total aircraft registrations on file is 289,490. It is estimated by the numbers collected one in every five aircraft have a 337 form submitted for major alteration and repairs performed. Each 337 takes approximately 1 hour.

DATES: Written comments should be submitted by January 17, 2023.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field) *By email:* Jude Sellers, *jude.n.sellers@faa.gov.*

SUPPLEMENTARY INFORMATION: All maintenance actions as well as documentation are required by 14 CFR part 43.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0020.

Title: Maintenance, Preventive Maintenance, Rebuilding, and Alteration.

Form Numbers: Aircraft maintenance logbooks and form 337.

Type of Review: Renewal of information collection.

Background: Title 14 CFR part 43 mandates information to be provided when an alteration or major repair is performed on an aircraft of United Sates registry. Submission of Form 337 is required for capture in the aircraft permanent records for current and future owners to substantiate the requirements of the regulations, prior to operation of the aircraft. Aircraft owners have the responsibility of documentation and submission of all maintenance records performed to their aircraft.

Respondents: 289,490 Aircraft owners.

Frequency: On occasion.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: Industry Annual burden 54,237 man hours.

Issued in Washington, DC, on November 7, 2022.

Jude Sellers,

Aviation Safety Inspector, AFS–340 General Aviation Maintenance Branch.

[FR Doc. 2022–24795 Filed 11–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2022–0031]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION.** We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 17, 2023.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2022–0031 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joseph Krolak, Senior Hydraulic Engineer, Federal Highway Administration, Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Culvert Removal, Replacement, and Restoration Grant Program (Culvert AOP Program).

Background: Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection. In compliance with the Paperwork Reduction Act of 1995, the DOT provides notice that it will submit an information collection requests (ICR) to the Office of Management and Budget (OMB) for emergency approval of a proposed information collection. Upon receiving the requested six-month emergency approval by OMB, the Office of the Secretary (OST) will follow the normal PRA procedures to obtain extended approval for this proposed information collection. This collection involves applicants submitting an application for discretionary grant funding under the ''National Culvert Removal, Replacement, and Restoration Grant Program'' (Culvert AOP Program) established by the Infrastructure Investment and Jobs Act of 2021, November 15, 2021, ''Bipartisan Infrastructure Law'', or ''BIL''. DOT is requesting emergency approval due to the urgency of making the associated funds available to applicants that meet the eligibility requirements under the law. The continued viability of these funds is critical in supporting the transportation infrastructure and fish passage needs across the United States.

Respondents: States, units of local government, and an Indian Tribe as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

Expected Number of Respondents: 200.

Frequency: One-time application, to be followed by project agreement execution, reimbursement of funds, reporting, and project closeout.

Estimated Average Burden Hours per Response: 19.

Estimated Total Annual Burden Hours: 8,600.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 23 U.S.C. 134 and 135; and 23 CFR Chapter 1, Subchapter E, Part 450.

Dated: November 8, 2022.

Michael Howell,

FHWA Information Collection Officer.

[FR Doc. 2022–24739 Filed 11–14–22; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Federal-State Partnership for Intercity Passenger Rail Program; Northeast Corridor Project Inventory

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability of the Northeast Corridor Project Inventory.

SUMMARY: FRA is publishing the Northeast Corridor (NEC) project inventory (NEC Project Inventory), which is a requirement of the Federal-State Partnership for Intercity Passenger Rail Program (FSP). FRA is required to publish the NEC Project Inventory not later than one year after the enactment of the Infrastructure Investment and Jobs Act, also known and the Bipartisan Infrastructure Law (BIL).

DATES: Applicable November 15, 2022.

ADDRESSES: The NEC Project Inventory can be found at: *https://railroads.dot.gov/elibrary/nec-inventory.*

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Amishi Castelli, Northeast Corridor Program Manager, Office of Amtrak and Northeast Corridor Program Delivery, at email: *Amishi.Castelli@dot.gov* or telephone: 202–845–4394, or Bryan Rodda, Lead Community Planner, Office of Amtrak and Northeast Corridor Program Delivery, at email: *Bryan.Rodda@dot.gov* or telephone: 202–493–0443.

SUPPLEMENTARY INFORMATION:

The FSP was reauthorized and revised in the BIL, Title II, U.S.C. 22106 and 22307, Public Law 117–58 (2021); codified at 49 U.S.C. 24911. Under the FSP, the Secretary of Transportation (Secretary) is directed to develop and implement a program for issuing grants, on a competitive basis, to fund projects that reduce the state of good repair backlog, improve performance, or expand or establish new intercity passenger rail service, including privately operated intercity passenger rail service if an eligible applicant is involved. The FSP also requires the Secretary to, among other things, develop and publish an NEC Project Inventory to: (1) create a predictable project pipeline that will assist Amtrak, States, and the public with long-term capital planning, and (2) use the NEC Project Inventory when selecting projects located on the NEC for FSP funds. 49 U.S.C. 24911.

In compliance with the above, FRA is publishing the NEC Project Inventory, which will be available on November 15, 2022, at: *https://railroads.dot.gov/elibrary/nec-inventory.* In the future, FRA will publish FSP Notices of Funding Opportunity (NOFO) soliciting applications for NEC Projects listed on the NEC Project Inventory. FRA will then evaluate applications and select projects consistent with the NOFO. FRA will publish an NEC Project Inventory at least every two years following this initial publication.

Issued in Washington, DC.

Paul Nissenbaum,

Associate Administrator and Chief Development Officer, Office of Railroad Development.

[FR Doc. 2022–24860 Filed 11–14–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257, Notice No. 92]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: FRA announces the sixty-third meeting of the Railroad Safety Advisory Committee (RSAC), a Federal Advisory Committee that develops railroad safety regulations through a consensus process.

DATES: The RSAC meeting is scheduled for Monday, December 12, 2022. The meeting will commence at 9:30 a.m. and will adjourn by 11:30 a.m. (all times Eastern Standard Time). Requests to attend the meeting must be received by December 2, 2022. Requests for accommodations because of a disability must be received by December 2, 2022.

ADDRESSES: The RSAC meeting will be held by Microsoft Teams and by telephone. Virtual and telephonic attendance information will be provided upon registration with either of the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section. Copies of the minutes of past meetings, along with general information about the committee, are available on the RSAC internet website at *https://rsac.fra.dot.gov/.*

FOR FURTHER INFORMATION CONTACT: Kenton Kilgore, RSAC Designated Federal Officer/RSAC Coordinator, FRA Office of Railroad Safety, telephone: (202) 365–3724 or email: *kenton.kilgore@dot.gov;* or Thomas Woodhams, Executive Officer, FRA Office of Railroad Safety, telephone: (504) 232–6601or email: *thomas.woodhams@dot.gov.* Any committee-related request should be sent to the persons listed in this section.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the RSAC. The RSAC is composed of 51 voting representatives from 26 member organizations, representing various rail industry perspectives. The diversity of the Committee ensures a representative range of views and expertise necessary to discharge its responsibilities.

Public Participation: The meeting will be open to the public and attendance may be limited due to virtual and telephonic meeting constraints. To register to attend, please send an email to either of the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section. The meeting is accessible to individuals with disabilities. DOT and FRA are committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please contact either of the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section and submit your request by December 2, 2022. Any member of the public may submit a written statement to the committee at any time. If a member of the public wants to submit written materials to be reviewed by the committee during the meeting, the submission must be received by December 2, 2022.

Agenda Summary: The RSAC meeting topics will include updates on recent activity by RSAC Working Groups for: Passenger Safety; Track Standards; Roadway Worker Protection; Part 220 Electronic Devices; Confidential Close Call Reporting System; and Critical Incident Stress Plans. The detailed agenda will be posted on the RSAC internet website at least one week in advance of the meeting.

Issued in Washington, DC.

Amitabha Bose,

Administrator.

[FR Doc. 2022–24730 Filed 11–14–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2022–0123]

Notice That the Build America, Buy America Requirement for Construction Materials Applies Effective November 10, 2022, and Notice of Proposed Waiver of That Requirement for a Narrow Category of Contracts and Solicitations

ACTION: Notice; request for comments.

SUMMARY: The Department of Transportation (DOT) seeks to maximize the use of American-made products and materials in all federally funded projects as part of the Biden-Harris Administration's implementation of the Build America, Buy America Act (the Act), which was included in the historic Bipartisan Infrastructure Law (BIL). The implementation of this law will transform DOT's approach to domestic procurement requirements and is designed to drive significant investment in domestic manufacturing, spur job creation and grow the economy. The Department is taking three concurrent actions: (1) DOT is not extending its temporary waiver for construction materials, making that requirement applicable effective November 10, 2022; (2) in a separate notice, DOT is proposing a narrow waiver for de minimis costs, small grants, and minor components; and (3) in this notice, DOT is proposing to take two actions to help transition to the new construction materials standard. First, for DOT awards obligated on or after the effective date of the final waiver, DOT is proposing to waive the construction materials requirements for any contracts entered into before November 10, 2022. Second, DOT is proposing to waive the construction materials requirements for any contracts entered into before March 10, 2023, that result from solicitations published before May 14, 2022.

DATES: Comments must be received by November 20, 2022. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments to the Federal eRulemaking Portal at *http://www.regulations.gov/,* Docket: DOT–OST–2022–0123.

Note: All submissions must contain the agency name and the docket number. All submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477).

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Darren Timothy, DOT Office of the Assistant Secretary for Transportation Policy, at *darren.timothy@dot.gov* or at 202–366–4051. For legal questions, please contact Michael A. Smith, DOT Office of the General Counsel, 202–366–2917, or via email at *michael.a.smith@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

In January 2021, President Biden issued Executive Order 14005, titled ''Ensuring the Future is Made in All of America by All of America's Workers,'' launching a whole-of-government initiative to strengthen Made in America

standards. The Executive Order states that the United States Government ''should, consistent with applicable law, use terms and conditions of Federal financial assistance awards and Federal procurements to maximize the use of goods, products, and materials produced in, and services offered in, the United States.'' DOT is committed to ensuring strong and effective Buy America implementation consistent with Executive Order 14005 and has a long track record of successfully applying Made in America standards to support American workers and businesses through its more than $70 billion in grant programs and $700 million in direct purchases in FY 2020.

On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (IIJA or the Bipartisan Infrastructure Law), Public Law 117–58, which includes the Build America, Buy America Act (BABA). IIJA div. G §§ 70901–27. The Bipartisan Infrastructure Law not only makes an historic investment in American transportation—from roads and bridges to rail to transit—but also greatly strengthens Made in America standards. Specifically, BABA expands the coverage and application of Buy America preferences in Federal financial assistance programs for infrastructure. BABA requires that no later than May 14, 2022—180 days after the date of enactment—the head of each covered Federal agency shall ensure that ''none of the funds made available for a Federal financial assistance program for infrastructure . . . may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.'' IIJA § 70914(a).

BABA provides that the preferences under Section 70914 apply only to the extent that a domestic content procurement preference as described in Section 70914 does not already apply to iron, steel, manufactured products, and construction materials. IIJA § 70917(a)–(b). This provision allows Federal agencies to preserve existing Buy America policies and provisions that meet or exceed the standards required by BABA.

One of the new Buy America preferences included under BABA is for construction materials. By May 14, 2022, each covered Federal agency must ensure that all manufacturing processes for construction materials used in federally assisted infrastructure projects occur in the United States. None of the specific statutes that apply particular Buy America requirements to the Federal financial assistance programs administered by DOT's Operating Administrations specifically covers construction materials, other than to the extent that such materials would already be considered iron, steel, or manufactured products. IIJA § 70914.

In addition to establishing Buy America preferences, BABA also provides certain statutory authorities for the Made in America Office (MIAO) in the Office of Management and Budget (OMB). IIJA §§ 70915(b), 70923. MIAO was first established by Section 4 of Executive Order 14005. MIAO's authorities under the Bipartisan Infrastructure Law include issuing guidance to assist in applying BABA's requirements and issuing standards that define the term ''all manufacturing processes'' in the case of construction materials. IIJA § 70915.

On April 18, 2022, OMB issued memorandum M–22–11, ''Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure'' (Implementation Guidance). Under Section VIII of the Implementation Guidance, ''construction materials'' includes: an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

Implementation Guidance at 13–14.

The Implementation Guidance states that ''an article, material, or supply should only be classified into one of the following categories: (1) iron or steel; (2) a manufactured product; or (3) a construction material. For ease of administration, an article, material, or supply should not be considered to fall into multiple categories.'' *Id.* at 6. The Implementation Guidance also explains that ''items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials.'' *Id.* at 14. OMB characterizes its guidance on which materials are construction materials as ''preliminary and non-binding guidance . . . so that agencies can begin applying Buy America requirements to those materials.'' *Id.* at 13.

Section 70915(b) of BABA requires OMB to issue standards that define ''all manufacturing processes'' for construction materials. Section VIII of the Implementation Guidance provides that, ''[p]ending MIAO's issuance of final standards on construction materials, and absent any existing applicable standard in law or regulation that meets or exceeds these preliminary standards, agencies should consider 'all manufacturing processes' for construction materials to mean the final manufacturing process and the immediately preceding manufacturing stage for the construction material.'' Implementation Guidance at 14. After considering information received through stakeholder and industry outreach, MIAO will issue further guidance that identifies initial manufacturing processes for each type of construction material that should be considered as part of ''all manufacturing processes.'' *Id.* Agencies are also directed to ''consult with MIAO, as needed, to ensure that any waiver issued for construction materials is explicitly targeted and time-limited, in order to send a clear market signal that additional standards for 'all manufacturing processes' in the case of construction materials will be forthcoming.'' *Id.*

In April 2022, DOT opened a public docket (DOT–OST–2022–0047) to receive comments in response to DOT's proposal to waive the construction materials requirement for 180 days, to allow for a longer transition period. On May 19, 2022, DOT issued a temporary waiver of the construction materials requirement for 180 days: from May 14 until November 10, 2022. 87 FR 31931. In the waiver notice, DOT stated its expectation that States, industry, and other participants establish procedures to document compliance.

During the waiver period, DOT is continuing its engagement to help facilitate the creation of robust enforcement and compliance mechanisms and to rapidly encourage domestic sourcing of construction materials for transportation infrastructure improvements. On July 28, 2022, DOT issued a Request for Information (RFI) seeking input from the public, including DOT's project sponsors, their contractors and offerors, manufacturers, labor unions, transportation and trade associations, and other interested parties on implementing BABA's new construction

materials requirement. 87 FR 45397. DOT asked the public to submit comments to the same docket DOT used to propose the 180-day waiver.

Based on its review of comments received on the RFI and other engagement opportunities with stakeholders, and consistent with the purpose of the temporary transitional waiver, DOT does not intend to modify or extend the existing DOT waiver for construction materials. As a result, DOT awards obligated on or after November 10, 2022, from financial assistance programs for infrastructure projects will be subject to the BABA requirement that construction materials used on those projects be produced in the United States.

The Need for a Waiver

The Implementation Guidance states that a ''waiver in the public interest may be appropriate where an agency determines that other important policy goals cannot be achieved consistent with the Buy America requirements established by the Act.'' Implementation Guidance at 10. The guidance also recognizes several instances in which Federal agencies may consider issuing a public interest waiver and encourages agencies to consider an adjustment period where time-limited waivers would allow recipients and agencies to transition to new Buy America preferences, rules, and processes. *Id.* at 11.

Since enactment of the Bipartisan Infrastructure Law, DOT has received numerous inquiries and comments from recipients raising concerns about the applicability of the new construction materials requirement to projects that already are under construction or are in advanced stages of planning. For example, a large West Coast transit system asked whether its projects already under construction could continue to comply with Buy America requirements as they existed at the time of contract award, or if they would be affected by the new domestic preference for construction materials. A large northeastern transit system similarly asked how the construction materials requirement would apply to a major construction project that is underway. The project already has some Federal financial assistance, and the transit system is concerned about the project remaining eligible for additional grant awards on or after November 10.

Some commenters on the proposed temporary waiver for construction materials issued by DOT in April and on the RFI issued in July also described problems that would arise if DOT were to apply the construction materials requirement to projects that have been under development or construction prior to the expiration of the temporary waiver on November 10.

For example, the Santa Clara Valley Transportation Authority asked whether the construction materials requirement will apply to construction contracts that it already has executed under pre-award authority for a project in the Federal Transit Administration's (FTA) Expedited Project Delivery Pilot Program, which may receive an FTA grant that would be awarded on or after November 10.[1] The New York Metropolitan Transportation Authority requested that DOT waive the construction materials requirement for, *inter alia,* (a) any contracts awarded during the waiver period, and (b) any contracts executed during the DOT waiver period using pre-award authority if they are funded by grants awarded after the waiver period.[2] Capital Metro requested that contracts awarded before the construction materials requirement takes effect be allowed to comply with Buy America standards as they existed at the time the contract was formed, even if the contract is funded by grants obligated in subsequent years.[3]

Several State departments of transportation expressed similar concerns in their submissions to the docket. For example, the New Jersey Department of Transportation commented that redesigning projects that are in an advanced state of design could be expensive and negatively affect project delivery and requested that such projects be exempt from the new construction materials requirement.[4] Similarly, the South Dakota Department of Transportation commented that it is not appropriate or feasible to apply the construction materials requirement to projects where bids were already submitted, and contracts awarded, based on using materials with no country-of-origin specifications; doing so would possibly require cancelling current contracts and would add delay and additional costs for project sponsors.[5] The California Department of Transportation reported that it has many multi-year contracts in place that incorporate Buy America standards as they existed before BABA and asked whether these contracts will remain eligible for Federal grants obligated on or after November 10.[6] Additionally, a joint comment submitted by the transportation departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming requested that DOT not apply the new construction materials requirement to projects where bids were already submitted and awarded without country-of-origin requirements, because doing so could require project sponsors and contractors to cancel orders or cancel contracts and incur additional costs and delays.[7]

Based on these and other inquiries and comments, DOT has identified certain categories of projects for which application of the BABA construction materials requirement after the DOT waiver expires would present significant concerns:

(1) projects that have received DOT financial assistance awards before November 10, 2022—and sometimes even prior to enactment of the Bipartisan Infrastructure Law—that have completed procurements involving construction materials or currently are in the process of soliciting construction contracts, and will receive additional DOT financial assistance that will be obligated on or after November 10, 2022;

(2) projects that will be funded by DOT grants obligated on or after November 10, 2022, for which recipients have exercised DOT-approved pre-award authority before November 10 to execute or solicit construction contracts prior to grant award;

(3) projects that will be funded by DOT credit assistance obligated on or after November 10, 2022, for which recipients solicited construction contracts before May 14, 2022;

Requiring compliance with the BABA domestic preference for construction materials would be unduly burdensome for projects that already have executed construction contracts, because they already have received DOT financial

[1] Comment from the Santa Clara Valley Transportation Authority (Aug. 16, 2022), *https://www.regulations.gov/comment/DOT-OST-2022-0047-0122.*

[2] Comment from the New York Metropolitan Transportation Authority (May 13, 2022), *https://www.regulations.gov/comment/DOT-OST-2022-0047-0037.*

[3] Comment from the Capital Metropolitan Transportation Authority (May 13, 2022), *https://www.regulations.gov/comment/DOT-OST-2022-0047-0049.*

[4] Comment from the New Jersey Department of Transportation (Aug. 12, 2022), *https://www.regulations.gov/comment/DOT-OST-2022-0047-0111.*

[5] Comment from the South Dakota Department of Transportation (Aug. 18, 2022), *https://www.regulations.gov/comment/DOT-OST-2022-0047-0167.*

[6] Comment from the California Department of Transportation (Aug. 18, 2022), *https://www.regulations.gov/comment/DOT-OST-2022-0047-0170.*

[7] Comment from the Transportation Departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming (Aug. 17, 2022), *https://www.regulations.gov/comment/DOT-OST-2022-0047-0132.*

assistance, are exercising DOT-approved pre-award authority, or will receive DOT credit assistance for activities already in progress.[8] Under these circumstances, application of the construction materials requirement could compel contract terminations and cause projects to be put on hold while conducting new procurements. Accordingly, application of the construction materials requirement to these categories of projects would result in unacceptable delay, increased project costs, and potential loss of jobs while project construction is paused.

Additionally, for large infrastructure projects, the preparation of solicitations by project sponsors and the preparation of bids and proposals by offerors require significant time and investment, and are based on project design that occurs well in advance of the solicitations. DOT recipients throughout the country have exercised pre-award authority to solicit construction contracts prior to the May 14, 2022, effective date of the construction materials requirement, for which contract award will not occur until on or after November 10. Applicants to DOT's credit assistance programs often have solicitations underway concurrent with the Department's application and creditworthiness reviews. In these instances, amending the specifications of the contract solicitations to impose new requirements that were not previously applicable would cause considerable delay.

Proposed Waiver and Request for Comments

DOT recognizes the importance of ensuring the use of domestically produced construction materials on infrastructure projects receiving Federal assistance and the need to implement the requirement in a way that does not delay delivery of projects that were sufficiently advanced before the requirement applies to DOT funding. Therefore, for DOT awards obligated on or after the effective date of the waiver, DOT proposes to issue a general public interest waiver of BABA's domestic preference for construction materials for:

(1) Any contract entered into before November 10, 2022; and

(2) Any contract entered into before March 10, 2023, if the contract results from a solicitation published prior to May 14, 2022.

In these limited circumstances, DOT recipients incurred costs, executed contracts, are conducting procurements with long lead times prior to the BABA construction materials requirement taking effect, though they will seek Federal reimbursement through grants obligated on or after November 10, 2022. This proposed waiver would preserve the eligibility of costs a project sponsor already incurred or estimated before the construction materials requirement took effect. The purpose of covering contracts through March 10, 2023, for contracts resulting from solicitations published before the May 14, 2022, BABA effective date, is to provide recipients with reasonable time to complete procurements. Project sponsors and offerors have invested significant resources in such procurements, which are based on design and engineering conducted before the BABA construction materials requirement went into effect. A project sponsor whose solicitation does not result in a contract before March 10, 2023, would have to take such measures as may be necessary to ensure that its contract will comply with the construction materials requirement.

If issued, this waiver would apply only to projects funded by DOT financial assistance obligated on or after the effective date of the waiver. DOT financial assistance obligated before the expiration of the temporary DOT waiver on November 10, 2022 is not subject to the BABA's construction materials requirement.

DOT requests comments on the applicable dates proposed in this waiver. DOT also requests comments on whether this waiver should be time-limited or phased for certain long-term contracts.

In order to support a more efficient and targeted process for future waivers, DOT requests comment on whether there are other scenarios where project delivery would be significantly disrupted or delayed because of circumstances such as the level of design and engineering for a project that has occurred in relation to the effective date of the construction materials preference and provide specific information as to the construction materials which may not be available. For example, are there specific circumstances that may justify a project specific waiver, such as the unavailability of specific construction materials manufactured in the United States in sufficient quantity or quality for a particular DOT-funded transportation project or category of projects? Additionally, are there transportation projects, such as projects in various stages of FTA's Capital Investment Grants program, for which a waiver may be justified due to significant delay in project delivery. If completed design and engineering must be revised to comply with the construction materials preference after November 10, 2022, DOT seeks comments on the length and type of waiver which may be necessary to mitigate a significant delay.

This proposed waiver would apply to infrastructure projects funded by financial assistance administered by the Office of Secretary of Transportation or any of DOT's Operating Administrations with financial assistance programs, including the Federal Aviation Administration (FAA); the Federal Highway Administration (FHWA); the Federal Motor Carrier Safety Administration; the Federal Railroad Administration (FRA); the Federal Transit Administration (FTA); the Maritime Administration (MARAD); the National Highway Traffic Administration (NHTSA); and the Pipeline and Hazardous Materials Safety Administration (PHMSA).

This proposed waiver would not affect any domestic preference requirements under other authorities, including DOT's non-BABA domestic preference statutes: 49 U.S.C. 50101 (FAA); 23 U.S.C. 313 (FHWA and NHTSA); 49 U.S.C. 22905(a) (FRA); 49 U.S.C. 5323(j) (FTA); and 46 U.S.C. 54101(d)(2) (MARAD).

The Implementation Guidance also provides that, before granting a waiver in the public interest, to the extent permitted by law, agencies shall assess whether a significant portion of any cost advantage of a foreign-sourced product is ''the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products.'' Implementation Guidance at p. 12. E.O. 14005 at Section 5 includes a similar requirement for ''steel, iron, or manufactured goods.'' However, because the public interest waiver that DOT is proposing in this notice is not based on consideration of the cost advantage of any foreign-sourced steel, iron, or manufactured product content, there is not a specific cost advantage for DOT to consider.

DOT will consider all comments received in the 15-day comment period, as required by section 70914(c)(2) of the BIL. DOT will consider comments received after the comment period to the extent practicable.

[8] For information related to pre-award costs, see 2 CFR 200.458, ''Pre-award costs.'' Some DOT OAs have program-specific guidance on pre-award authority, including FTA's ''Notice of FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Infrastructure Investment and Jobs Act; and FTA Fiscal Year 2022 Apportionments, Allocations, Program Information and Interim Guidance'', 87 FR 25362 (April 28, 2022).

Issued in Washington, DC on: November 8, 2022.

Polly E. Trottenberg,

Deputy Secretary.

[FR Doc. 2022–24743 Filed 11–14–22; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2022–0124]

Notice That the Build America, Buy America Requirement for Construction Materials Applies Effective November 10, 2022, and Notice of Proposed Waiver of Buy America Requirements for De Minimis Costs, Small Grants, and Minor Components

ACTION: Notice; request for comments.

SUMMARY: The Department of Transportation (DOT) seeks to maximize the use of American-made products and materials in all federally funded projects as part of the Biden-Harris Administration's implementation of the Build America, Buy America Act (the Act), which was included in the historic Bipartisan Infrastructure Law (BIL). The implementation of this law will transform the Department's approach to domestic procurement requirements. The Department is taking three concurrent actions: (1) DOT is not extending its temporary waiver for construction materials, making that requirement applicable effective November 10, 2022; (2) in a separate notice, DOT is proposing a waiver for narrow categories of contracts and solicitations; and (3) in this notice, DOT is proposing a narrow waiver to allow DOT and its assistance recipients to focus their domestic sourcing efforts on products that provide the greatest manufacturing opportunities for American workers and firms and reduce delays in the delivery of important transportation infrastructure projects that provide jobs and promote economic growth. DOT is seeking comments on whether a waiver of Buy America requirements under the Act and related domestic preference statutes administered by DOT and its Operating Administrations (OAs) should be granted in the public interest for de minimis costs, small grants, and minor components.

DATES: Comments must be received by November 20, 2022.

ADDRESSES: Please submit your comments to the U.S. Government electronic docket site at *http://www.regulations.gov,* Docket: DOT–OST–2022–0124.

Note: All submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477).

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Darren Timothy, DOT Office of the Assistant Secretary for Transportation Policy, at *darren.timothy@dot.gov* or at 202–366–4051. For legal questions, please contact Michael A. Smith, DOT Office of the General Counsel, 202–366–2917, or via email at *michael.a.smith@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

In January 2021, President Biden issued Executive Order (E.O.) 14005, titled Ensuring the Future is Made in All of America by All of America's Workers. The E.O. states that the United States Government ''should, consistent with applicable law, use terms and conditions of Federal financial assistance awards and Federal procurements to maximize the use of goods, products, and materials produced in, and services offered in, the United States.'' DOT is committed to ensuring strong and effective Buy America implementation consistent with E.O. 14005.

On November 15, 2021, President Biden signed the Bipartisan Infrastructure Law (BIL) enacted as the Infrastructure Investment and Jobs Act, Public Law 117–58. The BIL includes the Act, Public Law 117–58, div. G §§ 70901–27, which greatly strengthens Made in America standards by expanding the coverage and application of Buy America preferences in Federal financial assistance programs for infrastructure. The Act requires that the head of each covered Federal agency shall ensure that ''none of the funds made available for a Federal financial assistance program for infrastructure . . . may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.'' BIL § 70914(a). However, Federal agencies may waive the application of Buy America in certain circumstances, including where the agency finds that applying the Buy America requirement ''would be inconsistent with the public interest.'' BIL § 70914(b)(1).

The Act required the Office of Management and Budget (OMB) to issue guidance to assist in applying the Act's requirements. BIL § 70915. On April 18, 2022, OMB issued memorandum M–22–11, ''Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure'' (''Implementation Guidance''). Section VII(b) of the Implementation Guidance, *Waiver Principles and Criteria,* states that ''Federal agencies may wish to consider issuing a limited number of general applicability public interest waivers in the interest of efficiency and to ease burdens for recipients.'' Implementation Guidance at p. 10. The Implementation Guidance goes on to provide examples of certain types of public interest waivers an agency may consider issuing that would support that goal, including infrastructure project purchases below a *de minimis* threshold; purchases made under small Federal grant awards; and miscellaneous minor components within iron and steel products. As the Implementation Guidance notes, such waivers could help ''ensure that recipients and Federal agencies make efficient use of limited resources, especially if the cost of processing the individualized waiver(s) would risk exceeding the value of the items waived.'' Implementation Guidance at p. 11.

The Act also provides that the preferences under Section 70914 apply only to the extent that a domestic content procurement preference as described in Section 70914 does not already apply to iron, steel, manufactured products, and construction materials. BIL § 70917(a)–(b). Federal financial assistance programs administered by DOT's Operating Administrations (OAs) are subject to a variety of mode-specific statutes that apply particular Buy America [1] requirements to iron, steel, and manufactured products, including 49 U.S.C. 50101 (FAA); 23 U.S.C. 313 (FHWA and NHTSA); 49 U.S.C. 22905(a) (FRA); 49 U.S.C. 5323(j) (FTA); and 46 U.S.C. 54101(d)(2) (MARAD). Recent annual appropriations acts have also required DOT to apply the Buy American Act (41 U.S.C. Chapter 83) to funds appropriated under those acts,[2]

[1] In this notice, references to ''Buy America'' include domestic preference laws called ''Buy American'' that apply to DOT financial assistance programs.

[2] For example, Section 409 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2022 states that ''no funds appropriated pursuant to this Act may be expended by an entity unless the entity agrees that

where a mode-specific statute is not in place. These statutes also allow for waivers of the Buy America requirements to be issued when doing so is deemed to be in the public interest.

Certain DOT OAs currently do not apply Buy America preferences to *de minimis* purchases or project costs under their existing statutory requirements. For example, the Federal Transit Administration (FTA) exempts purchases of $150,000 or less by statute. 49 U.S.C. 5323(j)(13). The Federal Highway Administration's (FHWA) minimum threshold for Buy America to apply is $2,500 (the total amount of iron and steel products as delivered to the project) or 0.1% of the total contract amount, whichever is greater. 23 CFR 635.410(b)(4). However, other DOT OAs, including the Federal Railroad Administration (FRA), the Federal Aviation Administration (FAA), and the Maritime Administration (MARAD) do not have similar exceptions by statute or regulation.

In DOT's experience, the development and substantiation of individual Buy America waivers requires recipients to determine the availability or nonavailability of domestically sourced items. Such efforts can help ensure that potential domestic suppliers are not overlooked and, where waivers may be appropriate, help send signals to industry about market opportunities. However, when the cost of the items is relatively low, suppliers may have a lesser incentive to track and document the country of origin of those items in a manner sufficient to meet the requirements of the Buy America statutes applied to Federal assistance, which can lead to increased administrative burdens even as the potential impact of applying domestic preferences in those cases may be lower. Focusing on higher value items can also allow Federal agencies and their assistance recipients to focus their domestic sourcing efforts on products that provide the greatest manufacturing opportunities for American workers and firms and reduce delays in the delivery of important transportation infrastructure projects that provide jobs and promote economic growth.

Transportation infrastructure projects use a variety of iron and steel items, manufactured goods, and construction materials. Typical iron and steel items subject to Buy America preferences include structural and reinforcing steel incorporated into pavements, bridges, and buildings (such as maintenance facilities); steel rail; rolling stock (such as buses and trains); and other equipment. Manufactured products may include airfield lighting and navigational aids; ties and ballast; traffic control systems; fare collection and other electronic systems; and mooring bollards, fenders, and gate operating systems. Construction materials include non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall, as well as materials [3] that are explicitly exempted from being considered construction materials under the Act.

Proposed Waiver and Request for Comments

DOT is proposing to use its authority under Section 70914(b)(1) to waive the Act's Buy America preferences for iron and steel, manufactured products, and construction materials used in infrastructure projects funded under DOT-administered financial assistance programs for iron, steel, manufactured products, and construction materials under a single financial assistance award for which:

- The total value of the non-compliant products is no more than the lesser of $1,000,000 or 5% of total allowable costs under the Federal financial assistance award;
- The size of the Federal financial assistance award is below $500,000; or
- The non-domestically produced miscellaneous minor components comprise no more than 5 percent of the total material cost of an otherwise domestically produced iron or steel product.

The basis for this proposal is that applying Buy America preferences to iron, steel, manufactured products, and construction materials below these thresholds would be inconsistent with the public interest. If issued, the waiver would be applicable to awards that are obligated on or after the effective date of the waiver. The Department requests comment on whether such a waiver would be warranted. DOT also specifically seeks comment on the proposed percentage and dollar thresholds for applying the waiver, including whether those thresholds should be higher or lower than the levels in the proposal.

Because many DOT-administered financial assistance programs are also subject to program-specific domestic preference requirements, the waiver proposed in this notice would also apply to those requirements. Specifically, the waiver would also be an exercise of DOT's authority to issue public interest waivers under 23 U.S.C. 313(b)(1), 49 U.S.C. 5323(j); 46 U.S.C. 54101(d)(2)(B)(i)(I), 49 U.S.C. 22905(a)(2), 49 U.S.C. 50101(b)(1), and 41 U.S.C. Chapter 83.

In developing this proposal, DOT considered different thresholds for applying the waiver to small grants. While DOT makes federal assistance through discretionary and formula awards at a variety of dollar amounts, the vast majority of its assistance funding is provided in larger sums to transportation infrastructure projects. Reviewing 19,000 awards totaling $83 billion in FY 2022 that may be covered by DOT's domestic preference requirements, awards for an amount under $500,000 represented 48% of the 19,000 total, but just 1.4% of the $83 billion. Awards under $250,000 accounted for 37% of the 19,000 total and 0.5% of the $83 billion. Given the scope and scale of DOT's infrastructure assistance programs, the Department believes that it is appropriate to apply the waiver to awards below the higher $500,000 threshold, as this would significantly reduce administrative burdens while still ensuring that Buy America requirements would be applied to almost all DOT assistance funding. DOT seeks comment on the proposed dollar threshold for applying the waiver to small grants.

DOT believes that waiving the domestic preference requirements for lower-cost items purchased for infrastructure projects under the Act and the DOT-administered Buy America statutes referenced above will support the goals of E.O. 14005 to maximize domestic content in Federal financial assistance awards. Doing so will allow the Department and its assistance recipients to make efficient use of its limited resources to focus their efforts on higher-value products with more significant opportunities to develop a domestic supply base and create well-paid jobs for American workers.

Section 70914(d) of the Act requires that any general applicability waivers issued under section 70914(b) must ''be reviewed every 5 years after the date on which the waiver is issued,'' and prescribes a process for that review that includes an opportunity for public notice and comment and publication in the **Federal Register** of a determination on whether to continue or discontinue the waiver at that time. Accordingly, this proposed general applicability waiver would be subject to such a review within five years of its issue

in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 8301–8305, popularly known as the ''Buy American Act'').''

[3] See BIL section 701917(c). Exempted materials include cement and cementitious materials, aggregates such as stone, sand, or gravel, and aggregate binding agents or additives.

date. However, DOT would reserve the right to modify or shorten the duration of this waiver if it obtains information before the end of the five-year period indicating the waiver is no longer in the public interest.

The Implementation Guidance also provides that, before granting a waiver in the public interest, to the extent permitted by law, agencies shall assess whether a significant portion of any cost advantage of a foreign-sourced product is ''the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products.'' Implementation Guidance at p. 12. E.O. 14005 at Section 5 includes a similar requirement for ''steel, iron, or manufactured goods.'' However, because the public interest waiver that DOT is proposing in this notice is not based on consideration of the cost advantage of any foreign-sourced steel, iron, or manufactured product content, there is not a specific cost advantage for DOT to consider.

DOT will consider all comments received in the initial 15-day comment period during our consideration of the proposed waiver, as required by section 70914(c)(2) of the BIL. Comments received after this period, but before notice of our finding is published in the **Federal Register**, will be considered to the extent practicable. Section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572) also requires an additional 5-day, comment period after FHWA publishes a waiver finding notice. Comments received during that period will be reviewed, but the finding will continue to remain valid. Those comments may influence DOT/FHWA's decision to terminate or modify a finding.

Issued in Washington, DC on: November 4, 2022.

Polly E. Trottenberg,

Deputy Secretary.

[FR Doc. 2022–24744 Filed 11–14–22; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one entity that has been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this entity are blocked, and U.S. persons are generally prohibited from engaging in transactions with it.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea M. Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action

On November 8, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following entity are blocked under the relevant sanctions authorities listed below.

Entity

1. TORNADO CASH; website *tornado.cash;* Digital Currency Address—ETH 0x12D66f87A04A9E220743712cE6d9bB1B5616B8Fc; alt. Digital Currency Address—ETH 0x47CE0C6eD5B0Ce3d3A51fdb1C52DC66a7c3c2936; alt. Digital Currency Address—ETH 0x910Cbd523D972eb0a6f4cAe4618aD62622b39DbF; alt. Digital Currency Address—ETH 0xA160cdAB225685dA1d56aa342Ad8841c3b53f291; alt. Digital Currency Address—ETH 0xD4B88Df4D29F5CedD6857912842cff3b20C8Cfa3; alt. Digital Currency Address—ETH 0xFD8610d20aA15b7B2E3Be39B396a1bC3516c7144; alt. Digital Currency Address—ETH 0x07687e702b410Fa43f4cB4Af7FA097918ffD2730; alt. Digital Currency Address—ETH 0x23773E65ed146A459791799d01336DB287f25334; alt. Digital Currency Address—ETH 0x22aaA7720ddd5388A3c0A3333430953C68f1849b; alt. Digital Currency Address—ETH 0x03893a7c7463AE47D46bc7f091665f1893656003; alt. Digital Currency Address—ETH 0x2717c5e28cf931547B621a5dddb772Ab6A35B701; alt. Digital Currency Address—ETH 0xD21be7248e0197Ee08E0c20D4a96DEBdaC3D20Af; alt. Digital Currency Address—ETH 0x4736dCf1b7A3d580672CcE6E7c65cd5cc9cFBa9D; alt. Digital Currency Address—ETH 0xDD4c48C0B24039969fC16D1cdF626eaB821d3384; alt. Digital Currency Address—ETH 0xd96f2B1c14Db8458374d9Aca76E26c3D18364307; alt. Digital Currency Address—ETH 0x169AD27A470D064DEDE56a2D3ff727986b15D52B; alt. Digital Currency Address—ETH 0x0836222F2B2B24A3F36f98668Ed8F0B38D1a872f; alt. Digital Currency Address—ETH 0x178169B423a011fff22B9e3F3abeA13414dDD0F1; alt. Digital Currency Address—ETH 0x610B717796ad172B316836AC95a2ffad065CeaB4; alt. Digital Currency Address—ETH 0xbB93e510BbCD0B7beb5A853875f9eC60275CF498; alt. Digital Currency Address—ETH 0x84443CFd09A48AF6eF360C6976C5392aC5023a1F; alt. Digital Currency Address—ETH 0xd47438C816c9E7f2E2888E060936a499Af9582b3; alt. Digital Currency Address—ETH 0x330bdFADE01eE9bF63C209Ee33102DD334618e0a; alt. Digital Currency Address—ETH 0x1E34A77868E19A6647b1f2F47B51ed72dEDE95DD; alt. Digital Currency Address—ETH 0xdf231d99Ff8b6c6CBF4E9B9a945CBAcEF9339178; alt. Digital Currency Address—ETH 0xaf4c0B70B2Ea9FB7487C7CbB37aDa259579fe040; alt. Digital Currency Address—ETH 0xa5C2254e4253490C54cef0a4347fddb8f75A4998; alt. Digital Currency Address—ETH 0xaf8d1839c3c67cf571aa74B5c12398d4901147B3; alt. Digital Currency Address—ETH 0x6Bf694a291DF3FeC1f7e69701E3ab6c592435Ae7; alt. Digital Currency Address—ETH 0x3aac1cC67c2ec5Db4eA850957b967Ba153aD6279; alt. Digital Currency Address—ETH 0x723B78e67497E85279CB204544566F4dC5d2acA0; alt. Digital Currency Address—ETH 0x0E3A09dDA6B20aFbB34aC7cD4A6881493f3E7bf7; alt. Digital Currency Address—ETH 0x76D85B4C0Fc497EeCc38902397aC608000A06607; alt. Digital Currency Address—ETH 0xCC84179FFD19A1627E79F8648d09e095252Bc418; alt. Digital Currency Address—ETH 0xD5d6f8D9e784d0e26222ad3834500801a68D027D; alt. Digital Currency Address—ETH

0x407CcEeaA7c95d2FE22 50Bf9F2c105aA7AAFB512; alt. Digital Currency Address—ETH 0x833481186f16Cece 3f1Eeea1a694c42034c3a0dB; alt. Digital Currency Address—ETH 0xd8D7DE3349ccaA0F de6298fe6D7b7d0d34586193; alt. Digital Currency Address—ETH 0x8281Aa6795aDE17C8 973e1aedcA380258Bc124F9; alt. Digital Currency Address—ETH 0x57b2B8c82F065de8Ef 5573f9730fC1449B403C9f; alt. Digital Currency Address—ETH 0x05E0b5B40B7b66098 C2161A5EE11C5740A3A7C45; alt. Digital Currency Address—ETH 0x23173fE8b96A4Ad8d2 E17fB83EA5dcccdCa1Ae52; alt. Digital Currency Address—ETH 0x538Ab61E8A9fc1b2f93 b3dd9011d662d89bE6FE6; alt. Digital Currency Address—ETH 0x94Be88213a387E992 Dd87DE56950a9aef34b9448; alt. Digital Currency Address—ETH 0x242654336ca22057 14071898f67E254EB49ACdCe; alt. Digital Currency Address—ETH 0x776198CCF446DFa168 347089d7338879273172cF; alt. Digital Currency Address—ETH 0xeDC5d01286f99A0665 59F60a585406f3878a033e; alt. Digital Currency Address—ETH 0xD692Fd2D0b2Fbd2e52 CFa5B5b9424bC981C30696; alt. Digital Currency Address—ETH 0xca0840578f57fe71599 d29375e16783424023357; alt. Digital Currency Address—ETH 0xDF3A408c53E5078af6e8 fb2A85088D46Ee09A61b; alt. Digital Currency Address—ETH 0x743494b60097A223001 8079c02fe21a7B687EAA5; alt. Digital Currency Address—ETH 0x94C92F096437ab9958f C0A37F09348f30389Ae79; alt. Digital Currency Address—ETH 0x5efda50f22d34F262c 29268506C5Fa42cB56A1Ce; alt. Digital Currency Address—ETH 0x2f50508a8a3d323b 91336fa3ea6ae50e55f32185; alt. Digital Currency Address—ETH 0xCEe71753C9820f063b 38FDbE4cFDAf1d3D928A80; alt. Digital Currency Address—ETH 0xffbac21a641dcfe455 2920138d90f3638b3c9fba; alt. Digital Currency Address—ETH 0x179f48c78f57a3a78f 0608cc9197b8972921d1d2; alt. Digital Currency Address—ETH 0xb04E030140b30C27bcdf aafFFA98C57d80eDa7B4; alt. Digital Currency Address—ETH 0x77777feddddffc19ff86 db637967013e6c6a116c; alt. Digital Currency Address—ETH 0x3efa30704d2b8bbac82 1307230376556cf8cc39e; alt. Digital Currency Address—ETH 0x746aebc06d2ae31b71ac 51429a19d54e797878e9; alt. Digital Currency Address—ETH 0xd90e2f925DA726b50C4E d8D0Fb90Ad053324F31b; alt. Digital Currency Address—ETH 0x5f6c97C6AD7bdd0AE7E0 Dd4ca33A4ED3fDabD4D7; alt. Digital Currency Address—ETH 0xf4B067dD14e95Bab89Be 928c07Cb22E3c94E0DAA; alt. Digital Currency Address—ETH 0x58E8dCC13BE9780fC42E 8723D8EaD4CF46943dF2; alt. Digital Currency Address—ETH 0x01e2919679362dFBC9ee 1644Ba9C6da6D6245BB1; alt. Digital Currency Address—ETH 0x2FC93484614a34f26F 7970CBB94615bA109BB4bf; alt. Digital Currency Address—ETH 0x26903a5a198D571422b 2b4EA08b56a37cbD68c89; alt. Digital Currency Address—ETH 0xB20c66C4DE72433F3c E747b58B86830c459CA911; alt. Digital Currency Address—ETH 0x2573BAc39EBe2901B 4389CD468F2872cF7767FAF; alt. Digital Currency Address—ETH 0x527653eA119F3E6a1F5 BD18fbF4714081D7B31ce; alt. Digital Currency Address—ETH 0x653477c392c16b076560 3074f157314Cc4f40c32; alt. Digital Currency Address—ETH 0x88fd245fEdeC4A936e70 0f9173454D1931B4C307; alt. Digital Currency Address—ETH 0x09193888b3f38C82d Edfda55259A82C0E7De875E; alt. Digital Currency Address—ETH 0x5cab7692D4E940964 62119ab7bF57319726Eed2A; alt. Digital Currency Address—ETH 0x756C4628E57F7e7f8a 459EC2752968360Cf4D1AA; alt. Digital Currency Address—ETH 0x722122dF12D4e14e13Ac 3b6895a86e84145b6967; alt. Digital Currency Address—ETH 0x94A1B5CdB22c43faab 4AbEb5c74999895464Ddaf; alt. Digital Currency Address—ETH 0xb541fc07bC7619fD 4062A54d96268525cBC6FfEF; alt. Digital Currency Address—ETH 0xD82ed8786D7c69DC7e 052F7A542AB047971E73d2; alt. Digital Currency Address—ETH 0xDD4c48C0B24039969fC 16D1cdF626eaB821d3384; alt. Digital Currency Address—ETH 0xF67721A2D8F736E75a 49FdD7FAd2e31D8676542a; alt. Digital Currency Address—ETH 0x9AD122c22B14202B4490e DAf288FDb3C7cb3ff5E; alt. Digital Currency Address—ETH 0xD691F27f38B395864Ea86 CfC7253969B409c362d; alt. Digital Currency Address—ETH 0xaEaaC358560e11f52454 D997AAFF2c5731B6f8a6; alt. Digital Currency Address—ETH 0x1356c899D8C9467C7f71 C195612F8A395aBf2f0a; alt. Digital Currency Address—ETH 0xA60C772958a3eD56c1F 15dD055bA37AC8e523a0D; alt. Digital Currency Address—ETH 0xBA214C1c1928a32Bffe 790263E38B4Af9bFCD659; alt. Digital Currency Address—ETH 0xb1C8094B234DcE6e03f 10a5b673c1d8C69739A00; alt. Digital Currency Address—ETH 0xF60dD140cFf0706bAE9 Cd734Ac3ae76AD9eBC32A; alt. Digital Currency Address—ETH 0x8589427373D6D84E98 730D7795D8f6f8731FDA16; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; Organization Established Date 2019 [DPRK3] [CYBER2].

Designated pursuant to section l(a)(iii)(B) of Executive Order 13694 of April 1, 2015, ''Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities,'' 80 FR 18077, 3 CFR, 2015 Comp., p. 297, as amended by Executive Order 13757 of December 28, 2016, ''Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities,'' 82 FR 1, 3 CFR, 2016 Comp., p. 659 (E.O. 13694, as amended) for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, an activity described in section 1(a)(ii) of E.O. 13694, as amended.

Also designated pursuant to section 2(a)(vii) of Executive Order 13722 of March 15, 2016, ''Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions with Respect to North Korea,'' 81 FR 14943, 3 CFR, 2016 Comp., p. 446 (E.O. 13722), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or

services to or in support of, any person whose property and interests in property are blocked pursuant to E.O. 13722.

Dated: November 8, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–24798 Filed 11–14–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On November 8, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. OO, Kyaw Min, Yangon, Burma; DOB 18 Jan 1982; nationality Burma; Gender Male; National ID No. 14/MAMAKA N 140703 (Burma) (individual) [BURMA–EO14014].

Designated pursuant to section 1(a)(i) of Executive Order 14014 of February 10, 2021, ''Blocking Property With Respect to the Situation in Burma'' (''E.O. 14014''), 86 FR 9429, for operating in the defense sector of the Burmese economy or any other sector of the Burmese economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State.

Entities

1. SKY AVIATOR COMPANY LIMITED (a.k.a. SKY AVIATOR CO.; a.k.a. SKY AVIATOR CO., LTD.; a.k.a. SKY AVIATOR COMPANY LTD.; a.k.a. ''SKY AVIATOR''), No. 286, Bogyoke Street, Ward No. 2, Waibargi, North Okkalarpa Township, Yangon Region, Burma; No. 204/2, Myinthar 11th Street, Ward 14/1, South Okkalarpa Township, Yangon, Burma; Target Type Private Company; Business Registration Number 100789450 (Burma) [BURMA–EO14014].

Designated pursuant to section 1(a)(i) of E.O. 14014 for operating in the defense sector of the Burmese economy or any other sector of the Burmese economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State.

Authority: E.O. 14014, 86 FR 9429.

Dated: November 8, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–24736 Filed 11–14–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On November 7, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. RI, Sok, Dandong, China; DOB 28 Jul 1973; nationality Korea, North; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214 (individual) [DPRK3] (Linked To: AIR KORYO).

Designated pursuant to section 2(a)(viii) of Executive Order 13722 of March 15, 2016, ''Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions With Respect to North Korea,'' 81 FR 14943, 3 CFR, 2016 Comp., p. 446 (E.O. 13722 or the ''Order''), for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, AIR KORYO, a person whose property and interests in property are blocked pursuant to the Order.

2. YAN, Zhiyong, Beijing, China; DOB 15 Feb 1980; POB Shandong, China; nationality China; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214; National ID No. 370827198002151333 (China) (individual) [DPRK3] (Linked To: AIR KORYO).

Designated pursuant to section 2(a)(viii) of E.O. 13722 for being owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, AIR KORYO, a person whose property and interests in property are blocked pursuant to the Order.

Authority: E.O. 13722, 81 FR 14943, 3 CFR, 2016 Comp., p. 446.

Dated: November 7, 2022.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–24737 Filed 11–14–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of two individuals that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date.

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On November 9, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. HARIS NIZAR, Mohamad Irshad Mohamad (a.k.a. HARIS NIZAR, Mohamed Irshad Mohamed), 96–3 China Fort Road, Beruwala, Sri Lanka; DOB 27 Apr 1971; POB Beruwala, Sri Lanka; nationality Sri Lanka; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport N5636241 (Sri Lanka) expires 04 Dec 2025 (individual) [SDGT] (Linked To: TALIB, Ahmed Luqman).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,'' 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions To Combat Terrorism,'' 84 FR 48041 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AHMED LUQMAN TALIB, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. TURKMEN, Musab (Latin: TÜRKMEN, Musab) (a.k.a. TURKMAN, Musab), Sinanagha Mah. Dersvekil Sokak 55 4, Fatih, Istanbul, Turkey; DOB 11 Jan 1988; POB Eyup, Sanliurfa Merkez, Sanliurfa, Turkey; nationality Turkey; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport U01884667 (Turkey) expires 07 Apr 2021; Turkish Identification Number 68941120966 (Turkey) (individual) [SDGT] (Linked To: TALIB, Ahmed Luqman).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AHMED LUQMAN TALIB, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Dated: November 9, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–24820 Filed 11–14–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one entity whose property and interests in property have been unblocked and removed from the Specially Designated Nationals and Blocked Persons List.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea M. Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action

On November 8, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following entity are unblocked, and removed the entity from the SDN List under Executive Order 13694 of April 1, 2015, ''Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities,'' 80 FR 18077, 3 CFR, 2015 Comp., p. 297, as amended by Executive Order 13757 of December 28, 2016, ''Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities,'' 82 FR 1, 3 CFR 2016 Comp., p. 659.

Entity

1. TORNADO CASH (a.k.a. TORNADO CASH CLASSIC; a.k.a. TORNADO CASH NOVA); website tornado.cash; Digital Currency Address—ETH 0x8589427373D6D84E98730 D7795D8f6f8731FDA16; alt. Digital Currency Address—ETH 0x722122dF12D4e14e13Ac3 b6895a86e84145b6967; alt. Digital Currency Address—ETH 0xDD4c48C0B24039969fC16 D1cdF626eaB821d3384; alt. Digital Currency Address—ETH 0xd90e2f925DA726b50C4 Ed8D0Fb90Ad053324F31b; alt. Digital Currency Address—ETH 0xd96f2B1c14Db8458374d9Aca 76E26c3D18364307; alt. Digital Currency Address—ETH 0x4736dCf1b7A3d580672CcE6E7 c65cd5cc9cFBa9D; alt. Digital Currency Address—ETH 0xD4B88Df4D29F5CedD6857 912842cff3b20C8Cfa3; alt. Digital Currency Address—ETH 0x910Cbd523D972eb0a6f4c Ae4618aD62622b39DbF; alt. Digital Currency Address—ETH 0xA160cdAB225685dA1d56 aa342Ad8841c3b53f291; alt. Digital Currency Address—ETH

0xFD8610d20aA15b7B2E3Be3 9B396a1bC3516c7144; alt. Digital Currency Address—ETH 0xF60dD140cFf0706bAE9Cd 734Ac3ae76AD9eBC32A; alt. Digital Currency Address—ETH 0x22aaA7720ddd5388A3c0A3 333430953C68f1849b; alt. Digital Currency Address—ETH 0xBA214C1c1928a32Bffe79 0263E38B4Af9bFCD659; alt. Digital Currency Address—ETH 0xb1C8094B234DcE6e03f10a 5b673c1d8C69739A00; alt. Digital Currency Address—ETH 0x527653eA119F3E6a1F5BD 18fbF4714081D7B31ce; alt. Digital Currency Address—ETH 0x58E8dCC13BE9780fC42 E8723D8EaD4CF46943dF2; alt. Digital Currency Address—ETH 0xD691F27f38B395864Ea86Cf C7253969B409c362d; alt. Digital Currency Address—ETH 0xaEaaC358560e11f52454 D997AAFF2c5731B6f8a6; alt. Digital Currency Address—ETH 0x1356c899D8C9467C7f71C19 5612F8A395aBf2f0a; alt. Digital Currency Address—ETH 0xA60C772958a3eD56c1F15d D055bA37AC8e523a0D; alt. Digital Currency Address—ETH 0x169AD27A470D064DEDE56a2D 3ff727986b15D52B; alt. Digital Currency Address—ETH 0x0836222F2B2B24A3F36f 98668Ed8F0B38D1a872f; alt. Digital Currency Address—ETH 0xF67721A2D8F736E75a49F dD7FAd2e31D8676542a; alt. Digital Currency Address—ETH 0x9AD122c22B14202B44 90eDAf288FDb3C7cb3ff5E; alt. Digital Currency Address—ETH 0x905b63Fff465B9fFBF4 1DeA908CEb12478ec7601; alt. Digital Currency Address—ETH 0x07687e702b410Fa43f4cB4Af 7FA097918ffD2730; alt. Digital Currency Address—ETH 0x94A1B5CdB22c43faab4 AbEb5c74999895464Ddaf; alt. Digital Currency Address—ETH 0xb541fc07bC7619fD4062A54 d96268525cBC6FfEF; alt. Digital Currency Address—ETH 0x12D66f87A04A9E220743 712cE6d9bB1B5616B8Fc; alt. Digital Currency Address—ETH 0x47CE0C6eD5B0Ce3d3A51fdb 1C52DC66a7c3c2936; alt. Digital Currency Address—ETH 0x23773E65ed146A459 791799d01336DB287f25334; alt. Digital Currency Address—ETH 0xD21be7248e0197Ee0 8E0c20D4a96DEBdaC3D20Af; alt. Digital Currency Address—ETH 0x610B717796ad172B316836 AC95a2ffad065CeaB4; alt. Digital Currency Address—ETH 0x178169B423a011fff22B9e3 F3abeA13414dDD0F1; alt. Digital Currency Address—ETH 0xbB93e510BbCD0B7beb5A8 53875f9eC60275CF498; alt. Digital Currency Address—ETH 0x2717c5e28cf931547B621 a5dddb772Ab6A35B701; alt. Digital Currency Address—ETH 0x03893a7c7463AE47D46bc7 f091665f1893656003; alt. Digital Currency Address—ETH 0xCa0840578f57fE71599 D29375e16783424023357; alt. Digital Currency Address—ETH 0x58E8dCC13BE9780fC42E 8723D8EaD4CF46943dF2; Organization Established Date 2019; Digital Currency Address—USDC 0x8589427373D6D84E98730D7 795D8f6f8731FDA16; alt. Digital Currency Address—USDC 0x722122dF12D4e14e13Ac3b689 5a86e84145b6967; alt. Digital Currency Address—USDC 0xDD4c48C0B24039969fC16 D1cdF626eaB821d3384; alt. Digital Currency Address—USDC 0xd90e2f925DA726b50C4Ed 8D0Fb90Ad053324F31b; alt. Digital Currency Address—USDC 0xd96f2B1c14Db8458374 d9Aca76E26c3D18364307; alt. Digital Currency Address—USDC 0x4736dCf1b7A3d580672Cc E6E7c65cd5cc9cFBa9D [CYBER2].

Dated: November 8, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–24794 Filed 11–14–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Concerning Information Reporting for Form 4768

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 4768, *Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes*.

DATES: Written comments should be received on or before January 17, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov*. Please include, ''OMB Number: 1545–0181—Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes.

OMB Number: 1545–0181.

Form Project Number: Form 4768.

Abstract Form 4768 is used to request an extension of time to file an estate (and generation-skipping) tax return and/or to pay the estate (and generation-skipping) taxes and to explain why the extension should be granted. IRS uses the information to decide whether the extension should be granted.

Current Actions: There is no change in the burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Responses: 18,500.

Estimated Time per Respondent: 1 Hours 30 minutes.

Estimated Total Annual Burden Hours: 27,565.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be

retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) 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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: November 9, 2022.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2022–24828 Filed 11–14–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Environmental Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning environmental taxes.

DATES: Written comments should be received on or before January 16, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov*. Include OMB control number 1545–1361 or Environmental Taxes.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.L.Dennis@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Environmental Taxes.

OMB Number: 1545–1361.

Regulation Project Number: TD 8662.

Abstract: These regulations impose reporting and recordkeeping requirements necessary to implement Internal Revenue Code sections 4681 and 4682 relating to the tax on chemicals that deplete the ozone layer and on products containing such chemicals. The regulation affects manufacturers and importers of ozone-depleting chemicals, manufacturers of rigid foam insulation, and importers of products containing or manufactured with ozone-depleting chemicals manufacture, import, export, sell, or use ODCs. In addition, the regulation affects persons, other than manufacturers and importers of ozone-depleting chemicals, holding such chemicals for sale or for use in further manufacture on January 1, 1990, and on subsequent tax-increase dates. This regulation provides reporting and recordkeeping rules relating to taxes imposed on exports of ozone-depleting chemicals (ODCs), taxes imposed on ODCs used as medical sterilant or propellants in metered-dose inhalers, and floor stocks taxes on ODCs. The rules affect persons, other than manufacturers and importers of ozone-depleting chemicals, holding such chemicals for sale or for use in further manufacture on January 1, 1990, and on subsequent tax-increase dates. This regulation provides reporting and recordkeeping rules relating to taxes imposed on exports of ozone-depleting chemicals (ODCs), taxes imposed on ODCs used as medical sterilants or propellants in metered-dose inhalers, and floor stocks taxes on ODCs.

Current Actions: There is no change to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for profit organizations.

Estimated Number of Respondents: 150,350.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 75,265 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 9, 2022.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2022–24853 Filed 11–14–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Concerning Information Reporting for SS–8 and SS–8(PR)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning information reporting for requesting a determination of the status of a worker under the common law rules for purposes of federal employment taxes and income tax withholding.

DATES: Written comments should be received on or before January 16, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Please include, ''OMB Number: 1545–0004—Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding.

OMB Number: 1545–0004.

Form Project Number: Forms SS–8 and SS–8(PR).

Abstract: Firms and workers file Form SS–8 to request a determination of the status of a worker under the common law rules for purposes of federal employment taxes and income tax withholding.

Current Actions: This request is being submitted to update the filing estimates. The estimated number of annual responses has increased by 1,045. However, the total estimated burden has decreased by 27,333 hours due to changes in the methodology.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, Federal government, farms, and state, local or tribal governments.

Estimated Number of Respondents: 5,750.

Estimated Time per Respondent: 21 Hours 6 minutes.

Estimated Total Annual Burden Hours: 121,288.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) 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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: November 9, 2022.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2022–24827 Filed 11–14–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Bureau of Fiscal Service Information Collection Request.

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before December 15, 2022 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202)-622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Bureau of the Fiscal Service (BFS)

Title: Accounts Receivable Forms for Debt Repayment.

OMB Number: 1530–NEW.

Form Number(s): FS Form 000122: Request for Recurring Electronic Payments; FS Form 000123: Financial Statement of Debtor.

Abstract: The principal purpose for gathering this information is to evaluate a debtor's ability to pay their debt and to obtain the debtor's ACH payment information so recurring electronic payments can be set up to pay their debt.

Current Actions: Fiscal Service will insert the new forms into the customer relationship management system, so it can be added to any of the Accounts Receivable Section letters and mailed by Federal Reserve Bank, Minneapolis. The forms are necessary to evaluate the debtor's ability to pay their debt and obtain the debtor's ACH payment information so recurring electronic payments can be set up to pay their debt.

Type of Review: New.

Affected Public: Individuals.

Estimated Number of Respondents: 60 Total (FS Form 000122: 20 responses; FS Form 000123: 40 responses).

Estimated Time per Respondent: FS Form 000122: 15 minutes; FS Form 000123: 45 minutes).

Estimated Total Annual Burden Hours: 35 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2022–24802 Filed 11–14–22; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0525]

Agency Information Collection Activity: VA MATIC ENROLLMENT/ CHANGE

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, 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 January 16, 2023.

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. 2900–0525'' 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), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–XXXX'' 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: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: VA MATIC ENROLLMENT/ CHANGE (2900–0525).

OMB Control Number: 2900–0525.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insured to enroll or change the account number and/or bank from which a VA MATIC deduction was previously authorized. The information requested is authorized by law, 38 U.S.C. 1908.

Affected Public: Individuals and households.

Estimated Annual Burden: 417 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–24727 Filed 11–14–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Disciplinary Appeals Board Panel

AGENCY: Department of Veterans Affairs.

ACTION: Notice with request for comments.

SUMMARY: Section 203 of the Department of Veterans Affairs (VA) Health-Care Personnel Act of 1991 revised the disciplinary grievance and appeal procedures for employees appointed under Federal law. It also required the periodic designation of VA employees who are qualified to serve on the Disciplinary Appeals Board. These employees constitute the Disciplinary Appeals Board Panel from which board members in a case are appointed. This notice announces that the roster of employees on the panel is available for review and comment. Employees, employee organizations and other interested parties shall be provided, upon request and without charge, the list of the employees on the panel, and may submit comments concerning the suitability of any employee on the panel list.

DATES: The names that appear on the panel roster may be selected to serve on a Disciplinary Appeals Board or as a grievance examiner after December 15, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Terri McVay, Senior Employee Relations Policy Specialist, Employee Relations and Performance Management Service, Office of the Chief Human Capital Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Mailstop 051, Washington, DC 20420 or *Terri.McVay@va.gov.* Ms. McVay may be reached at 205–821–2446. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Public Law 102–40 and 38 U.S.C. 7464(d) requires that the availability of the roster be posted in the **Federal Register** periodically, but not less than annually. Requests for the panel roster and/or comments concerning suitability for service on the panel may be sent to *vaco051erpms@va.gov.*

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this

document on November 8, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2022–24757 Filed 11–14–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 87 Tuesday,
No. 219 November 15, 2022

Part II

The President

Notice of November 10, 2022—Continuation of the National Emergency With Respect to the Situation in Nicaragua

Federal Register
Vol. 87, No. 219
Tuesday, November 15, 2022

Presidential Documents

Title 3—

The President

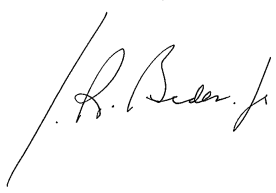
Notice of November 10, 2022

Continuation of the National Emergency With Respect to the Situation in Nicaragua

On November 27, 2018, by Executive Order 13851, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in Nicaragua. On October 24, 2022, I issued Executive Order 14088 to take additional steps with respect to the national emergency declared in Executive Order 13851.

The situation in Nicaragua, including the violent response by the Government of Nicaragua to the protests that began on April 18, 2018, and the Ortega-Murillo regime's continued systematic dismantling and undermining of democratic institutions and the rule of law, its use of indiscriminate violence and repressive tactics against civilians, as well as its corruption leading to the destabilization of Nicaragua's economy, 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 November 27, 2018, must continue in effect beyond November 27, 2022. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13851 with respect to the situation in Nicaragua.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
November 10, 2022.

[FR Doc. 2022–25006
Filed 11–14–22; 11:15 am]
Billing code 3395–F3–P

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