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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2022-1475; Project Identifier MCAI-2022-00823-T; Amendment 39-22383; AD 2023-05-14]

RIN 2120-AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022-06-02, which applied to all Airbus SAS Model A318-111, and -112 airplanes; Model A319-111, -112, -113, -114, -115, -131, -132, and -133 airplanes; Model A320-211, -212, -214, -216, -231, -232, and -233 airplanes; and Model A321-111, -112, -131, -211, -212, -213, -231, and -232 airplanes. AD 2022-06-02 required new repetitive inspections of the 80 view unit (80VU) rack lower lateral fittings, lower central support, upper fittings, central post, and shelves attachments for discrepancies, and corrective actions if necessary. This AD was prompted by a determination that the compliance times must be revised to address the unsafe condition. This AD continues to require the actions in AD 2022-06-02 with revised compliance times, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 12, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 12, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket

No. FAA-2022-1475; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2022-1475.

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

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2022-06-02, Amendment 39-21968 (87 FR 16094, March 22, 2022) (AD 2022-06-02). AD 2022-06-02 applied to all Airbus SAS Model A318-111, and -112 airplanes; Model A319-111, -112, -113, -114, -115, -131, -132, and -133 airplanes; Model A320-211, -212, -214, -216, -231, -232, and -233 airplanes; and Model A321-111, -112, -131, -211, -212, -213, -231, and -232 airplanes. AD 2022-06-02 required new repetitive inspections of the 80VU rack lower lateral fittings, lower central support, upper fittings, central post, and shelves attachments for discrepancies, and corrective actions if necessary. The FAA issued AD 2022-06-02 to address damage or cracking of the 80VU fittings

and supports, which could lead to possible disconnection of the cable harnesses to one or more computers, and if occurring during a critical phase of flight, could result in reduced control of the airplane.

The NPRM published in the **Federal Register** on November 18, 2022 (87 FR 69228). The NPRM was prompted by AD 2022-0120R1, dated June 30, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022-0120R1) (also referred to as the MCAI). The MCAI was prompted by reports of damaged lower lateral fittings of the 80VU rack and a determination that the compliance times must be revised. The MCAI states that damage or cracking of the 80VU fittings and supports could lead to possible disconnection of the cable harnesses to one or more computers, and if occurring during a critical phase of flight, could result in reduced control of the airplane.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2022-1475.

In the NPRM, the FAA proposed to retain all of the requirements in AD 2022-06-02 with revised compliance times, as specified in EASA AD 2022-0120R1, dated June 30, 2022. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from United Airlines and the Air Line Pilots Association, International (ALPA). Both supported the NPRM without change.

The FAA received an additional comment from American Airlines (AAL). The following presents the comment received on the NPRM and the FAA's response to that comment.

Request for Using a Borescope in Place of an Endoscope During the Inspections of the 80VU Components

AAL stated that EASA AD 2022-0120R1 requires the use of Airbus Service Bulletin A320-25-1BKJ, Revision 4, which changes all references from "borescope" to "endoscope" in the required for compliance (RC) inspection steps. AAL requested the AD include a statement that a "borescope" can be used in place of an "endoscope" during the inspections of the 80VU components

as they are identical for purposes of this inspection. AAL stated it considers an endoscope and a borescope to be identical for the purposes of this inspection.

The FAA agrees with the change requested by AAL. The service instructions should allow for using a borescope in place of an endoscope during the inspections of the 80VU components. The FAA has added paragraph (h)(6) to this AD to include this information.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described

in the MCAI referenced above. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0120R1 specifies procedures for repetitive special detailed inspections of the 80VU rack lower lateral fittings, lower central support, upper fittings, central post, and shelves attachments for discrepancies (referred to as damaged, or parts not

found in good condition in the service information) (including broken fittings, missing bolts, an electronics rack FIN 80VU that is in contact with structure, any bush that has migrated, burred material, and cracks), and corrective action if necessary. Corrective actions include modification, repair, and replacement. EASA AD 2022–0120R1 also describes procedures for reporting inspection results to Airbus.

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

Costs of Compliance

The FAA estimates that this AD affects 1,528 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2022–06–02 ...	Up to 8 work-hours × \$85 per hour = Up to \$680.	\$0	Up to \$680	Up to \$1,039,040.

* Table does not include estimated costs for reporting.

The FAA estimates that it would take about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is \$85 per hour. Based on these figures, the

FAA estimates the cost of reporting the inspection results on U.S. operators to be \$129,880, or \$85 per product.

The FAA estimates the following costs to do any necessary on-condition

actions that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Action	Labor cost	Parts cost	Cost per product
Repair	122 work-hours × \$85 per hour = \$10,370	\$4,150	\$14,520.
Replacement	Up to 189 work-hours × \$85 per hour = Up to \$16,065	Up to \$6,928	Up to \$22,993.
Modification	189 work-hours × \$85 per hour = \$16,065	\$7,407	\$23,472.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of

information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government.

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
- a. Removing Airworthiness Directive (AD) 2022–06–02, Amendment 39–21968 (87 FR 16094, March 22, 2022); and
 - b. Adding the following new airworthiness directive:

2023–05–14 Airbus SAS: Amendment 39–22383; Docket No. FAA–2022–1475; Project Identifier MCAI–2022–00823–T.

(a) Effective Date

This airworthiness directive (AD) is effective May 12, 2023.

(b) Affected ADs

This AD replaces AD 2022–06–02, Amendment 39–21968 (87 FR 16094, March 22, 2022) (AD 2022–06–02).

(c) Applicability

This AD applies to all Airbus SAS airplanes, certificated in any category, identified in paragraphs (c)(1) through (4) of this AD.

- (1) Model A318–111 and –112 airplanes.
- (2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.
- (3) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.
- (4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by reports of damaged lower lateral fittings of the 80VU rack and a determination that the compliance times must be revised. The FAA is issuing this AD to address damage or cracking of the 80VU fittings and supports, which could lead to possible disconnection of the cable harnesses to one or more computers, and if occurring during a critical phase of flight, could result in reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0120R1, dated June 30, 2022 (EASA AD 2022–0120R1).

(h) Exceptions to EASA AD 2022–0120R1

(1) Where EASA AD 2022–0120R1 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2022–0120R1 refers to the effective date of EASA AD 2021–0172, this AD requires using April 26, 2022 (the effective date of AD 2022–06–02).

(3) Where paragraph (2) of EASA AD 2022–0120R1 specifies “any discrepancy,” for this AD “any discrepancy” includes broken fittings, missing bolts, an electronics rack FIN 80VU that is in contact with structure, any bush that has migrated, burred material, and cracks.

(4) Where the service information referenced in EASA AD 2022–0120R1 specifies to “replace the damaged parts with new parts,” this AD allows replacing damaged parts with new or serviceable parts.

(5) This AD does not adopt the “Remarks” section of EASA AD 2022–0120R1.

(6) Where the service information referenced in EASA AD 2022–0120R1 specifies to use a “endoscope” during the inspections of the 80VU components, this AD allows using a borescope during the inspections of the 80VU components. An endoscope and a borescope are identical for the purposes of this inspection.

(i) Credit for Previous Actions

This paragraph provides credit for the inspections and corrective actions required by paragraph (g) of this AD if those actions were accomplished prior to the effective date of this AD using Airbus Service Bulletin A320–25–1BKJ, Revision 02, dated April 9, 2020, with corrections referenced in the Airbus Technical Adaptation 80827186/024/2020, Issue 1, dated September 18, 2020.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested

using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Additional Information

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

(2) For Airbus service information identified in this AD that is not incorporated by reference, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No. 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth-eas@airbus.com; website airbus.com. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0120R1, dated June 30, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0120R1, contact EASA, Konrad-Adenauer-Ufer 3, 50668

Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

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

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

Issued on March 9, 2023.

Christina Underwood,

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

[FR Doc. 2023-07167 Filed 4-6-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2022-1643; Project Identifier MCAI-2022-00799-T; Amendment 39-22376; AD 2023-05-07]

RIN 2120-AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020-21-07, which applied to all Airbus SAS Model A350-941 and -1041 airplanes. AD 2020-21-07 required replacement of affected passenger oxygen masks (which includes re-identifying the parts). This AD was prompted by a determination that additional parts are subject to the unsafe condition. This AD continues to require the actions in AD 2020-21-07, and also requires replacing additional affected parts; as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also prohibits installation of affected parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 12, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 12, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2022-1643; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available in the AD docket at regulations.gov under Docket No. FAA-2022-1643.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516-228-7317; email dat.v.le@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020-21-07, Amendment 39-21280 (85 FR 64949, October 14, 2020) (AD 2020-21-07). AD 2020-21-07 applied to all Airbus SAS Model A350-941 and -1041 airplanes. AD 2020-21-07 required replacement of affected passenger oxygen masks (which includes re-identifying the parts). The FAA issued AD 2020-21-07 to address sticking of the breathing bag on certain passenger oxygen masks, which could prevent the breathing bag from fully inflating, and possibly injure cabin occupants following a depressurization event.

The NPRM published in the **Federal Register** on December 22, 2022 (87 FR 78612). The NPRM was prompted by AD 2022-0112, dated June 17, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022-0112) (referred to after this as the MCAI). The MCAI states that additional affected

parts (emergency passenger oxygen container assembly having serial number BEHJ-XXXX) have been identified as being subject to the same unsafe condition.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA-2022-1643.

In the NPRM, the FAA proposed to continue to require the actions in AD 2020-21-07 and to require replacing additional affected parts, as specified in EASA AD 2022-0112. The NPRM also proposed to prohibit the installation of affected parts. The FAA is issuing this AD to address sticking of the breathing bag on certain passenger oxygen masks, which could prevent the breathing bag from fully inflating, and possibly injure cabin occupants following a depressurization event.

Discussion of Final Airworthiness Directive

Comments

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

Additional Changes Made to This Final Rule

Since the NPRM was published, the FAA received a parts cost estimate for the passenger oxygen masks. The FAA has revised the Costs of Compliance section of this final rule to include this parts cost.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 14 CFR Part 51

EASA AD 2022-0112 specifies procedures for replacing the affected passenger oxygen masks (those passenger oxygen masks contained in each affected emergency passenger oxygen container assembly), and re-identifying each affected part. EASA AD

2022–0112 also prohibits the installation of affected parts.

This material is reasonably available because the interested parties have access to it through their normal course

of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 30 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2020–21–07 (13 airplanes).	6 work-hours × \$85 per hour = \$510.	Up to \$4,250 (per mask assembly)	\$4,760	\$61,880
New actions	6 work-hours × \$85 per hour = \$510.	Up to \$4,250 (per mask assembly)	4,760	142,800

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2020–21–07, Amendment 39–21280 (85 FR 64949, October 14, 2020); and

■ b. Adding the following new AD:

2023–05–07 Airbus SAS: Amendment 39–22376; Docket No. FAA–2022–1643; Project Identifier MCAI–2022–00799–T.

(a) Effective Date

This airworthiness directive (AD) is effective May 12, 2023.

(b) Affected ADs

This AD replaces AD 2020–21–07, Amendment 39–21280 (85 FR 64949, October 14, 2020) (AD 2020–21–07).

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Unsafe Condition

This AD was prompted by a report that sticking effects have been observed affecting the breathing bag on certain passenger oxygen masks, and by a determination that additional parts are subject to the unsafe condition. The FAA is issuing this AD to address sticking of the breathing bag on certain passenger oxygen masks. The unsafe condition, if not addressed, could prevent the breathing bag from fully inflating, and possibly injure cabin occupants following a depressurization event.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0112, dated June 17, 2022 (EASA AD 2022–0112).

(h) Exceptions to EASA AD 2022–0112

(1) Where EASA AD 2022–0112 refers to its effective date, this AD requires using the effective date of this AD.

(2) The “Remarks” section of EASA AD 2022–0112 does not apply to this AD.

(3) Where EASA AD 2022–0112 specifies to do the replacement and re-identification specified in Airbus Service Bulletin A350–35–P013, Revision 02, dated March 8, 2022, which specifies to inspect for the part number and serial number and then do a replacement; this AD only requires the replacement and re-identification.

(4) Where service information identified in EASA AD 2022–0112 specifies to do an inspection for the date of manufacture of the affected part, this AD does not require that inspection.

(5) Where Table 3 of EASA AD 2022–0112 specifies a compliance time for airplanes on which “the SB” has not been embodied, for this AD the compliance time for those airplanes is “before exceeding 72 months since airplane date of manufacture or within 30 days after the effective date of this AD, whichever occurs later.”

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC)*: Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516-228-7317; email dat.v.le@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022-0112, dated June 17, 2022.

(ii) [Reserved]

(3) For EASA AD 2022-0112, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADS@easa.europa.eu; website easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

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

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

Issued on March 5, 2023.

Christina Underwood,

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

[FR Doc. 2023-07095 Filed 4-6-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2022-0889; Project Identifier AD-2021-00614-T; Amendment 39-22373; AD 2023-05-04]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 787-8, 787-9, and 787-10 airplanes. This AD was prompted by reports of ram air turbine (RAT) pump barrel assembly failures, which caused the RAT to fail to provide hydraulic power. The failures were determined to be caused by variations in the bronze metal used during manufacturing, which can result in varying fatigue properties. This AD requires an inspection or records review to determine the part number of the RAT pump and control module (PCM) and of the RAT assembly, and replacement of any RAT PCM or any RAT assembly having certain part numbers. This AD also prohibits the installation of affected parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 12, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 12, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2022-0889; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments

received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; website myboeingfleet.com.

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at regulations.gov under Docket No. FAA-2022-0889.

FOR FURTHER INFORMATION CONTACT:

Douglas Tsuji, Senior Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St, Des Moines, WA 98198; phone: 206-231-3548; email: douglas.tsuji@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 787-8, 787-9, and 787-10 airplanes. The NPRM published in the **Federal Register** on September 21, 2022 (87 FR 57653). The NPRM was prompted by reports of RAT pump barrel assembly failures, which caused the RAT to fail to provide hydraulic power. The failures were determined to be caused by variations in the bronze metal used during manufacturing, which can result in varying fatigue properties. In the NPRM, the FAA proposed to require an inspection or records review to determine the part number of the RAT PCM and of the RAT assembly, and replacement of any RAT PCM or any RAT assembly having certain part numbers. In the NPRM, the FAA also proposed to prohibit the installation of affected parts. The FAA is issuing this AD to address fatigue or cracking of the RAT hydraulic pump bronze cylinder block. This condition, if not addressed, could cause failure of the RAT pump and subsequent loss of backup hydraulic power for the flight controls, which can result in loss of continued safe flight and landing.

Discussion of Final Airworthiness Directive**Comments**

The FAA received comments from the Air Line Pilots Association, International (ALPA) who supported the NPRM without change.

The FAA received additional comments from United Airlines (UAL), who supported the NPRM and also had additional comments, and from Boeing. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Revise a RAT Assembly Part Number

Boeing requested that paragraphs (j)(1) and (2) of the proposed AD be revised to specify RAT assembly part number (P/N) 7000011H08, instead of P/N 700011H08.

The FAA agrees with the commenter's request to fix this typographical error and has revised paragraphs (j)(1) and (2) of this AD accordingly.

Request To Revise the Applicability

Boeing requested that the proposed AD be revised to specify that it applies only to the airplanes identified in Boeing Alert Requirements Bulletin B787-81205-SB290039-00 RB, Issue 002, dated October 26, 2021, instead of all Model 787-8, 787-9, and 787-10 airplanes. Boeing claimed that Model 787 airplanes delivered after the incorporation of CN-AA82746B were configured with the current version of the RAT assembly and PCM. Boeing added that, by design and process, there are no alternative installation configurations permitted either in production or in service.

The FAA disagrees with the commenter's request. As stated in the NPRM, the FAA considers the RAT

PCMs and RAT assemblies to be rotatable parts, and has determined that these parts could later be installed on airplanes that were initially delivered with acceptable RAT PCMs and RAT assemblies, thereby subjecting those airplanes to the unsafe condition. The FAA acknowledges there is a low possibility that airplanes delivered with the latest parts have had those parts replaced, but the possibility does exist. The FAA has not changed this AD regarding this issue.

Request To Clarify Related AD

UAL requested clarification of how the requirements of AD 2016-07-25, Amendment 39-18470 (71 FR 21720, April 13, 2016) (AD 2016-07-25) impact the requirements of the proposed AD. UAL noted that Boeing Alert Requirements Bulletin B787-81205-SB290039-00 RB, Issue 002, dated October 26, 2021, provides an alternative method of compliance (AMOC) for AD 2016-07-25 to incorporate Boeing Alert Requirements Bulletin B787-81205-SB290039-00 RB, Issue 002, dated October 26, 2021, on aircraft in the applicability of AD 2016-07-05.

The FAA agrees to clarify. AD 2016-07-25 will not affect this AD. AD 2016-07-25 requires changes to the RAT assembly's volume fuse to address potential failure of the RAT pump at low speeds. AD 2016-07-25 requires installation of a new RAT assembly, P/N 7000011H08, with a compliance time of within 36 months after May 18, 2016. This AD requires replacing any RAT assembly having P/N 7000011H08 with P/N 7000011H09. The RAT assembly P/N 7000011H09 incorporates the previous volume fuse changes and the new pump barrel changes. The AMOC to AD 2016-07-25 associated with

Boeing Alert Requirements Bulletin B787-81205-SB290039-00 RB Issue 002, dated October 26 2021, essentially allows installation of the RAT assembly having P/N 7000011H09 in lieu of P/N 7000011H08. The FAA has not changed this AD regarding this issue.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin B787-81205-SB290039-00 RB, Issue 002, dated October 26, 2021. This service information specifies procedures for replacing any RAT PCM having part number (P/N) 7001267H06 with P/N 7001267H07, and replacing any RAT assembly having P/N 7000011H08 with P/N 7000011H09. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in ADDRESSES.

Costs of Compliance

The FAA estimates that this AD affects 148 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection or records review	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$12,580

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Action	Labor cost	Parts cost	Cost per product
Replace RAT PCM	5 work-hours × \$85 per hour = \$425.	Up to \$95,210	Up to \$95,635.
Replace RAT assembly	5 work-hours × \$85 per hour = \$425.	Up to \$680,912	Up to \$681,337.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more

detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in

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

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023-05-04 The Boeing Company:
Amendment 39-22373; Docket No. FAA-2022-0889; Project Identifier AD-2021-00614-T.

(a) Effective Date

This airworthiness directive (AD) is effective May 12, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 787-8, 787-9, and 787-10 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic power.

(e) Unsafe Condition

This AD was prompted by reports of ram air turbine (RAT) assembly failures, which caused the RAT to fail to provide hydraulic power. The failures were determined to be caused by variations in the bronze metal used during manufacturing, which can result in varying fatigue properties. The FAA is issuing this AD to address fatigue or cracking of the RAT hydraulic pump bronze cylinder block. This condition, if not addressed, could cause failure of the RAT pump and subsequent loss of backup hydraulic power for the flight controls, which can result in loss of continued safe flight and landing.

(f) Compliance

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

(g) Inspection

For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before the effective date of this AD: Within 60 months after the effective date of this AD, inspect the RAT pump and control module (PCM) and the RAT assembly to determine the part number. A review of airplane maintenance records is acceptable in lieu of this inspection if the RAT PCM and the RAT assembly part numbers can be conclusively determined from that review.

(h) Replacements

If, during the inspection required by paragraph (g), any RAT PCM having part number (P/N) 7001267H06 or any RAT assembly having P/N 7000011H08 is found: Except as specified by paragraph (i) of this AD, at the applicable times specified in the “Compliance” paragraph of Boeing Alert Requirements Bulletin B787-81205-SB290039-00 RB, Issue 002, dated October 26, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787-81205-SB290039-00 RB, Issue 002, dated October 26, 2021.

Note 1 to paragraph (h): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin B787-81205-SB290039-00, Issue 002, dated October 26, 2021, which is referred to in Boeing Alert Requirements Bulletin B787-81205-SB290039-00 RB, Issue 002, dated October 26, 2021.

(i) Exception to Service Information Specifications

Where Boeing Alert Requirements Bulletin B787-81205-SB290039-00 RB, Issue 002, dated October 26, 2021, uses the phrase “the Issue 001 date of Requirements Bulletin B787-81205-SB290039-00 RB,” this AD requires using “the effective date of this AD.”

(j) Parts Installation Prohibition

(1) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after the effective date of this AD: Installation of a RAT PCM, part number (P/N) 7001267H06, or RAT assembly, P/N 7000011H08, is prohibited as of the effective date of this AD.

(2) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before the effective date of this AD, installation of a RAT PCM, P/N 7001267H06, or RAT assembly, P/N 7000011H08, is allowed until the actions required by paragraph (h) of this AD are accomplished.

(k) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Requirements Bulletin B787-81205-SB290039-00 RB, Issue 001, dated November 3, 2020.

(l) Alternative Methods of Compliance (AMOCs)

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

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

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

(m) Additional Information

(1) For more information about this AD, contact Douglas Tsuji, Senior Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206-231-3548; email: douglas.tsuji@faa.gov.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(3) and (4) of this AD.

(n) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin B787–81205–SB290039–00 RB, Issue 002, dated October 26, 2021.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website myboeingfleet.com.

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

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

Issued on March 5, 2023.

Christina Underwood,

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

[FR Doc. 2023–07090 Filed 4–6–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1242; Project Identifier MCAI–2022–00433–T; Amendment 39–22379; AD 2023–05–10]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A330–800, A330–900, A340–200, A340–300, A340–500, and A340–600 series airplanes. This AD was prompted by a report that an A319 airplane lost the right-hand front windshield in flight. Due to the design similarity, this condition can also exist or develop on Model A330 and A340 airplanes. This AD requires repetitive detailed inspections (DET) and electrical test measurements (ETM) of the affected parts and applicable corrective action, and prohibits the installation of affected parts under certain conditions, as specified in a

European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 12, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 12, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2022–1242; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at regulations.gov under Docket No. FAA–2022–1242.

FOR FURTHER INFORMATION CONTACT:

Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email vladimir.ulyanov@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A330–201, A330–202, A330–203, A330–223, A330–223F, A330–243, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, A330–343, A330–743L, A330–841, A330–941, A340–211, A340–212, A340–213, A340–311, A340–312, A340–313, A340–541, A340–542, A340–642, and A340–643 airplanes. The

NPRM published in the **Federal Register** on September 30, 2022 (87 FR 59342). The NPRM was prompted by AD 2022–0057, dated March 28, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0057) (also referred to as the MCAI). The MCAI states that a Model A319 airplane lost the right-hand front windshield in flight, with consequent rapid cockpit depressurization, causing damage to cockpit items/systems and significant increase of flightcrew workload. The investigations identified several contributing factors, including manufacturing variability, fretting between windshield components, water ingress, and electrical braids corrosion, which led to a thermal shock/overheat, damaging more than one windshield structural ply and impairing the structural integrity of the windshield. Due to the design similarity, this condition can also exist or develop on Model A330 and A340 airplanes. This condition, if not addressed, could possibly result in injury to the flightcrew and in-flight depressurization of the airplane, and would significantly increase pilot workload.

In the NPRM, the FAA proposed to require repetitive DET and ETM of the affected parts and applicable corrective action, and to prohibit the installation of affected parts under certain conditions, as specified in EASA AD 2022–0057. The FAA is issuing this AD to address possible windshield failure. This condition, if not addressed, could possibly result in injury to the flightcrew and in-flight depressurization of the airplane, and would significantly increase pilot workload.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2022–1242.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from Air Line Pilots Association, International (ALPA), who supported the NPRM without change.

The FAA received additional comments from Delta Air Lines (DAL) and another commenter whose comments were outside the scope of this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Clarify Testing Requirements

DAL asked for clarification of whether a windshield that fails the DET must have the ETM performed before it is

replaced. DAL noted that, according to EASA AD 2022–0057 paragraphs (2) and (4), an ETM is to follow any DET. However, paragraphs (6) and (7) of EASA AD 2022–0057 prescribe corrective action (part replacement) for failing the DET or the ETM respectively, and it is unclear whether the ETM is required after a part fails the DET.

The FAA agrees to clarify the windshield testing requirements. EASA AD 2022–0057 requires both a DET and an ETM, regardless of the inspection results. The DET determines whether there is delamination and water ingress or corrosion inside the terminal block, whereas the ETM involves insulation and dielectric tests that help to detect potential wiring insulation damage and core degradation. Since there are multiple contributing factors and results related to the unsafe condition, it is important that both the DET and ETM be accomplished so that the extent of the unsafe condition can be addressed. Paragraph (6) of the EASA AD 2022–0057 requires replacement of the affected part if during DET any defect is found, and paragraph (7) of the EASA AD 2022–0057 requires replacement of the affected part in case the results of the ETM are found in the “red area.”

Request To Change a Definition

DAL requested a change to the definition of “defect” given in paragraph (h)(2) of the proposed AD. DAL recommended using the DET “pass/fail” criteria given in the vendor service information as the definition, because “defect” is not defined in either the MCAI or the service information. DAL explained that the definition in the proposed AD includes “manufacturing variability” and “fretting between windshield components,” but the service information does not specify a search for either of these factors. Also, “manufacturing variability” cannot be inspected for without identifying what the norm would be.

The FAA agrees to change the definition of “defect” to be consistent with the terminology in the service information. The definition change is based on the pass/fail criteria of the

vendor service bulletin which specifies that if any humidity, moisture/water ingress, or corrosion is detected, or if the connector cannot be opened, the windshield must be rejected. However, the Airbus service information uses “delamination and/or bubbles” in lieu of the term humidity, and the FAA has determined “delamination and/or bubbles” is a more appropriate term. The FAA has changed paragraph (h)(2) of this AD to clarify that, for purposes of this AD, defects include evidence of any delamination and/or bubbles, moisture/water ingress, or corrosion, or a connector that cannot be opened.

Request To Allow the Use of Repair Design Approval Forms (RDAFs)

DAL requested that the FAA approve the use of certain RDAFs as acceptable methods for completing certain steps specified in the service information, because those steps are not accomplishable as they are described in the service information.

The FAA does not agree to grant the requested approval because the FAA has not been able to determine whether the RDAFs provide an acceptable method for addressing the unsafe condition. Reportedly, Airbus has issued these RDAFs specifically for the use by certain operators, including DAL, and have not granted their applicability to other operators. The use of these RDAFs may be approved through the alternative method of compliance (AMOC) process specified in paragraph (j)(1) of this AD if requested. This AD has not been changed.

Request for Clarification on Affected Parts

DAL requested clarification of whether the amendment part numbers listed in the service information represent affected parts and suggested creating an additional exception in paragraph (h) of the proposed AD to specify this. DAL remarked that the EASA AD 2022–0057 lists 10 affected parts. However, the vendor service information lists those same 10 part numbers and several amendment part numbers in its applicability.

The affected parts identified in Table 1 of EASA AD 2022–0057 refer to all of the part numbers listed in the service information, including those marked as “A”, “B”, “Amendt A” or “Amendt B” in the table of windshield part numbers in the vendor service information. An exception has been added as paragraph (h)(4) of this AD, stating “For Table 1 of EASA AD 2022–0057, the identified part numbers include those regardless of amendment level following the part number.”

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0057 specifies procedures for repetitive DET and ETM of the affected parts and applicable corrective actions. Corrective actions include replacement. EASA AD 2022–0057 also limits the installation of affected parts under certain conditions. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Costs of Compliance

The FAA estimates that this AD affects 131 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
5 work-hours × \$85 per hour = \$425	\$0	\$425	\$55,675

The FAA estimates the following costs to do any necessary on-condition action that would be required based on

the results of any required actions. The FAA has no way of determining the

number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
20 work-hours × \$85 per hour = \$1,700	\$11,393	\$13,093

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–05–10 Airbus SAS: Amendment 39–22379; Docket No. FAA–2022–1242; Project Identifier MCAI–2022–00433–T.

(a) Effective Date

This airworthiness directive (AD) is effective May 12, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) through (9) of this AD, certificated in any category.

- (1) Model A330–201, –202, –203, –223, and –243 airplanes.
- (2) Model A330–223F and –243F airplanes.
- (3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.
- (4) Model A330–841 airplanes.
- (5) Model A330–941 airplanes.
- (6) Model A340–211, –212, and –213 airplanes.
- (7) Model A340–311, –312, and –313 airplanes.
- (8) Model A340–541 airplanes.
- (9) Model A340–642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 56, Windows.

(e) Unsafe Condition

This AD was prompted by a report that a Model A319 airplane lost the right-hand front windshield in flight. Due to the design similarity, this condition can also exist or develop on Model A330 and A340 series airplanes. The FAA is issuing this AD to address possible windshield failure. This condition, if not addressed, could possibly result in injury to the flightcrew and in-flight depressurization of the airplane, and would significantly increase pilot workload.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0057, dated March 28, 2022 (EASA AD 2022–0057).

(h) Exceptions to EASA AD 2022–0057

(1) Where EASA AD 2022–0057 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (6) of EASA AD 2022–0057 refers to a "defect, as identified in the SB," for purposes of this AD, defects include evidence of any delamination and/or bubbles, moisture/water ingress, or corrosion, or a connector that cannot be opened.

(3) The "Remarks" section of EASA AD 2022–0057 does not apply to this AD.

(4) For Table 1 of EASA AD 2022–0057, the identified part numbers include those regardless of amendment level following the part number.

(i) No Reporting Requirement

Although paragraphs (11) and (12) of EASA AD 2022–0057 and the service information referenced therein specify to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any service information contains procedures

or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Additional Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206-231-3229; email vladimir.ulyanov@faa.gov.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022-0057, dated March 28, 2022.

(ii) [Reserved]

(3) For EASA AD 2022-0057, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

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

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

Issued on March 9, 2023.

Christina Underwood,

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

[FR Doc. 2023-07135 Filed 4-6-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2022-1473; Project Identifier MCAI-2022-00902-T; Amendment 39-22363; AD 2023-04-16]

RIN 2120-AA64

Airworthiness Directives; Dassault Aviation Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020-21-20, which applied to certain Dassault Aviation Model FALCON 900EX airplanes. AD 2020-21-20 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and/or airworthiness limitations. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD continues to require the actions in AD 2020-21-20 and requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations; as specified in European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 12, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 12, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of December 7, 2020 (85 FR 69144, November 2, 2020).

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2022-1473; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available in the AD docket at regulations.gov under Docket No. FAA-2022-1473.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone 206-231-3226; email tom.rodriguez@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020-21-20, Amendment 39-12193 (85 FR 69144, November 2, 2020) (AD 2020-21-20). AD 2020-21-20 applied to certain Dassault Aviation Model FALCON 900EX airplanes. AD 2020-21-20 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and/or airworthiness limitations. The FAA issued AD 2020-21-20 to address, among other things, fatigue cracking and damage in principal structural elements; such fatigue cracking and damage could result in reduced structural integrity of the airplane. AD 2020-21-20 specifies that accomplishing the actions required by paragraph (g) or (i) of that AD terminates the requirements of paragraph (g)(1) of AD 2010-26-05, Amendment 39-16544 (75 FR 79952, December 21, 2010) for Dassault Aviation Model FALCON 900EX airplanes, serial number (S/N) 97 and S/Ns 120 and higher. This AD therefore continues to allow that terminating action.

The NPRM published in the **Federal Register** on November 18, 2022 (87 FR 69214). The NPRM was prompted by AD 2022-0141, dated July 7, 2022, issued by EASA (EASA AD 2022-0141) (referred to after this as the MCAI). The MCAI states that new or more restrictive airworthiness limitations have been developed.

In the NPRM, the FAA proposed to continue to require the actions AD

2020–21–20. The NPRM also proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in EASA AD 2022–0141.

The FAA is issuing this AD to address, among other things, fatigue cracking and damage in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1473.

Discussion of Final Airworthiness Directive

Comments

The FAA received one comment from an anonymous commenter. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Clarify Reason for Proposed AD

The commenter requested more detail, and clarification of why the FAA issued the proposed AD.

The FAA agrees to clarify. EASA, which is the State of Design Authority for the affected airplanes, issued the MCAI to address an unsafe condition. The FAA reviewed the MCAI and concurred that an unsafe condition is likely to exist or develop in the affected airplanes. In order to require affected operators to accomplish the proposed actions, the FAA must issue an airworthiness directive. The FAA issued the proposed rule to provide interested parties the opportunities to provide feedback, which the FAA considered before issuing this AD. Once the AD is effective, operators must comply with the required actions specified in this AD to ensure the identified unsafe condition is addressed. The FAA did not change this AD as a result of this comment.

Conclusion

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

adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0141. This service information specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This AD also requires EASA AD 2020–0117, dated May 20, 2020, which the Director of the Federal Register approved for incorporation by reference as of December 7, 2020 (85 FR 69144, November 2, 2020).

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

Costs of Compliance

The FAA estimates that this AD affects 191 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2020–21–20 to be \$7,650 (90 work-hours × \$85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new actions to be \$7,650 (90 work-hours × \$85 per work-hour).

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of

that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
- a. Removing Airworthiness Directive 2020–21–20, Amendment 39–21293 (85 FR 69144, November 2, 2020); and
 - b. Adding the following new airworthiness directive:

2023–04–16 Dassault Aviation:

Amendment 39–22363; Docket No. FAA–2022–1473; Project Identifier MCAI–2022–00902–T.

(a) Effective Date

This airworthiness directive (AD) is effective May 12, 2023.

(b) Affected ADs

(1) This AD replaces AD 2020–21–20, Amendment 39–21293 (85 FR 69144, November 2, 2020) (AD 2020–21–20).

(2) This AD affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (AD 2010–26–05).

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 900EX airplanes, serial

number (S/N) 97 and S/Ns 120 and higher, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 15, 2021.

(d) Subject

Air Transport Association (ATA) of America Code: 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address, among other things, fatigue cracking and damage in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program, With a New Terminating Action

This paragraph restates the requirements of paragraph (i) of AD 2020–21–20, with a new terminating action. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before October 2, 2019: Except as specified in paragraph (h) of this AD, comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0117, dated May 20, 2020 (EASA AD 2020–0117). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2020–0117 With No Changes

This paragraph restates the exceptions specified in paragraph (j) of AD 2020–21–20, with no changes.

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0117 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2020–0117 specifies revising “the approved AMP” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the “limitations, tasks and associated thresholds and intervals” specified in paragraph (3) of EASA AD 2020–0117 within 90 days after December 7, 2020 (the effective date of AD 2020–21–20).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2020–0117 is at the applicable “associated thresholds” specified in paragraph (3) of EASA AD 2020–0117, or within 90 days after December 7, 2020 (the effective date of AD 2020–21–20), whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2020–0117 do not apply to this AD.

(5) The “Remarks” section of EASA AD 2020–0117 does not apply to this AD.

(i) Retained Restrictions on Alternative Actions and Intervals, With a New Exception

This paragraph restates the requirements of paragraph (k) of AD 2020–21–20, with a new exception. Except as required by paragraph (j) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) and intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2020–0117.

(j) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0141, dated July 7, 2022. Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2022–0141

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0141 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0141 specifies revising “the approved AMP” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0141 is at the applicable “limitations” and “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2022–0141, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0141 do not apply to this AD.

(5) The “Remarks” section of EASA AD 2022–0141 does not apply to this AD.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (e.g., inspections) and intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2022–0141.

(m) Terminating Action for Certain Actions in AD 2010–26–05

Accomplishing the actions required by paragraph (g) or (j) of this AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, for Dassault Aviation Model FALCON 900EX airplanes, S/N 97 and S/Ns 120 and higher only.

(n) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(o) Additional Information

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

(p) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on May 12, 2023.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0141, dated July 7, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR on December 7, 2020 (85 FR 69144, November 2, 2020).

(i) European Union Aviation Safety Agency (EASA) AD 2020–0117, dated May 20, 2020.

(ii) [Reserved]

(5) For EASA ADs 2020–0117 and 2022–0141, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find these EASA ADs on the EASA website at ad.easa.europa.eu.

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

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

Issued on February 17, 2023.

Christina Underwood,

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

[FR Doc. 2023-07091 Filed 4-6-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2022-1651; Project Identifier MCAI-2022-00893-T; Amendment 39-22360; AD 2023-04-13]

RIN 2120-AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021-04-02, which applied to certain Dassault Aviation Model FALCON 2000EX airplanes. AD 2021-04-02 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD continues to require the actions in AD 2021-04-02, and also requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference (IBR). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 12, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 12, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of March 30, 2021 (86 FR 10738, February 23, 2021).

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2022-1651; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information

(MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2022-1651.

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

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021-04-02, Amendment 39-21423 (86 FR 10738, February 23, 2021) (AD 2021-04-02). AD 2021-04-02 applied to certain Dassault Aviation Model FALCON 2000EX airplanes. AD 2021-04-02 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2021-04-02 to address reduced structural integrity of the airplane. AD 2021-04-02 specified that accomplishing the revision required by paragraph (g) or (i) of that AD terminates the requirements of paragraph (g)(1) of AD 2010-26-05, Amendment 39-16544 (75 FR 79952, December 21, 2010), for Dassault Aviation Model FALCON 2000EX airplanes.

The NPRM published in the **Federal Register** on December 23, 2022 (87 FR 78878). The NPRM was prompted by AD 2022-0136, dated July 6, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022-0136) (referred to after this as the MCAI). The MCAI states that new or more restrictive airworthiness limitations have been developed.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2022-1651.

In the NPRM, the FAA proposed to continue to require the actions in AD 2021-04-02, and to require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in EASA AD 2022-0136.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 14 CFR Part 51

EASA AD 2022-0136 specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This AD also requires EASA AD 2020-0114, dated May 20, 2020, which the Director of the Federal Register approved for incorporation by reference as of March 30, 2021 (86 FR 10738, February 23, 2021).

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

Costs of Compliance

The FAA estimates that this AD affects 245 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2021-04-02 to be \$7,650 (90 work-hours × \$85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-

hours per operator, although the agency recognizes that this number may vary from operator to operator. In the past, the agency has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new actions to be \$7,650 (90 work-hours × \$85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
 - a. Removing Airworthiness Directive (AD) 2021-04-02, Amendment 39-21423 (86 FR 10738, February 23, 2021); and
 - b. Adding the following new AD:

2023-04-13 Dassault Aviation:

Amendment 39-22360; Docket No. FAA-2022-1651; Project Identifier MCAI-2022-00893-T.

(a) Effective Date

This airworthiness directive (AD) is effective May 12, 2023.

(b) Affected ADs

- (1) This AD replaces AD 2021-04-02, Amendment 39-21423 (86 FR 10738, February 23, 2021) (AD 2021-04-02).
- (2) This AD affects AD 2010-26-05, Amendment 39-16544 (75 FR 79952, December 21, 2010) (AD 2010-26-05).

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 2000EX airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before January 15, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2021-04-02, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before February 15, 2020, except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency

(EASA) AD 2020-0114, dated May 20, 2020 (EASA AD 2020-0114). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2020-0114, With No Changes

This paragraph restates the exceptions specified in paragraph (j) of AD 2021-04-02, with no changes.

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2020-0114 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2020-0114 specifies revising "the approved AMP" within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the "limitations, tasks and associated thresholds and intervals" specified in paragraph (3) of EASA AD 2020-0114 within 90 days after March 30, 2021 (the effective date of AD 2021-04-02).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2020-0114 is at the applicable "associated thresholds" specified in paragraph (3) of EASA AD 2020-0114, or within 90 days after the March 30, 2021 (the effective date of AD 2021-04-02), whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2020-0114 do not apply to this AD.

(5) The "Remarks" section of EASA AD 2020-0114 does not apply to this AD.

(i) Retained Provision: No Alternative Actions or Intervals, With a New Exception

This paragraph restates the requirements of paragraph (k) of AD 2021-04-02, with a new exception. Except as required by paragraph (j) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless they are approved as specified in the provisions of the "Ref. Publications" section of EASA AD 2020-0114.

(j) New Maintenance or Inspection Program Revision

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022-0136, dated July 6, 2022 (EASA AD 2022-0136). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2022-0136

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022-0136 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022-0136 specifies revising "the approved AMP" within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0136 is at the applicable “limitation” and “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2022–0136, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0136 do not apply to this AD.

(5) The “Remarks” section of EASA AD 2022–0136 does not apply to this AD.

(l) New Provisions for Alternative Actions and Intervals

After the maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (e.g., inspections), and intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2022–0136.

(m) Terminating Action for Certain Actions in AD 2010–26–05

Accomplishing the actions required by paragraph (g) or (j) of this AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, for Dassault Aviation Model FALCON 2000EX airplanes only.

(n) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(o) Additional Information

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

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this

paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

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

(3) The following service information was approved for IBR on May 12, 2023.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0136, dated July 6, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR on March 30, 2021 (86 FR 10738, February 23, 2021).

(i) European Union Aviation Safety Agency (EASA) AD 2020–0114, dated May 20, 2020.

(ii) [Reserved]

(5) For EASA ADs 2020–0114 and 2022–0136, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find these EASA ADs on the EASA website at ad.easa.europa.eu.

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

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

Issued on February 17, 2023.

Christina Underwood,

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

[FR Doc. 2023–07092 Filed 4–6–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1648; Project Identifier MCAI–2022–00894–T; Amendment 39–22357; AD 2023–04–10]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020–26–07, which applied to all Dassault Aviation Model MYSTERE–FALCON 900 airplanes. AD 2020–26–07 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD was

prompted by a determination that a new airworthiness limitation is necessary. This AD continues to require the actions in AD 2020–26–07, and also requires revising the existing maintenance or inspection program, as applicable, to incorporate a new airworthiness limitation; as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 12, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 12, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of January 25, 2021 (85 FR 82901, December 21, 2020).

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2022–1648; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at regulations.gov under Docket No. FAA–2022–1648.

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

SUPPLEMENTARY INFORMATION:**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020-06-07, Amendment 39-21362 (85 FR 82901, December 21, 2020) (AD 2020-06-07). AD 2020-06-07 applied to all Dassault Aviation Model MYSTERE-FALCON 900 airplanes. AD 2020-06-07 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2020-06-07 to address reduced structural integrity of the airplane. AD 2020-26-07 also specified that accomplishing the revision required by that AD terminated certain requirements of AD 2010-26-05, Amendment 39-16544 (75 FR 79952, December 21, 2010) (AD 2010-26-05).

The NPRM published in the **Federal Register** on December 16, 2022 (87 FR 77037). The NPRM was prompted by AD 2022-0137, dated July 6, 2022, issued by EASA (EASA AD 2022-0137) (also referred to as the MCAI). The MCAI states that since issuance of EASA AD 2020-0115, dated May 20, 2020 (EASA AD 2020-0115), a new maintenance task for eddy current inspections of the flap tracks 2 and 5 has been introduced.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA-2022-1648.

In the NPRM, the FAA proposed to continue to require revising the existing maintenance or inspection program, as applicable to incorporate new or more restrictive airworthiness limitations, as specified in EASA AD 2010-0115. The NPRM also proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate a new airworthiness limitation, as specified in EASA AD 2022-0137. The FAA is issuing this AD to address reduced structural integrity of the airplane.

Discussion of Final Airworthiness Directive**Comments**

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

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA

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

Related Service Information Under 1 CFR Part 51

EASA AD 2022-0137 specifies a new airworthiness limitation for eddy current inspections of the flap tracks 2 and 5.

This AD also requires EASA 2020-0115, which the Director of the Federal Register approved for incorporation by reference as of January 25, 2021 (85 FR 82901, December 21, 2020).

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

Costs of Compliance

The FAA estimates that this AD affects 151 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2020-26-07 to be \$7,650 (90 work-hours × \$85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new actions to be \$7,650 (90 work-hours × \$85 per work-hour).

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil

aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2020-06-07, Amendment 39-21362 (85 FR 82901, December 21, 2020); and

■ b. Adding the following new airworthiness directive:

2023-04-10 Dassault Aviation:

Amendment 39-22357; Docket No. FAA-2022-1648; Project Identifier MCAI-2022-00894-T.

(a) Effective Date

This airworthiness directive (AD) is effective May 12, 2023.

(b) Affected ADs

(1) This AD replaces AD 2020-26-07, Amendment 39-21362 (85 FR 82901, December 21, 2020) (AD 2020-26-07).

(2) This AD affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (AD 2010–26–05).

(c) Applicability

This AD applies to all Dassault Aviation Model MYSTERE–FALCON 900 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new airworthiness limitations are necessary. The FAA is issuing this AD to address reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2020–26–07, with no changes. Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0115, dated May 20, 2020 (EASA AD 2020–0115). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2020–0115, With No Changes

This paragraph restates the exceptions specified in paragraph (j) of AD 2020–26–07, with no changes.

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0115 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2020–0115 specifies revising “the approved AMP” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the “limitations, tasks and associated thresholds and intervals” specified in paragraph (3) of EASA AD 2020–0115 within 90 days after January 25, 2021 (the effective date of AD 2020–26–07).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2020–0115 is at the applicable “associated thresholds” specified in paragraph (3) of EASA AD 2020–0115, or within 90 days after January 25, 2021 (the effective date of AD 2020–26–07), whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2020–0115 do not apply to this AD.

(5) The “Remarks” section of EASA AD 2020–0115 does not apply to this AD.

(i) Retained Restrictions on Alternative Actions or Intervals, With a New Exception

This paragraph restates the requirements of paragraph (k) of AD 2020–26–07, with a new exception. Except as required by paragraph (j) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2020–0115.

(j) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0137, dated July 6, 2022 (EASA AD 2022–0137). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2022–0137

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2022–0137.

(2) Paragraph (3) of EASA AD 2022–0137 specifies revising “the approved AMP” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0137 is at the applicable “limitations” and “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2022–0137, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2022–0137.

(5) This AD does not adopt the “Remarks” section of EASA AD 2022–0137.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (e.g., inspections) and intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2022–0137.

(m) Terminating Actions for Certain Requirements in AD 2010–26–05

Accomplishing the actions required by paragraph (g) or (j) of this AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, for Dassault Aviation Model MYSTERE–FALCON 900 airplanes only.

(n) Additional AD Provisions

The following provisions also apply to this AD:

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

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

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

(o) Additional Information

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

(p) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on May 12, 2023.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0137, dated July 6, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR on January 25, 2021 (85 FR 82901, December 21, 2020).

(i) European Union Aviation Safety Agency (EASA) AD 2020–0115, dated May 20, 2020.

(ii) [Reserved]

(5) For EASA ADs 2022–0137 and 2020–0115, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

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

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

Issued on February 17, 2023.

Christina Underwood,

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

[FR Doc. 2023-07093 Filed 4-6-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2023-0173; Project Identifier MCAI-2022-01153-T; Amendment 39-22356; AD 2023-04-09]

RIN 2120-AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A310 series airplanes. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 24, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 24, 2023.

The FAA must receive comments on this AD by May 22, 2023.

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

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA-2023-0173; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; website *easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*.

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at *regulations.gov* under Docket No. FAA-2023-0173.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2023-0173; Project Identifier MCAI-2022-01153-T" at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and

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

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022-0172, dated August 22, 2022 (EASA AD 2022-0172) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A310-203, A310-204, A310-221, A310-222, A310-203C, A310-304, A310-308, A310-322, A310-324, and A310-325 airplanes. Model A310-203C and A310-308 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability. The MCAI states that new or more restrictive airworthiness limitations have been developed.

EASA AD 2022-0172 specifies that it requires a task (limitation) related to the replacement of life-limited parts already in Airbus A310 Airworthiness Limitations Section (ALS) Part 1 Safe Life Airworthiness Limitations Items (SL-ALI) Revision 02 that is required by EASA AD 2017-0204 (which corresponds to FAA AD 2018-18-19, Amendment 39-19398 (83 FR 47056, September 18, 2018) (AD 2018-18-19)), and that incorporation of EASA AD 2022-0172 invalidates (terminates) prior instructions for that task. This AD therefore terminates the limitations for SL-ALI, as required by paragraph (g)(3) of AD 2018-18-19, for Model A310-203, -204, -221, -222, -304, -322, -324, and -325 airplanes only.

The FAA is issuing this AD to address fatigue damage in principal structural

elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane. You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-0173.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022-0172, which specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

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

AD Requirements

This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2022-0172 described previously, as incorporated by reference. Any differences with EASA AD 2022-0172 are identified as exceptions in the regulatory text of this AD.

This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (k)(1) of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with

requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2022-0172 is incorporated by reference in this AD. This AD requires compliance with EASA AD 2022-0172 through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022-0172 does not mean that operators need comply only with that section. For example, where the AD requirement refers to "all required actions and compliance times," compliance with this AD requirement is not limited to the section titled "Required Action(s) and Compliance Time(s)" in EASA AD 2022-0172. Service information required by EASA AD 2022-0172 for compliance will be available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-0173 after this final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (e.g., inspections or intervals) may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under "Additional AD Provisions." This new format includes a "New Provisions for Alternative Actions and Intervals" paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for "good cause," finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

There are currently no domestic operators of these products. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the foregoing reason(s), the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. For any affected airplane that may be imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with this AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new actions to be \$7,650 (90 work-hours × \$85 per work-hour).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866, and
- (2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023-04-09 Airbus SAS: Amendment 39–22356; Docket No. FAA–2023–0173; Project Identifier MCAI–2022–01153–T.

(a) Effective Date

This airworthiness directive (AD) is effective April 24, 2023.

(b) Affected ADs

This AD affects AD 2018–18–19, Amendment 39–19398 (83 FR 47056, September 18, 2018) (AD 2018–18–19).

(c) Applicability

This AD applies to Airbus SAS Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue damage in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0172, dated August 22, 2022 (EASA AD 2022–0172).

(h) Exceptions to EASA AD 2022–0172

(1) This AD does not adopt the requirements specified in paragraph (1) of EASA AD 2022–0172.

(2) Paragraph (2) of EASA AD 2022–0172 specifies revising "the approved AMP" within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (2) of EASA 2022–0172 is at the applicable "limitations" as incorporated by the requirements of paragraph (2) of EASA AD 2022–0172, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraph (3) of EASA AD 2022–0172.

(5) This AD does not adopt the "Remarks" section of EASA AD 2022–0172.

(i) Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) and intervals are allowed unless they are approved as specified in the provisions of the "Ref. Publications" section of EASA AD 2022–0172.

(j) Terminating Action for AD 2018–18–19

For Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes only: Accomplishing the actions required by this

AD terminates the corresponding requirements of paragraph (g)(3) of AD 2018–18–19 for the tasks identified in the service information referenced in EASA AD 2022–0172 only.

(k) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(l) Additional Information

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

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0172, dated August 22, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0172, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

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

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

Issued on February 17, 2023.

Christina Underwood,

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

[FR Doc. 2023-07094 Filed 4-6-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2023-0014; Project Identifier MCAI-2022-01160-T; Amendment 39-22382; AD 2023-05-13]

RIN 2120-AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A300 B4-600, B4-600R, and F4-600R series airplanes, and Model A300 C4-605R Variant F airplanes (collectively called Model A300-600 series airplanes). This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 12, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 12, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-0014; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact EASA,

Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-0014.

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

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A300-600 series airplanes. The NPRM published in the **Federal Register** on January 13, 2023 (88 FR 2276). The NPRM was prompted by AD 2022-0173, dated August 24, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022-0173) (also referred to as the MCAI). The MCAI states that new or more restrictive airworthiness limitations have been developed.

EASA AD 2022-0173 specifies that it requires a task (limitation) related to the replacement of life-limited parts already in Airbus A300-600 Airworthiness Limitations Section (ALS) Part 1 Safe Life Airworthiness Limitations Items (SL-ALI) Revision 02 that is required by EASA AD 2017-0204 (which corresponds to FAA AD 2018-18-19, Amendment 39-19398 (83 FR 47056, September 18, 2018) (AD 2018-18-19)), and that incorporation of EASA AD 2022-0173 invalidates (terminates) prior instructions for that task. For Model A300 B4-601, B4-603, B4-620, B4-622, B4-605R, B4-622R, C4-605R Variant F, F4-605R and F4-622R airplanes only: this AD therefore terminates the limitations for the safe life limits required by paragraph (g) of AD 2018-18-19, for the tasks identified in the service information referenced in EASA AD 2022-0173 only.

In the NPRM, the FAA proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as

specified in EASA AD 2022-0173. The FAA is issuing this AD to address fatigue damage in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-0014.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from Air Line Pilots Association, International (ALPA), who supported the NPRM without change.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 14 CFR Part 51

The FAA reviewed EASA AD 2022-0173, which specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 128 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per

operator to be \$7,650 (90 work-hours × \$85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–05–13 Airbus SAS: Amendment 39–22382; Docket No. FAA–2023–0014; Project Identifier MCAI–2022–01160–T.

(a) Effective Date

This airworthiness directive (AD) is effective May 12, 2023.

(b) Affected ADs

This AD affects AD 2018–18–19, Amendment 39–19398 (83 FR 47056, September 18, 2018) (AD 2018–18–19).

(c) Applicability

This AD applies to all Airbus SAS airplanes, certificated in any category, identified in paragraphs (c)(1) through (4) of this AD.

(1) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(2) Model A300 B4–605R and B4–622R airplanes.

(3) Model A300 C4–605R Variant F airplanes.

(4) Model A300 F4–605R and F4–622R airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue damage in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0173, dated August 24, 2022 (EASA AD 2022–0173).

(h) Exceptions to EASA AD 2022–0173

(1) This AD does not adopt the requirements specified in paragraph (1) of EASA AD 2022–0173.

(2) Paragraph (2) of EASA AD 2022–0173 specifies revising "the approved AMP" within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (2) of EASA 2022–0173 is at the applicable "limitations" as incorporated by the requirements of paragraph (2) of EASA AD 2022–0173, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraph (3) of EASA AD 2022–0173.

(5) This AD does not adopt the "Remarks" section of EASA AD 2022–0173.

(i) Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) and intervals are allowed unless they are approved as specified in the provisions of the "Ref. Publications" section of EASA AD 2022–0173.

(j) Terminating Action for AD 2018–18–19

For Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, C4–605R Variant F, F4–605R and F4–622R airplanes only: Accomplishing the actions required by this AD terminates the corresponding requirements of AD 2018–18–19, for the tasks identified in the service information referenced in EASA AD 2022–0173 only.

(k) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(l) Additional Information

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

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0173, dated August 24, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0173, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

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

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

Issued on March 9, 2023.

Christina Underwood,

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

[FR Doc. 2023–07136 Filed 4–6–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1308; Project Identifier MCAI–2022–00532–T; Amendment 39–22377; AD 2023–05–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–04–05, which applied to certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. AD 2021–04–05 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD continues to require the actions in AD 2021–04–05 and requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations.

The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 12, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 12, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of March 30, 2021 (86 FR 10799, February 23, 2021).

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2022–1308; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Airbus Canada Limited Partnership, 13100 Henri-Fabre Boulevard, Mirabel, Québec J7N 3C6, Canada; telephone 450–476–7676; email a220_crc@abc.airbus; website a220world.airbus.com.

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at regulations.gov under Docket No. FAA–2022–1308.

FOR FURTHER INFORMATION CONTACT:

Gabriel Kim, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email 9-avs-nyaco-cos@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021–04–05, Amendment 39–21426 (86 FR 10799, February 23, 2021) (AD 2021–04–05). AD 2021–04–05 applied to certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. AD 2021–04–05 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more

restrictive airworthiness limitations. The FAA issued AD 2021–04–05 to address reduced structural integrity of the airplane or reduced controllability of the airplane.

The NPRM published in the **Federal Register** on October 31, 2022 (87 FR 65538). The NPRM was prompted by AD CF–2022–18, dated April 14, 2022, issued by Transport Canada, which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states that the manufacturer has published a revision to the airworthiness limitations, which contains new or more restrictive requirements, and states that failure to comply with the instructions could result in an unsafe condition.

In the NPRM, the FAA proposed to continue to require the actions in AD 2021–04–05 and to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address reduced structural integrity of the airplane or reduced controllability of the airplane.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2022–1308.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from Air Line Pilots Association, International (ALPA), who supported the NPRM without change.

The FAA received additional comments from Delta Airlines (DAL). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Require MCAI Instead of Service Information

DAL requested that the FAA require compliance with the MCAI instead of service information so that Issue 014.00 of the airworthiness limitations is required through incorporation by reference (IBR) of Transport Canada AD CF–2022–18. DAL noted that the type certificate data sheet (TCDS) for these airplane models (TCDS T00008NY) states that any document that is Transport Canada-approved or Transport Canada-approved through the Manufacturer's Design Approval Representative is accepted by the FAA and is considered FAA-approved. DAL added that Transport Canada has released AD CF–2022–58, dated October 12, 2022 (Transport Canada AD CF–2022–58), which mandates Issue 015.00 of Airbus Canada Limited Partnership

A220 Airworthiness Limitations BD500–3AB48–11400–02. DAL further noted that Issue 016.00 of Airbus Canada Limited Partnership A220 Airworthiness Limitations BD500–3AB48–11400–02 is anticipated to be issued in December of 2022, with Issue 017.00 possibly being issued in June 2023.

The FAA disagrees with the request to revise the AD. The FAA acknowledges that not incorporating by reference the Transport Canada AD means that operators may not use later-approved revisions of the service information without obtaining an alternative method of compliance (AMOC). However, in this case, it was determined that the IBR the MCAI method would not be used due to the complexity of the AD and the FAA's decision to not mandate new certification maintenance requirements (CCMRs). Additionally, the FAA will review each new revision of Airbus Canada Limited Partnership A220 Airworthiness Limitations BD500–3AB48–11400–02, to determine if the FAA needs to issue an AD to require incorporating a new revision. The FAA acknowledges that Transport Canada AD CF–2022–58 mandates Issue 015.00 of Airbus Canada Limited Partnership A220 Airworthiness Limitations BD500–3AB48–11400–02. However, the FAA considers that delaying this action to require the incorporation of later airworthiness limitations would be inappropriate because an unsafe condition exists and the airworthiness limitations identified in this final rule address the identified unsafe service information that include new or more restrictive airworthiness limitations. The FAA has not changed this AD in this regard.

Request To Remove a Requirement

DAL requested the FAA add an exceptions paragraph to the proposed AD to no longer mandate the CCMR. DAL stated that since publication of AD 2021–04–05, it has had to request an AMOC with each subsequent revision of the airworthiness limitations document, and has not been allowed to incorporate the new CCMRs in later revisions of the airworthiness limitations document. DAL explained that each time it has requested an AMOC, the AMOC was delayed and time-limited approved, and in several cases nearly led to DAL grounding its fleet.

The FAA disagrees with removing the reference to the CCMR section of the AWLs. The FAA's understanding is that Transport Canada will not mandate CCMRs in the future. Since AD 2021–04–05 required the CCMRs specified in Airbus Canada Limited Partnership

A220 Airworthiness Limitations BD500–3AB48–11400–02, Issue 011.00, dated June 18, 2020, the FAA has determined that those CCMRs can continue to be mandated, but newer revisions of the CCMRs cannot be mandated by the FAA.

However, equivalent airplane maintenance manual (AMM) tasks may be mandated in lieu of CCMRs in future rulemaking. The FAA has not changed this AD in this regard.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Canada Limited Partnership A220 Airworthiness Limitations BD500–3AB48–11400–02, Issue 014.00, dated February 3, 2022. This service information describes airworthiness limitations for fuel tank systems, safe life limits, and certification maintenance requirements.

This AD also requires Airbus Canada Limited Partnership A220 Airworthiness Limitations, BD500–3AB48–11400–02, Issue 011.00, dated June 18, 2020, which the Director of the Federal Register approved for incorporation by reference as of March 30, 2021 (86 FR 10799, February 23, 2021).

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

Costs of Compliance

The FAA estimates that this AD affects 70 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2021–04–05 to be \$7,650 (90 work-hours × \$85 per work-hour).

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be \$7,650 (90 work-hours × \$85 per work-hour).

The FAA estimates the total cost per operator for the new actions to be \$7,650 (90 work-hours × \$85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2021–04–05, Amendment 39–21426 (86 FR 10799, February 23, 2021); and

■ b. Adding the following new AD:

2023–05–08 Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Amendment 39–22377; Docket No. FAA–2022–1308; Project Identifier MCAI–2022–00532–T.

(a) Effective Date

This airworthiness directive (AD) is effective May 12, 2023.

(b) Affected ADs

This AD replaces AD 2021–04–05, Amendment 39–21426 (86 FR 10799, February 23, 2021) (AD 2021–04–05).

(c) Applicability

This AD applies to Airbus Canada Limited Partnership airplanes, certificated in any category, as identified in paragraphs (c)(1) and (2) of this AD.

(1) Model BD–500–1A10 airplanes, serial numbers 50001 and subsequent with an original airworthiness certificate or original export certificate of airworthiness issued on or before February 3, 2022.

(2) Model BD–500–1A11 airplanes, serial numbers 55001 and subsequent with an original airworthiness certificate or original export certificate of airworthiness issued on or before February 3, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address reduced structural integrity of the airplane or reduced controllability of the airplane.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program, With a New Terminating Action

This paragraph restates the requirements of paragraph (g) of AD 2021–04–05, with a new terminating action. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 18, 2020: Within 90 days after March 30, 2021 (the effective date of AD 2021–04–05), revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Airbus Canada Limited Partnership A220 Airworthiness Limitations, BD500–3AB48–11400–02, Issue 011.00, dated June 18, 2020. The initial compliance time for doing the tasks is at the time specified in Airbus Canada Limited Partnership A220 Airworthiness Limitations, BD500–3AB48–11400–02, Issue 011.00, dated June 18, 2020, or within 90 days after March 30, 2021, whichever occurs later. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (i) of this AD terminates the requirements of this paragraph for Sections 01, “Airworthiness limitations—Introduction;” 02, “Certification maintenance requirements—General;” 04, “ALI structural inspections—General;” 05, “Life limited parts (systems)—General;” 06, “Life limited parts (structures)—General;” 07, “Fuel system limitations—General;” 08, “Critical design configuration control limitations—General;” 09, “Power plant limitations—General;” 10, “Structural repair limitations—General;” and 11, “Limit of validity—General;” of Airbus Canada Limited Partnership A220 Airworthiness Limitations, BD500–3AB48–11400–02, Issue 011.00, dated June 18, 2020, only.

(h) Retained No Alternative Actions, Intervals, or Critical Design Configuration Control Limitations (CDCCLs), With a New Exception

This paragraph restates the requirements of paragraph (h) of AD 2021–04–05, with a new exception. Except as required by paragraph (i) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

(i) New Maintenance or Inspection Program Revision

Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Sections 01, “Airworthiness limitations—Introduction;” 02, “Certification maintenance requirements—General;” 04, “ALI structural inspections—General;” 05, “Life limited parts—General;” 06, “Fuel system limitations—General;” 07, “Critical design

configuration control limitations—General;” 08, “Power plant limitations—General;” 09, “Structural repair limitations—General;” and 10, “Limit of validity—General;” of Airbus Canada Limited Partnership A220 Airworthiness Limitations, BD500–3AB48–11400–02, Issue 014.00, dated February 3, 2022. The initial compliance time for doing the tasks is at the time specified in Airbus Canada Limited Partnership A220 Airworthiness Limitations, BD500–3AB48–11400–02, Issue 014.00, dated February 3, 2022, or within 90 days after the effective date of this AD, whichever occurs later. Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the actions required by paragraph (g) of this AD for Sections 01, “Airworthiness limitations—Introduction;” 02, “Certification maintenance requirements—General;” 04, “ALI structural inspections—General;” 05, “Life limited parts (systems)—General;” 06, “Life limited parts (structures)—General;” 07, “Fuel system limitations—General;” 08, “Critical design configuration control limitations—General;” 09, “Power plant limitations—General;” 10, “Structural repair limitations—General;” and 11, “Limit of validity—General;” of Airbus Canada Limited Partnership A220 Airworthiness Limitations, BD500–3AB48–11400–02, Issue 011.00, dated June 18, 2020, only.

(j) New No Alternative Actions, Intervals, or CDCCLs

After the existing maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (e.g., inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (k)(1) of this AD.

(k) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada; or Airbus Canada Limited Partnership’s Transport Canada Design Approval Organization (DAO). If

approved by the DAO, the approval must include the DAO-authorized signature.

(l) Additional Information

(1) Refer to Transport Canada AD CF–2022–18, dated April 14, 2022, for related information. This Transport Canada AD may be found in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2022–1308.

(2) For more information about this AD, contact Gabriel Kim, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email 9-avs-nyaco-cos@faa.gov.

(m) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on May 12, 2023.

(i) Airbus Canada Limited Partnership A220 Airworthiness Limitations, BD500–3AB48–11400–02, Issue 014.00, dated February 3, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR on March 30, 2021 (86 FR 10799, February 23, 2021).

(i) Airbus Canada Limited Partnership A220 Airworthiness Limitations, BD500–3AB48–11400–02, Issue 011.00, dated June 18, 2020.

(ii) [Reserved]

(5) For service information identified in this AD, contact Airbus Canada Limited Partnership, 13100 Henri-Fabre Boulevard, Mirabel, Québec J7N 3C6, Canada; telephone 450–476–7676; email a220@world.airbus.com.

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

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

Issued on March 5, 2023.

Christina Underwood,

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

[FR Doc. 2023–07096 Filed 4–6–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1661; Project Identifier MCAI–2022–00714–T; Amendment 39–22380; AD 2023–05–11]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. This AD was prompted by a report that in case of a flap, slat, or slat-flap failure in flight, resetting the slat flap control unit (SFCU) to clear the error using the airplane flight manual (AFM) could result in the stall protection computer (SPC) setting the low-speed cue to the most conservative stall advance mode. This AD requires revising the non-normal procedures section of the existing AFM to provide the flightcrew with procedures for addressing failure warnings in the slat and flap control systems. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 12, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 12, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2022–1661; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email ac.yul@aero.bombardier.com; website [bombardier.com](https://www.bombardier.com).

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2022–1661.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email 9-avs-nyaco-cos@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. The NPRM published in the **Federal Register** on January 13, 2023 (88 FR 2286). The NPRM was prompted by AD CF–2022–30, dated June 3, 2022, (referred to after this as the MCAI) issued by Transport Canada, which is the aviation authority for Canada. The MCAI states in case of a flap, slat, or slat-flap failure in flight, resetting the SFCU to clear the error using the AFM could result in the SPC setting the low-speed cue to the most conservative stall advance mode instead of that published in the AFM. This condition could result in unexpected stall warnings (aural and visual) as well as stick shaker activation during approach for a landing, increasing flightcrew workload during a critical phase of flight. The higher landing speed could consequently require a greater landing distance and possible diversion to a longer runway.

In the NPRM, the FAA proposed to require revising the non-normal procedures section of the existing AFM to provide the flightcrew with procedures for addressing failure warnings in the slat and flap control systems. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2022–1661.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following Bombardier service information. This service information specifies procedures for revising the non-normal procedures section of the existing AFM to provide the flightcrew with procedures for addressing failure warnings in the slat and flap control systems. These documents are distinct since they apply to different airplane models.

- C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedure, of the Bombardier Global Express AFM, Publication No. CSP 700–1, Revision 112, dated May 19, 2022. (For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–1, use Document Identification No. GL 700 AFM–1.)

- C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedure, of the Bombardier Global Express XRS AFM, Publication No. CSP 700–1A, Revision 112, dated May 19, 2022. (For obtaining the procedures for Bombardier Global Express XRS AFM, Publication No. CSP 700–1A, use Document Identification No. GL 700 AFM–1A.)

- C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedure, of the Bombardier Global 5000 AFM, Publication No. CSP 700–5000–1, Revision 73, dated May 19, 2022. (For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–5000–1, use Document Identification No. GL 5000 AFM.)

- C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedure, of the Bombardier Global 5000 AFM, Publication No. CSP 700–5000–1V, Revision 42, dated May 19, 2022. (For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–5000–1V, use Document Identification No. GL 5000 GVFD AFM.)

- C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05–10, Flight Controls,

Chapter 5—Non Normal Procedure, of the Bombardier Global 5500 AFM, Publication No. CSP 700–5500–1, Revision 14, dated May 19, 2022. (For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–5000–1V, use Document Identification No. GL 5500 AFM.)

- C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedure, of the Bombardier Global 6000 AFM, Publication No. CSP 700–1V, Revision 42, dated May 19, 2022. (For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–1V, use Document Identification No. GL 6000 AFM.)

- C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedure, of the Bombardier Global 6500 AFM, Publication No. CSP 700–6500–1, Revision 14, dated May 19, 2022. (For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–5000–1V, use Document Identification No. GL 6500 AFM.)

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

Costs of Compliance

The FAA estimates that this AD affects 450 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × \$85 per hour = \$85	\$0	\$85	\$38,250

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section

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

Regulatory Findings

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

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

(1) Is not a “significant regulatory action” under Executive Order 12866,
(2) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–05–11 Bombardier, Inc.: Amendment 39–22380; Docket No. FAA–2022–1661; Project Identifier MCAI–2022–00714–T.

(a) Effective Date

This airworthiness directive (AD) is effective May 12, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes, certificated in any category, having serial numbers 9001 through 9998 inclusive and 60001 through 60097 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Unsafe Condition

This AD was prompted by a report that in case of a flap, slat, or slat-flap failure in flight, resetting the slat flap control unit

(SFCU) to clear the error using the airplane flight manual (AFM) could result in the stall protection computer (SPC) setting the low-speed cue to the most conservative stall advance mode. The FAA is issuing this AD to address a flap, slat, or slat-flap failure warning. The unsafe condition, if not addressed, could result in unexpected stall warnings (aural and visual) as well as stick shaker activation during approach for a landing, increasing flightcrew workload during a critical phase of flight. The higher landing speed could consequently require a greater landing distance and possible diversion to a longer runway.

(f) Compliance

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

(g) Revision of the Existing AFM

Within 30 days after the effective date of this AD: Revise the existing AFM to incorporate the information specified in the AFM sections of the applicable AFM revisions specified in figure 1 to paragraph (g) of this AD.

Figure 1 to paragraph (g)—*AFM References*

Bombardier Airplane Model (Marketing Designation)	AFM	AFM Section	AFM Revision and Issue Date
BD-700-1A10 (Global Express)	Bombardier Global Express AFM, Publication No. CSP 700-1 ¹	C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat- Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat- Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05-10, Flight Controls, Chapter 5 - Non Normal Procedures	Revision 112, dated May 19, 2022
BD-700-1A10 (Global Express XRS)	Bombardier Global Express AFM, Publication No. CSP 700- 1A ²	C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat- Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat- Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05-10, Flight Controls, Chapter 5 - Non Normal Procedures	Revision 112, dated May 19, 2022
BD-700-1A11 (Global 5000)	Bombardier Global 5000 AFM, Publication No. CSP 700- 5000-1 ³	C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat- Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat- Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05-10, Flight Controls, Chapter 5 - Non Normal Procedures	Revision 73, dated May 19, 2022

Bombardier Airplane Model (Marketing Designation)	AFM	AFM Section	AFM Revision and Issue Date
BD-700-1A11 (Global 5000 ft. GVFD)	Bombardier Global 5000 Featuring Global Vision Flight Deck AFM, Publication No. CSP 700- 5000-1V ⁴	C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat- Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat- Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05-10, Flight Controls, Chapter 5 - Non Normal Procedures	Revision 42, dated May 19, 2022
BD-700-1A11 (Global 5500)	Bombardier Global 5500 AFM, Publication No. CSP 700- 5500-1 ⁵	C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat- Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat- Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05-10, Flight Controls, Chapter 5 - Non Normal Procedures	Revision 14, dated May 19, 2022
BD-700-1A10 (Global 6000)	Bombardier Global 6000 AFM, Publication No. CSP 700- 1V ⁶	C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat- Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat- Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05-10, Flight Controls, Chapter 5 - Non Normal Procedures	Revision 42, dated May 19, 2022

Bombardier Airplane Model (Marketing Designation)	AFM	AFM Section	AFM Revision and Issue Date
BD-700-1A10 (Global 6500)	Bombardier Global 6500 AFM, Publication No. CSP 700- 6500-1 ⁷	C. Flap Fail (Caution), D. Slat Fail (Caution), E. Slat-Flap Fail (Caution), and F. Slat Fault (Caution) or Flap Fault (Caution) or Slat-Flap Fault (Caution) procedures of the Slat and Flap Control System, Section 05-10, Flight Controls, Chapter 5 - Non Normal Procedures	Revision 14, dated May 19, 2022
¹ For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700-1, use Document Identification No. GL 700 AFM-1. ² For obtaining the procedures for Bombardier Global Express XRS AFM, Publication No. CSP 700-1A, use Document Identification No. GL 700 AFM-1A. ³ For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700-5000-1, use Document Identification No. GL 5000 AFM. ⁴ For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700-5000-1V, use Document Identification No. GL 5000 GVFD AFM. ⁵ For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700-5000-1V, use Document Identification No. GL 5500 AFM. ⁶ For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700-1V, use Document Identification No. GL 6000 AFM. ⁷ For obtaining the procedures for Bombardier Global 6500 AFM, Publication No. CSP 700-6500-1, use Document Identification No. GL 6500 AFM.			

(h) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the New York ACO Branch, mail it to ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (i)(2) of this AD or email to: 9-avs-nyaco-cos@faa.gov. If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada; or Bombardier, Inc.'s Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Additional Information

(1) Refer to Transport Canada AD CF-2022-30, dated June 3, 2022, for related information. This Transport Canada AD may be found in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2022-1661.

(2) For more information about this AD, contact Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone

516-228-7300; email 9-avs-nyaco-cos@faa.gov.

(j) Material Incorporated by Reference

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

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

(i) Slat and Flap Control System, Section 05-10, Flight Controls, Chapter 5—Non Normal Procedures, of the Bombardier Global Express AFM, Publication No. CSP 700-1, Revision 112, dated May 19, 2022.

Note 1 to paragraph (j)(2)(i): For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700-1, use Document Identification No. GL 700 AFM-1.

(ii) Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedures, of the Bombardier Global Express XRS AFM, Publication No. CSP 700–1A, Revision 112, dated May 19, 2022.

Note 2 to paragraph (j)(2)(ii): For obtaining the procedures for Bombardier Global Express XRS AFM, Publication No. CSP 700–1A, use Document Identification No. GL 700 AFM–1A.

(iii) Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedures, of the Bombardier Global 5000 AFM, Publication No. CSP 700–5000–1, Revision 73, dated May 19, 2022.

Note 3 to paragraph (j)(2)(iii): For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–5000–1, use Document Identification No. GL 5000 AFM.

(iv) Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedures, of the Bombardier Global 5000 AFM, Publication No. CSP 700–5000–1V, Revision 42, dated May 19, 2022.

Note 4 to paragraph (j)(2)(iv): For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–5000–1V, use Document Identification No. GL 5000 GVFD AFM.

(v) Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedures, of the Bombardier Global 5500 AFM, Publication No. CSP 700–5500–1, Revision 14, dated May 19, 2022.

Note 5 to paragraph (j)(2)(v): For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–

5000–1V, use Document Identification No. GL 5500 AFM.

(vi) Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedures, of the Bombardier Global 6000 AFM, Publication No. CSP 700–1V, Revision 42, dated May 19, 2022.

Note 6 to paragraph (j)(2)(vi): For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–1V, use Document Identification No. GL 6000 AFM.

(vii) Slat and Flap Control System, Section 05–10, Flight Controls, Chapter 5—Non Normal Procedures, of the Bombardier Global 6500 AFM, Publication No. CSP 700–6500–1, Revision 14, dated May 19, 2022.

Note 7 to paragraph (j)(2)(vii): For obtaining the procedures for Bombardier Global Express AFM, Publication No. CSP 700–5000–1V, use Document Identification No. GL 6500 AFM.

(3) For service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email ac.yul@aero.bombardier.com; website bombardier.com.

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on

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

Issued on March 9, 2023.

Christina Underwood,

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

[FR Doc. 2023–07134 Filed 4–6–23; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 232, 240, and 249

[Release Nos. 33–11138; 34–96492; File No. S7–20–21]

RIN 3235–AM86

Insider Trading Arrangements and Related Disclosures

Correction

In rule document 2022–27675, appearing on pages 80362–80432 in the issue of Thursday, December 29, 2022, make the following correction:

§ 229.601 [Corrected]

■ Beginning on page 80428, the “Exhibit Table” is correct to read as set forth below:

EXHIBIT TABLE

	Securities act forms										Exchange act forms					
	S-1	S-3	SF-1	SF-3	S-4 ¹	S-8	S-11	F-1	F-3	F-4 ¹	10	8-K ²	10-D	10-Q	10-K	ABS-EE
(19) Insider trading policies and procedures	*	*		*		*			*			*		*		X
	*	*		*		*			*			*		*		

¹ An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Form S–4 or F–4 to provide information about such company at a level prescribed by Form S–3 or F–3; and (2) the form, the level of which has been elected under Form S–4 or F–4, would not require such company to provide such exhibit if it were registering a primary offering.

² A Form 8–K exhibit is required only if relevant to the subject matter reported on the Form 8–K report. For example, if the Form 8–K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

[FR Doc. C1–2022–27675 Filed 4–6–23; 8:45 am]

BILLING CODE 0099–10–P

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1903

Conduct on Agency Installations

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

SUMMARY: The Central Intelligence Agency (CIA) is amending its installation security regulations to include Office of the Director of National Intelligence (ODNI) property in

the definition of Agency installation, which reflects the Agency’s authority to provide security on ODNI installations. The CIA is also removing the exemption for Federal officials or members of the Armed Forces from its prohibition on carrying weapons on Agency installations, except when such persons are either authorized by the CIA Director of Security or otherwise authorized by law for the performance of official law enforcement duties. This amendment also revises the definition of weapon to permit small amounts of irritant gas on Agency installations and revises the penalties provision to clarify that the penalty for a violation of these

regulations is up to a Class C misdemeanor.

DATES: This rule is effective April 7, 2023.

ADDRESSES: Court Liaison Officer, Office of Security, Central Intelligence Agency, Washington, DC 20505. Please include “Security Rulemaking” in the subject line of the letter.

FOR FURTHER INFORMATION CONTACT: Court Liaison Officer, (571) 280–3563.

SUPPLEMENTARY INFORMATION:

Background

Section 15 of the Central Intelligence Agency Act of 1949, as amended (50

U.S.C. 3515) (CIA Act), permits the Director of the CIA to authorize Agency personnel within the United States to perform the same functions as officers and agents of the Department of Homeland Security (DHS), as provided in 40 U.S.C. 1315(b)(2). In accordance with section 1315(b)(2), DHS officers and agents are authorized to enforce Federal laws and regulations for the protection of persons and property; carry firearms; make arrests without warrant for any offense against the United States committed in the presence of the officer or agent or for any felony cognizable under the laws of the United States if the officer or agent has reasonable ground to believe that the person to be arrested has committed or is committing a felony; serve warrants and subpoenas issued under the authority of the United States; conduct investigations, on and off the property in question, of offenses that may have been committed against property owned or occupied by the Federal Government or persons on the property; and carry out other activities for the promotion of homeland security as the Secretary of DHS may prescribe. In 1998, the CIA promulgated regulations in 32 CFR part 1903 pursuant to its authority under section 15 of the CIA Act to carry out these protective law enforcement functions.

In December 2022, Congress enacted the Intelligence Authorization Act for Fiscal Year 2023 (IAA FY23). Section 6303 of the IAA FY23 amended section 15(a) of the CIA Act to extend the CIA's law enforcement jurisdiction to Office of the Director of National Intelligence (ODNI) installations.

Summary of Revisions

The final rule revises the definition of Agency installation in 32 CFR 1903.1 to include ODNI installations, which reflects the expansion of CIA's law enforcement jurisdiction.

The final rule revises the definition of weapons in § 1903.1 to include an exemption for 2 ounces or less of irritant gas. This amendment codifies the CIA's long-standing practice of permitting small amounts of irritant gas, which individuals may carry for personal protection, on Agency installations.

The final rule revises the prohibition in § 1903.4(b)(1) on driving while impaired to more closely align the language of this prohibition with State laws on driving while impaired.

The final rule revises § 1903.6(d) to codify CIA authorities included in the consent signage, which allows both full search of the person and any personal property, including electronic devices.

The final rule revises the weapons prohibition in § 1903.10(c) to strike two exemptions: one exemption that allows weapons on Agency installations where 18 U.S.C. 930 applies; and another exemption that allows the possession of a weapon on Agency installations by a Federal official or a member of the Armed Forces if such possession is authorized by law. With the elimination of these two exemptions, two exemptions from the weapons prohibition remain in the regulation. One is an exemption for any person who receives authorization from the CIA Director of Security to possess, carry, transport, or use a weapon. The other exemption is for any officer, agent, or employee of the United States, a State, or a political subdivision of a State, who is engaged in the lawful performance of official duties and is authorized by law to engage in law enforcement.

The final rule revises § 1903.15(a) and (b) to strike the exception to the prohibition on theft where 18 U.S.C. 661 applies, because this exemption is unnecessary, and to clarify that destruction and theft of Government property is prohibited.

This final rule revises § 1903.20(a) to strike the provision that allows the imposition of penalties up to a Class B misdemeanor and replace it with a provision that allows penalties as permitted by 50 U.S.C. 3515(b). This revision is necessary because 50 U.S.C. 3515(b) provides that penalties shall not exceed those specified in 40 U.S.C. 1315(c)(2), which limits penalties to Class C, not Class B, misdemeanors.

The final rule also makes several minor editorial revisions, including revising terms in § 1903.1 to align with the terms used in Title 18 of the United States Code, updating officers' titles, and correcting typographical errors.

Executive Orders 12866 and 13563

The final rule was drafted and reviewed in accordance with Executive Order 12866, *Regulatory Planning and Review*, and Executive Order 13563, *Improving Regulation and Regulatory Review*. The final rule does not constitute a significant regulatory action under section 3(f) of Executive Order 12866; therefore, it is not subject to mandatory prior review by the Office of Management and Budget Office of Information and Regulatory Affairs (OMB/OIRA) under section 6 of Executive Order 12866.

Executive Order 12988

The final rule meets the applicable standards in section 3 of Executive Order 12988, *Civil Justice Reform*.

Executive Order 13132

The final rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore the final rule does not have federalism implications. Therefore, the requirements of sections 2, 3, and 8 of Executive Order 13132, *Federalism*, do not apply to the final rule.

Paperwork Reduction Act of 1995

The final rule does not involve an information collection. Therefore, the review and OMB clearance requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506 and 3507, do not apply.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), CIA has reviewed the final rule and certifies that it will not have a significant economic impact on a substantial number of small entities, and thus no regulatory flexibility analysis is required. These regulations pertain to conduct on Agency installations and do not impose any new requirements on small entities.

Unfunded Mandates Reform Act of 1995

The final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of the inflation-adjusted statutory threshold of \$165 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532(a) and 1533(a).

Small Business Regulatory Enforcement Fairness Act of 1996

The final rule will not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, it does not constitute a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601.

Administrative Procedure Act

The rule concerns the management of public property and is issued as a final rule in accordance with 5 U.S.C. 553(a)(2).

List of Subjects in 32 CFR Part 1903

Crime, Defense, Federal buildings and facilities, Government buildings, Government property, Law enforcement, Motor vehicles, Security measures.

For the reasons stated in the preamble, the Central Intelligence Agency amends 32 CFR part 1903 as set forth below:

PART 1903—CONDUCT ON AGENCY INSTALLATIONS

- 1. Revise the authority citation for part 1903 to read as follows:

Authority: 50 U.S.C. 3515.

- 2. In § 1903.1:

■ a. Revise the definitions of “Agency installation” and “Authorized person”;

■ b. Remove the definitions “Blasting agents” and “Explosives/Explosive Materials” and add the definitions “Blasting agent” and “Explosive materials” in their places, respectively; and

■ c. Revise the definition of “Weapons”.

The revisions and additions read as follows:

§ 1903.1 Definitions.

* * * * *

Agency installation. For the purposes of this part, the term Agency installation means property owned, leased, or controlled by the Central Intelligence Agency, property controlled and occupied by the Federal Highway Administration located immediately adjacent to the CIA Headquarters Compound, and property owned, leased, or controlled by the Office of the Director of National Intelligence.

Authorized person. An officer of the Security Protective Service, or any other Central Intelligence Agency employee who has been authorized by the Director of the Central Intelligence Agency pursuant to section 15 of the Central Intelligence Agency Act of 1949 to enforce the provisions of this part.

Blasting agent. The term is defined for the purposes of this part as it is defined in 18 U.S.C. 841.

* * * * *

Explosive materials. The term is defined for the purposes of this part as it is defined in 18 U.S.C. 841.

* * * * *

Weapons. Any firearms or any other loaded or unloaded pistol, rifle, shotgun, or other weapon which is designed to, or may be readily converted to expel a projectile by ignition of a propellant, by compressed gas, or which is spring-powered. Any bow and arrow, crossbow, blowgun, spear gun, hand-thrown spear, sling-shot, irritant gas device, explosive device, or any other

implement designed to discharge missiles; or a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or is readily capable of, causing death or serious bodily injury, including any weapon the possession of which is prohibited under the laws of the State in which the Agency installation or portion thereof is located; except that such term does not include a closing pocket knife with a blade of less than 2 ½ inches in length or 2 ounces or less of irritant gas.

- 3. In § 1903.2, revise the third sentence to read as follows:

§ 1903.2 Applicability.

* * * The Director of the Central Intelligence Agency, or his or her designee, may suspend the applicability of this part, or a portion thereof, on any Agency installation, or any portion of the installation, covered under this part.

* * *

- 4. In § 1903.4, revise paragraph (b)(1) and (2) to read as follows:

§ 1903.4 Vehicles and traffic safety.

* * * * *

(b) * * *

(1) *Prohibited conduct.* Operating or being in actual physical control of a vehicle is prohibited:

(i) While under the influence of alcohol;

(ii) While under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, or any combination of such drugs, to a degree that impairs one's ability to drive or operate any motor vehicle;

(iii) While under the combined influence of alcohol and any drugs or drugs to a degree that impairs one's ability drive or operate any motor vehicle; or

(iv) While the alcohol concentration in the operator's blood is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more alcohol per 210 liters of breath. Provided, however, that if the applicable State law that applies to operating a vehicle while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits supersede the limits specified in this section.

(2) *Applicability.* The provisions of paragraph (b)(1) of this section shall also apply to an operator who is or has been legally entitled to use alcohol or another drug.

* * * * *

- 5. Revise § 1903.5 to read as follows:

§ 1903.5 Enforcement of parking regulations.

(a) A vehicle parked in any location without authorization, pursuant to a fraudulent, fabricated, copied or altered parking permit, or parked contrary to the directions of posted signs or markings shall be subject to any penalties imposed by this section and the vehicle may be removed from the Agency installation at the owner's risk and expense.

(b) The use, attempted use, or possession of a fraudulent, fabricated, copied, or altered parking permit is prohibited.

(c) The blocking of entrances, driveways, sidewalks, paths, loading platforms, or fire hydrants on an Agency installation is prohibited.

(d) This section may be supplemented or the applicability suspended from time to time by the CIA Director of Security, or by his or her designee, by the issuance and posting of such parking directives as may be required, and when so issued and posted, such directives shall have the same force and effects as if made a part thereof.

(e) Long term parking (parking in excess of 72 hours) is permitted only in designated areas and with express approval consistent with CIA internal guidance.

(f) Proof that a vehicle was parked in violation of the regulations of this section or directives may be taken as prima facie evidence that the registered owner was responsible for the violation.

(g) Any violation of this section may result in relocation of the vehicle or removal of the vehicle from the Agency installation at the owner's risk and expense. The Central Intelligence Agency assumes no responsibility for the payment of any fees or costs related to the removal or storage of the vehicle, which may be charged to the owner of the vehicle by the towing organization.

- 6. In § 1903.6, revise paragraphs (c) and (d) to read as follows:

§ 1903.6 Admission on to an Agency installation.

* * * * *

(c) All personal property, including but not limited to any packages, briefcases, electronic devices, other containers or vehicles brought on to, on, or being removed from an Agency installation are subject to inspection and search by authorized persons.

(d) A full search of a person or any personal property, to include electronic devices, may accompany an investigative stop or an arrest.

* * * * *

- 7. In § 1903.9, revise paragraph (a) to read as follows:

§ 1903.9 Explosives.

(a) Using, possessing, storing, or transporting explosives, blasting agents, ammunition or explosive materials is prohibited on any Agency installation, except as authorized by the CIA Director of Security. When permitted, the use, possession, storage, and transportation shall be in accordance with applicable Federal and State laws, and shall also be in accordance with applicable Central Intelligence Agency rules and regulations in this chapter.

* * * * *

■ 8. In § 1903.10, revise paragraph (c) to read as follows:

§ 1903.10 Weapons.

* * * * *

(c) This section does not apply:

(1) To any person who has received authorization from the CIA Director of Security, or from his or her designee, to possess, carry, transport, or use a weapon in support of the Agency's mission or for other lawful purposes as determined by the CIA Director of Security; or

(2) To the lawful performance of official duties by an officer, agent, or employee of the United States, a State, or a political subdivision thereof, who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law.

■ 9. In § 1903.11, revise paragraph (d) to read as follows:

§ 1903.11 Restrictions on photographic, transmitting, and recording equipment.

* * * * *

(d) This section does not apply to any person who has received approval from the CIA Director of Security, or from his or her designee, to carry, transport, or use a camera, other visual or audio recording devices, or electronic transmitting equipment while on an Agency installation.

■ 10. In § 1903.12, revise paragraphs (a) and (b)(2) to read as follows:

§ 1903.12 Alcoholic beverages and controlled substances.

(a) *Alcoholic beverages.* The possession or transportation of alcoholic beverages in closed containers and their consumption on an Agency installation will be administratively controlled by the Agency outside the provisions of this part.

(b)* * *

(2) The possession of a controlled substance, unless such substance was obtained by the possessor directly from, or pursuant to a valid prescription or ordered by, a licensed physician or pharmacist.

■ 11. In § 1903.13, revise the section heading to read as follows:

§ 1903.13 Under the influence while on an Agency installation.

* * * * *

■ 12. In § 1903.15, revise paragraphs (a) and (b) to read as follows:

§ 1903.15 Preservation of property.

* * * * *

(a) *Property damage.* Destroying or damaging private or Government property.

(b) *Theft.* The theft of private or Government property.

* * * * *

■ 13. In § 1903.17, revise paragraphs (a) and (b) to read as follows:

§ 1903.17 Soliciting, vending, and debt collection.

* * * * *

(a) National or local drives for funds for welfare, health, or other purposes as authorized by 5 CFR parts 110 and 950 and sponsored or approved by the Director of the Central Intelligence Agency, or by his or her designee.

(b) Personal notices posted on authorized bulletin boards and in compliance with Central Intelligence Agency internal guidance governing the use of such authorized bulletin boards advertising to sell or rent property of Central Intelligence Agency employees, their immediate families, or other persons with proper authorization.

■ 14. Revise § 1903.18 to read as follows:

§ 1903.18 Distribution of materials.

Distributing, posting, or affixing materials, such as pamphlets, handbills, or flyers, on any Agency installation is prohibited except as authorized by § 1903.17(b), or by other authorization from the CIA Director of Security, or from his or her designee.

■ 15. In § 1903.20, revise paragraph (a) to read as follows:

§ 1903.20 Penalties and effects on other laws.

(a) Whoever shall be found guilty of violating any rule or regulation enumerated in this part is subject to the

penalties permitted by 50 U.S.C. 3515(b).

* * * * *

Dated: March 27, 2023.

Beverly D. Kennedy,

Associate Deputy Director of CIA for Support, Management, Central Intelligence Agency.

[FR Doc. 2023-06686 Filed 4-6-23; 8:45 am]

BILLING CODE 6310-02-P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 100**

[Docket No. USCG-2023-0261]

Special Local Regulations; Marine Events Within the Sector Columbia River Captain of the Port Zone

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

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations at various locations in the Sector Columbia River Captain of the Port Zone from June 2, 2023, to September 9, 2023. This action is necessary to provide for the safety of life on these navigable waters during marine events. These regulations prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Sector Columbia River or a designated representative.

DATES: The regulations in 33 CFR 100.1302 will be enforced for the regulated areas identified in the **SUPPLEMENTARY INFORMATION** section below for the dates and times specified.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email LT Carlie Gilligan, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503-240-9319, email *D13-SMB-MSUPortlandWWM@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations in 33 CFR 100.1302 for the following events only during the hours specified on the dates listed in the following Table:

TABLE—DATES AND TIMES OF ENFORCEMENT OF 33 CFR 100.1302 SPECIAL LOCAL REGULATIONS AT VARIOUS LOCATIONS IN THE SECTOR COLUMBIA RIVER CAPTAIN OF THE PORT ZONE IN 2023

No.	Date	Event	Location
1	June 2, 2023, from 5:30 a.m. to 6:30 p.m.	Spring Testing Hydroplane races.	Kennewick, WA. Regulated area includes all navigable waters within the Columbia River in the vicinity of Columbia Park, commencing at the Interstate 395 Bridge and continuing up river approximately 2.0 miles and terminating at the northern end of Wade Island.
2	June 10, 2023, from 6:30 a.m. to 6:30 p.m.	Rose Fest Dragon Boat Races.	Portland, OR. Regulated area includes all waters of the Willamette River shore to shore, bordered on the north by the Hawthorne Bridge, and on the south by the Marquam Bridge.
3	July 28, 2023, thru July 30, 2023, from 5:30 a.m. to 6:30 p.m.	Kennewick Hydroplane Races.	Kennewick, WA. Regulated area includes all navigable waters within the Columbia River in the vicinity of Columbia Park, commencing at the Interstate 395 Bridge and continuing up river approximately 2.0 miles and terminating at the northern end of Wade Island.
4	August 12, 2023, from 10:30 a.m. to 1:30 p.m.	Swim the Snake	Perry, WA. Regulated area includes all navigable waters, bank-to-bank of the Snake River, 500 yards upstream and 500 yards downstream from the Washington State Highway 261 Bridge at the approximate position of 46°35'23" N; 118°13'10" W.
9	September 9, 2023, from 7:30 a.m. to 10:30 a.m.	Columbia Crossing Swim	Pasco, WA. Regulated area includes all navigable waters, bank-to-bank of the Columbia River in Pasco, Washington, between river mile 332 and river mile 335.

All coordinates are listed in the Table reference North American Datum (NAD) 1983.

During the enforcement periods, as reflected in § 100.1302, if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any official patrol vessel. In addition to this notification of enforcement in the **Federal Register**, the Coast Guard will provide notification of these enforcement periods via the Local Notice to Mariners and marine information broadcasts.

Dated: March 31, 2023.

M. Scott Jackson,

Captain, U.S. Coast Guard, Captain of the Port, Sector Columbia River.

[FR Doc. 2023-07227 Filed 4-6-23; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0120]

RIN 1625-AA00

Safety Zone; Atlantic Ocean, Cocoa Beach, FL

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on certain waters of the Atlantic Ocean near Cocoa Beach, FL. This action is necessary to provide for the safety of the boating public on navigable waters near

Cocoa Beach, FL, during the Cocoa Beach Air Show. This rule prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Jacksonville or a designated representative.

DATES: This rule is effective from 10 a.m. on April 13, 2023, through 5 p.m. on April 16, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0120 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Anthony DeAngelo, Sector Jacksonville Waterways Management Division, U.S. Coast Guard; telephone 904-714-7631, email Anthony.DeAngelo@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 would be impracticable. The Coast Guard lacks sufficient time to provide for a comment period and then consider those comments before issuing the rule since this rule is needed by April 13, 2023. It would be contrary to the public interest since immediate action is necessary to protect the safety of the public, and vessels transiting the waters of the Atlantic Ocean near Cocoa Beach, FL.

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

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 Jacksonville (COTP) has determined that potential hazards associated with an airshow occurring between April 13 and April 16, 2023, will be a safety concern for anyone within a defined boundary off the shore of Cocoa Beach, FL. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the airshow occurs.

IV. Discussion of the Rule

This rule establishes a safety zone daily from 10 a.m. until 5 p.m., on April 13, 2023, through April 16, 2023. The safety zone covers all navigable waters within a box beginning at 28°21.146 N, 80°36.225 W, thence to 28°21.109 N, 80°35.667 W, thence to 28°19.132 N, 80°35.842 W, thence to 28°19.169 N, 80°36.400 W and along the shore line back to the beginning point, east of Lori Wilson Park in Cocoa Beach, FL. The duration of the zone is intended to ensure the safety of the boating public during the Cocoa Beach Air Show. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

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 scope of the safety zone. The zone is limited in size, location, and duration as it will cover a small portion of the Atlantic Ocean near Coca Beach, FL. The zone is limited in scope as vessel traffic may seek permission from the COTP to enter the zone. It is limited in duration in that it will only be enforced for 21 hours over the course of three days. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the safety zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions

with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial

direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 7 hours a day for 3 days that will prohibit entry within a defined boundary off shore from Cocoa Beach, FL, in the Atlantic Ocean. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T07–0120 to read as follows:

§ 165.T07–0120 Safety Zone; Atlantic Ocean, Cocoa Beach, FL.

(a) *Location.* The following area is a safety zone: All waters of the Atlantic Ocean, from surface to bottom, encompassed by a line connecting the following points beginning at 28°21.146 N, 80°36.225 W, thence to 28°21.109 N, 80°35.667 W, thence to 28°19.132 N, 80°35.842 W, thence to 28°19.169 N, 80°36.400 W and along the shore line back to the beginning point. These coordinates are based on the 1984 World Geodetic System (WGS 84).

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

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

(2) To seek permission to enter, contact the COTP or the COTP's representative on VHF Channel 16 or VHF Channel 22. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement periods.* This section will be enforced daily from 10 a.m. until 5 p.m., on April 13, 2023, through April 16, 2023.

Dated: April 3, 2023.

J.D. Espino-Young,

Captain, U.S. Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 2023–07373 Filed 4–6–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0278]

RIN 1625–AA87

Security Zones; Corpus Christi Ship Channel, Corpus Christi, TX

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary, 500-yard radius, moving security zones for certain vessels carrying Certain Dangerous Cargoes (CDC) within the Corpus Christi Ship Channel and La Quinta Channel. The temporary security zones are needed to protect the vessels, the CDC cargo, and the surrounding waterway from terrorist acts, sabotage, or other subversive acts, accidents, or other events of a similar nature. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

DATES: This rule is effective without actual notice from April 7, 2023, until April 12, 2023. For the purposes of enforcement, actual notice will be used from April 4, 2023, until April 7, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0278 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

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

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Corpus Christi
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 these security zones by April 4, 2023, to ensure security of these vessels and lack sufficient time to provide a reasonable comment period and then 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 provide for the security of these vessels.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with the transit of the Motor Vessel (M/V) PILARGAS and M/V EPIC SARDINIA, when loaded, will be a security concern within a 500-yard radius of each vessel. This rule is needed to provide for the safety and security the vessels, their cargo, and surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other events of a similar nature while they are transiting within Corpus Christi, TX, from April 4, 2023, through April 12, 2023.

IV. Discussion of the Rule

The Coast Guard is establishing four 500-yard radius temporary moving security zones around M/V PILARGAS and M/V EPIC SARDINIA. The zones for the vessels will be enforced from April 4, 2023, through April 12, 2023. The duration of the zones are intended to protect the vessels and cargo and surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other events of a similar nature. No vessel or person will be permitted to enter the security zones without obtaining permission from the COTP or a designated representative.

Entry into these security zones is prohibited unless authorized by the

COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Corpus Christi. Persons or vessels desiring to enter or pass through each zone must request permission from the COTP or a designated representative on VHF-FM channel 16 or by telephone at 361-939-0450. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate for the enforcement times and dates for each security zone.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, duration, and location of the security zones. This rule will impact a small, designated area of 500-yards around the moving vessels in the Corpus Christi Ship Channel and La Quinta Channel as the vessels transit the channel over a nine day period. Moreover, the rule allows vessels to seek permission to enter the zones.

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 security zones 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 moving security zones lasting for the duration of time that the M/V PILARGAS and M/V EPIC SARDINIA are within the Corpus Christi Ship Channel and La Quinta Channel while loaded with cargo. It will prohibit entry within a 500-yard radius of M/V PILARGAS and M/V EPIC SARDINIA while the vessels are transiting loaded within Corpus Christi Ship Channel and La Quinta Channel. It is categorically excluded from further review under L60 in Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

- 2. Add § 165.T08–0278 to read as follows:

§ 165.T08–0278 Security Zones; Corpus Christi Ship Channel. Corpus Christi, TX.

(a) *Location.* The following area are moving security zones: All navigable waters encompassing a 500-yard radius around the M/V PILARGAS and M/V EPIC SARDINIA while the vessels are in the Corpus Christi Ship Channel and La Quinta Channel.

(b) *Enforcement period.* This section will be enforced from April 4, 2023, through April 12, 2023.

(c) *Regulations.* (1) The general regulations in § 165.33 apply. Entry into the zones is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Corpus Christi.

(2) Persons or vessels desiring to enter or pass through the zones must request permission from the COTP Sector Corpus Christi on VHF–FM channel 16 or by telephone at 361–939–0450.

(3) 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 through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate of the enforcement times and dates for these security zones.

Dated: March 31, 2023.

J.B. Gunning,

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

[FR Doc. 2023–07292 Filed 4–6–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[Docket Number USCG–2023–0199]

RIN 1625–AA00

Safety Zone: Tall Ships America; Galveston, TX

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone on the waters of the Gulf of Mexico off the coast of Galveston, around a Tall Ships America Parade of Sail in Galveston, Texas. Once the vessels are moored at the Galveston Historic Seaport, a temporary fixed safety zone will be established. The safety zones are necessary to protect the public and wooden sailing vessels and their crews from the hazards associated with transiting the area. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the moving and fixed safety zones unless authorized by the Captain of the Port Houston-Galveston or a designated representative.

DATES: This rule will be effective from 11 a.m. April 13, 2023, through 6 p.m. on April 16, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0199 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Marine Science Technician First Class Christopher C Morgan, Sector Houston-Galveston Waterway Management Division, Coast Guard; Telephone (713) 398–5823, Email Christopher.C.Morgan@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. The Coast Guard received all amplifying information for this Tall Ships event regarding the need for a safety zone on March 6, 2023. Insufficient time remains to publish a NPRM and to receive public comments, as the event will occur on April 13, 2023, before the rulemaking process would be completed. Because of the potential safety hazards associated with the Parade of Sail, the regulation is necessary to provide for the safety of the Tall Ships and their crew, spectators, and other vessels navigating the surrounding waterways. For those reasons, it would be impracticable to publish an NPRM.

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**. For the reasons discussed above, the Coast Guard finds that good cause exists.

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 Houston-Galveston has determined that potential hazards associated with the Parade of Sail, will be a safety concern for the Tall Ships and their crews, spectators, and vessels. This rule is needed to ensure the safety of life for vessels and persons within the navigable waters of the safety zone during the Parade of Sail in Galveston, Texas.

IV. Discussion of the Rule

This rule establishes a temporary moving safety zone extending 100 yards from the wooden sailing vessels participating in the Tall Ships America Parade from 11 a.m. through 4 p.m. on April 13, 2023, starting in approximate position 29°19.181' N 094°43.165' W to the turn around point at 29°16.6' N 094°48.5' W, then proceeding through the Houston Ship Channel and Galveston Ship Channel to their assigned docking stations in the vicinity of the Galveston Historic Seaport. Once vessels are moored at the Galveston Historic Seaport in Galveston, TX, the

temporary fixed safety zone will be in effect from 2 p.m. on April 13, 2023, through 6 p.m. on April 16, 2023, and extend 25 yards from the vessels. The temporary safety zones will cover all navigable waters within a specified area of the Gulf of Mexico and the Port of Galveston. The duration of the zones are intended to ensure the safety of the public and these navigable waters during the Tall Ships America Parade of Sail and while the vessels are moored. No vessel or person will be permitted to enter, transit through, anchor in, or remain within the safety zones without obtaining permission from the Captain of the Port Houston-Galveston or a designated representative.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port Houston-Galveston by telephone at (713) 398-5823, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Houston-Galveston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Houston-Galveston or a designated representative. The Coast Guard will provide notice of the safety zones by Local Notice to Mariners, Broadcast Notice to Mariners, and/or on-scene designated representatives.

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: (1) The safety zones will be enforced for a limited period of time over the course of four days during the Tall Ships America Parade of Sail and touring times at the pier; (2) although

persons and vessels are prohibited to enter, transit through, anchor in, or remain within the regulated area without authorization from the Captain of the Port Houston-Galveston or a designated representative, they may operate in the surrounding area during the enforcement period; and (3) the Coast Guard will provide advance notification of the safety zones to the local maritime community by Local Notice to Mariners and/or Broadcast Notice to Mariners.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within the regulated area during a four day visit of the Tall Ships. It is categorically excluded from further

review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08-0199 to read as follows:

§ 165.T08-0199 Safety Zone; Tall Ships America, Galveston, TX.

(a) *Regulated area.* The following areas are temporary safety zones:

(1) All waters of the Gulf of Mexico within 100 yards of the Tall Ships America Parade of Sail transiting from approximate coordinates, 29°19.181' N 094°43.165' W, to the turn around point located at 29°16.6' N 094°48.5' W, then to the mooring location at the Galveston Historic Seaport in Galveston, TX.

(2) While the vessels are moored a temporary fixed safety extending 25 yards from the vessels will be in effect for the duration of the event.

(b) *Definition.* The term *designated representative* means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Houston-Galveston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or

remaining within the regulated area unless authorized by the Captain of the Port Houston-Galveston or a designated representative.

(2) Designated representatives may control vessel traffic throughout the enforcement area as determined by the prevailing conditions.

(3) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the Captain of the Port Houston-Galveston by telephone at (713) 398-5823, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port Houston-Galveston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Houston-Galveston or a designated representative.

(d) *Enforcement period.* This section will be enforced from 11 a.m. on April 13, 2023, until 6 p.m. on April 16, 2023.

Dated: March 28, 2023.

Jason E. Smith,

Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston.

[FR Doc. 2023-07294 Filed 4-6-23; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0258]

RIN 1625-AA00

Safety Zone; Port Los Angeles and Long Beach, San Pedro Bay, CA

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone around the M/V ZHEN HUA 26 while it transits through the Port of Los Angeles—Long Beach, CA, to Long Beach Container Terminal (LBCT), LB Berth E22, then to Fenix Marine Services (FMS), LA Berth 302. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards associated with oversized cargo transfer operations of four ship-to-shore gantry cranes and one rubber tire gantry crane, which will extend more than 200 feet out from the transiting vessels. Entry of persons or vessels into this safety zone is prohibited unless specifically

authorized by the Captain of the Port (COTP) Los Angeles—Long Beach, or their designated representative.

DATES: This rule is effective without actual notice from April 7, 2023, through April 20, 2023. For the purposes of enforcement, actual notice will be used from April 5, 2023, until April 7, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0258 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or LCDR Maria Wiener, Waterways Management, U.S. Coast Guard Sector Los Angeles—Long Beach; telephone (310) 357-1603, email D11-SMB-SectorLALB-WWM@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 The COTP was notified of the impending arrival of the M/V ZHEN HUA 26 less than 30 days in advance and immediate action is needed to respond to the potential safety hazards associated with the transfer of large gantry cranes within the Ports of Los Angeles and Long Beach. It is impracticable to publish an NPRM because we must establish this safety zone by April 5, 2023.

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 ensure the safety of persons, vessels, and the marine environment in the vicinity of the M/V ZHEN HUA 26 while conducting oversized cargo transfer operations at LBCT, LB Berth E22, and FMS, LA Berth 302, within the Port of Los Angeles—Long Beach, CA.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 and 70011(b)(3). The COTP Los Angeles—Long Beach has determined that potential hazards associated with the movement of large-scale gantry crane transfer operations will be a safety concern for anyone within a 500-foot radius of the M/V ZHEN HUA 26 during its transit to LBCT, LB Berth E22, and FMS, LA Berth 302, while the vessel is within the Port of Los Angeles—Long Beach and the waters inside the Federal breakwaters bounding San Pedro Bay or on the waters within three nautical miles seaward of the Federal breakwaters, respectively. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the vessel offloads gantry cranes in the Port of Los Angeles and Long Beach.

IV. Discussion of the Rule

This rule establishes a safety zone from April 5, 2023, through April 20, 2023, during the transit of the M/V ZEN HUA 26. While the M/V ZHEN HUA 26 is within the Port of Los Angeles—Long Beach and the waters inside the Federal breakwaters bounding San Pedro Bay or on the waters within three nautical miles seaward of the Federal breakwaters, respectively, the safety zone will encompass the navigable waters around and under the vessel, form surface to bottom, within a circle formed by connecting all points 500-feet out from the vessel. The safety zone is needed to protect personnel, mariners, and vessels from hazards associated with ship-to shore gantry crane arms which will extend more than 200 feet out from the transiting vessel. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the transfer operations are active.

No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Sector Los Angeles—Long Beach may be contacted on VHF-FM Channel 16 or (310) 521-3801. The marine public will be notified of the safety zone via Broadcast Notice to Mariners.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. This rule impacts an area of 500-feet surrounding a cargo vessel while at LBCT, LB Berth E22, for 10 days, and FMS, LA Berth 302, for 5 days during the month of April 2023. This safety zone impacts a 500-foot-radius area of the Port of Los Angeles—Long Beach and the waters inside the Federal breakwaters bounding San Pedro Bay or on the waters within three nautical miles seaward of the Federal breakwaters, respectively for a limited duration. While the safety zone encompasses a fifteen-day period to account for uncertain transit delays of the M/V ZHEN HUA 26, the safety zone will only be enforced for the duration of the vessel’s inbound transit, and transit from LBCT, LB Berth E22, to FMS, LA Berth 302. Each transit is expected to last less than 24 hours, and that period will be announced via Broadcast Notice to Mariners. Vessel traffic will be able to safely transit around this safety zone, which will impact a small, designated area of the San Pedro Bay, Long Beach, and Los Angeles, CA.

B. Impact on Small Entities

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

significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone encompassing an area extending 500-feet out from a cargo vessel in vicinity of Long Beach Container Terminal and Fenix Marine Services and will last only while transfer operations are ongoing. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T11–123 to read as follows:

§ 165.T11–123 Safety Zone; Port of Los Angeles and Long Beach, San Pedro Bay, CA.

(a) *Location.* The following area is a safety zone: all navigable waters of the port of Los Angeles—Long Beach, from surface to bottom, within a circle formed by connecting all points 500-feet out from the vessel, M/V ZHEN HUA 26, during the vessel's transit within the Port of Los Angeles—Long Beach and the waters inside the Federal breakwaters bounding San Pedro Bay or on the waters within three nautical miles seaward of the Federal breakwaters, respectively.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel designated by or assisting the Captain of the Port Los Angeles—Long Beach (COTP) in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by hailing Coast Guard Sector Los Angeles—Long Beach on VHF–FM Channel 16 or calling at (310) 521–3801. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This temporary safety zone will be enforced from April 5, 2023, through April 20, 2023, during the M/V ZHEN HUA 26's inbound transit and transit between Long Beach Container Terminal, LB Berth E22, to Fenix Marine Services, LA Berth 302, or as announced via Broadcast Notice to Mariners.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public of the enforcement date and times for this

safety zone via Local Notices to Mariners.

R.D. Manning,

Captain, U.S. Coast Guard, Captain of the Port Sector Los Angeles—Long Beach.

[FR Doc. 2023–07361 Filed 4–6–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0112]

RIN 1625–AA00

Safety Zone; Back River, Hampton, VA; Air Show

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

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone for certain waters in the vicinity of the northwest branch of the Back River. This action is necessary to provide for the safety of life on these navigable waters near Langley Air Force Base, Hampton, VA, during an annual airshow. This rulemaking would prohibit persons and vessels from entry in the safety zone unless authorized by the Captain of the Port Sector Virginia or a designated representative.

DATES: This rule is effective April 17, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0112 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Ashley Holm, Chief Waterways Management Division U.S. Coast Guard; 757–617–7986, Ashley.E.Holm@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

On January 26, 2023, the Joint Base Langley-Eustis Fire Dispatch notified

the Coast Guard that the 2023 Air Power Over Hampton Roads Air Show will be occurring Friday, May 5, 2023, to Sunday, May 7, 2023, from 10:00 a.m. to 4 p.m. each day and annually on the third or fourth Friday through Sunday in April or the first or second Friday through Sunday in May thereafter. In response, on February 28, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Safety Zone; Back River, Hampton, VA; Air Show” (88 FR 12621). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this air show. During the comment period that ended March 30, 2023, we received no comments.

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

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 Virginia (COTP) has determined that potential hazards associated with the air show will be a safety concern for anyone within the following points: 37°05′34.32″ N, 076°20′47.13″ W; 37°5′38.05″ N, 076°20′36.49″ W; 37°5′30.53″ N, 076°20′31.86″ W. The purpose of this rule is to ensure safety of vessels on the navigable waters in the vicinity of the safety zone, before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published February 28, 2023. The only changes in the regulatory text of this rule from the proposed rule in the NPRM were to clarify that the prohibition against entry to the safety zone when it is subject to enforcement and that vessels may not be present in the safety zone when an enforcement period begins.

This rule establishes a safety zone from 10 a.m. to 4 p.m. daily on the third or fourth Friday through Sunday in April or the first or second Friday through Sunday in May. The safety zone will cover all navigable waters from the shoreline of the Back River contained within the following points: 37°05′34.32″ N, 076°20′47.13″ W; 37°5′38.05″ N, 076°20′36.49″ W; 37°5′30.53″ N, 076°20′31.86″ W. The duration of the zone is intended to

ensure the safety of vessels on the navigable waters in the vicinity of the safety zone, before, during, and after the air show. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Back River. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule will allow vessels to seek permission from the COTP 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 received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 6 hours, each day of the event, that would prohibit entry within a small portion of the Back River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

- 2. Add § 165.517 to read as follows:

§ 165.517 Safety Zone; Back River, Hampton, VA; Air Show.

(a) *Location.* The following area is a safety zone: all navigable waters from the shoreline of the Back River contained within the following points: 37°5′34.32″ N, 076°20′47.13″ W; 37°5′38.05″ N, 076°20′36.49″ W; 37°5′30.53″ N, 076°20′31.86″ W.

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

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

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

(d) *Enforcement period.* This section will be enforced annually on the third or fourth Friday through Sunday in April or the first or second Friday through Sunday in May from 10 a.m. to 4 p.m. each day during the event.

Dated: April 3, 2023.

J.A. Stockwell,

Captain, U.S. Coast Guard, Captain of the Port, Sector Virginia.

[FR Doc. 2023–07365 Filed 4–6–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0114]

RIN 1625–AA87

Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA

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

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the established security zone extending 50 yards into the navigable waters of the Oakland Estuary, Alameda, California,

surrounding the Coast Guard Island Pier. This security zone change will now include the entire perimeter of Coast Guard Island and 50 yards on either side of the Coast Guard Island causeway (Dennison Street Bridge). This action is necessary to provide for the continued security of the military service members on board vessels moored at the pier, as well as all military members and government property on Coast Guard Island. This security zone will prohibit all persons and vessels from entering, transiting through, or anchoring within a portion of the Oakland Estuary surrounding Coast Guard Island, and prohibit all persons and vessels from loitering within 50 yards of the Coast Guard Island causeway, unless authorized by the Captain of the Port (COTP) or his designated representative.

DATES: This rule is effective April 7, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0114 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT William Harris, Sector San Francisco Waterways Management Division, U.S. Coast Guard; telephone 415–399–7443, email SFWaterways@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 Captain of the Port (COTP) San Francisco identified a need to amend the existing security zone to address the security concerns to the military base on Coast Guard Island and the Coast Guard Island causeway. Over the past three years, Coast Guard Island has had over 20 security incidents. Additionally, the Coast Guard no longer uses the Security barrier around the pier and this rulemaking accounts for that change. In response, on February 15, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA” (88 FR 10063). There we stated why we issued

the NPRM and invited comments on our proposed regulatory action related to this security zone. During the comment period that ended March 20, 2023, we received 3 comments.

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 public interest because immediate action is needed to respond to the potential security hazards associated with security incidents on Coast Guard Island.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70051 and 70124. The Captain of the Port Sector San Francisco (COTP) has determined that potential hazards associated with future security incidents necessitate changes to the existing regulation.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received 3 comments on our NPRM published February 15, 2023. The first comment requested a chart graphic be added to the docket representing the area encompassed by the proposed expanded security zone, which we addressed by publishing the chart graphic to the docket on February 27, 2023. The second comment received was not within the scope of the regulation. The final comment was in support of the proposed expanded security zone. There is one change in the regulatory text of this rule from the proposed rule in the NPRM. The Coast Guard added a sentence to paragraph (b)(2) clarifying that vessels must make direct passage through the security zone for the Coast Guard Island Causeway in addition to not loitering. This addition clarifies that vessels and persons may enter the Coast Guard Island Causeway security zone if they are making direct passage through the area.

This rule amends the established security zone at Coast Guard Island, 33 CFR 165.1190, to cover all navigable waters of the Oakland Estuary beginning at 37°46'42.5" N, 122°14'51.4" W; thence to 37°46'46.6" N, 122°14'59.7" W; thence to 37°46'51.8" N, 122°15'7.4" W; thence to 37°46'56.3" N, 122°15'12.1" W; thence to 37°47'2.2" N, 122°15'16.4" W; thence to 37°47'8" N, 122°15'16.6" W; thence to 37°47'10" N, 122°15'12.8" W; thence to 37°47'10.1" N, 122°15'5.7" W; thence to 37°47'7.8" N, 122°15'0.1" W; thence to 37°47'5.2" N, 122°14'53.7" W; thence to 37°47'2.1" N, 122°14'49.5" W; thence to 37°46'58.9" N, 122°14'46.2" W; thence to

37°46'57.1" N, 122°14'44.6" W; thence to 37°46'52.9" N, 122°14'42.6" W; thence to 37°46'50.2" N, 122°14'42.9" W; thence to 37°46'47.9" N, 122°14'43.6" W; thence to 37°46'42.3" N, 122°14'44.1" W; thence to the beginning, and all navigable waters of the Oakland Estuary 50 yards on either side of a line beginning at 37°46'48.1" N, 122°14'45.8" W; thence to 37°46'46.1" N, 122°14'41.5" W; thence to 37°46'45.4" N, 122°14'36.6" W.

No vessel or person will be permitted to enter the security zone surrounding Coast Guard Island, and no vessel or person will be permitted to loiter in the zone surrounding the causeway bridge, unless authorized by the COTP. Vessel operators and persons will be able to transit the waters surrounding the causeway bridge without COTP permission, but they will not be allowed to loiter in those waters without the COTP permission.

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 and location of the security zone. The effect of this rule will not be significant because vessel traffic will still be permitted to transit around Coast Guard Island, and this rule will encompass only a small portion of the waterway.

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 received no comments from the Small Business Administration

on this rulemaking. 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 security 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 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial

direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone covering all navigable waters of the Oakland Estuary, which will exclude vessels from entering the regulated area unless authorized by the COTP. It is categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Revise § 165.1190 to read as follows:

§ 165.1190 Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA.

(a) *Locations.* The following areas are security zones:

(1) *Coast Guard Island.* All waters of the Oakland Estuary, from surface to bottom, encompassed by a line connecting the following points beginning at 37°46′42.5″ N, 122°14′51.4″ W; thence to 37°46′46.6″ N, 122°14′59.7″ W; thence to 37°46′51.8″ N, 122°15′7.4″ W; thence to 37°46′56.3″ N, 122°15′12.1″ W; thence to 37°47′2.2″ N, 122°15′16.4″ W; thence to 37°47′8″ N, 122°15′16.6″ W; thence to 37°47′10″ N, 122°15′12.8″ W; thence to 37°47′10.1″ N, 122°15′5.7″ W; thence to 37°47′7.8″ N, 122°15′0.1″ W; thence to 37°47′5.2″ N, 122°14′53.7″ W; thence to 37°47′2.1″ N, 122°14′49.5″ W; thence to 37°46′58.9″ N, 122°14′46.2″ W; thence to 37°46′57.1″ N, 122°14′44.6″ W; thence to 37°46′52.9″ N, 122°14′42.6″ W; thence to 37°46′50.2″ N, 122°14′42.9″ W; thence to 37°46′47.9″ N, 122°14′43.6″ W; thence to 37°46′42.3″ N, 122°14′44.1″ W; and back to the beginning point. These coordinates are based on North American Datum (NAD) 83.

(2) *Coast Guard Island Causeway.* All waters of the Oakland Estuary, from surface to bottom, 50 yards on either side of a line beginning at 37°46′48.1″ N, 122°14′45.8″ W; thence to 37°46′46.1″ N, 122°14′41.5″ W; thence to 37°46′45.4″ N, 122°14′36.6″ W. These coordinates are based on NAD 83.

(b) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, you may not enter the security zone described in paragraph (a)(1) of this section unless authorized by the Captain of the Port (COTP). The security zone described in paragraph (a)(1) of this section is closed to all vessel traffic, except as may be permitted by the COTP. To seek permission to enter the security zone in paragraph (a)(1) of this section, contact the COTP by VHF Marine Radio channel 16 or through the 24-hour Command Center at telephone (415) 399–3547. Those in the security zone must comply with all lawful orders

or directions given to them by the COTP.

(2) Under the general security zone regulations in subpart D of this part, you may not loiter in the security zone described in paragraph (a)(2) of this section unless authorized by the COTP. Vessels must make a direct passage through the security zone described in paragraph (a)(2) of this section.

(c) *Enforcement.* The Captain of the Port will enforce this security zone and may be assisted in the patrol and enforcement of this security zone by any Federal, State, county, municipal, or private agency.

Dated: March 30, 2023.

Taylor Q. Lam,

Captain, U.S. Coast Guard, Captain of the Port, Sector San Francisco.

[FR Doc. 2023–07223 Filed 4–6–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0202; FRL–10873–03–R9]

Determination To Defer Sanctions; California; Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: The Environmental Protection Agency (EPA) is making an interim final determination that the California Air Resources Board (CARB) has submitted a rule and other materials on behalf of the Mojave Desert Air Quality Management District (MDAQMD or “District”) that correct deficiencies in its Clean Air Act (CAA or “Act”) state implementation plan (SIP) provisions concerning reasonably available control technology (RACT) ozone nonattainment requirements for controlling emissions of oxides of nitrogen (NO_x) and volatile organic compounds (VOCs) from internal combustion engines. This determination is based on a proposed approval, published elsewhere in this issue of the **Federal Register**, of MDAQMD’s Rule 1160 which regulates this source category. The effect of this interim final determination is that the imposition of sanctions that were triggered by a previous limited disapproval by the EPA in 2021 is now deferred. If the EPA finalizes its approval of MDAQMD’s submission, relief from these sanctions will become permanent.

DATES: This interim final determination is effective April 7, 2023. However, comments will be accepted on or before May 8, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2023–0202 at <https://www.regulations.gov>. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the

official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, 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: La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 942–3245 or by email at evanshopper.lakenya@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

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- I. Background
- II. The EPA’s Evaluation and Action
- III. Statutory and Executive Order Reviews

I. Background

On September 10, 2021 (86 FR 50643) (“2021 final rule”), the EPA issued a final rule promulgating a limited approval and limited disapproval for the MDAQMD rule listed in Table 1 that was submitted by CARB to the EPA for inclusion into the California SIP.

TABLE 1—DISTRICT RULE WITH PREVIOUS EPA ACTION

Rule No.	Rule title	Amended	Submitted	EPA action in 2021
1160	Internal Combustion Engines	01/22/2018	05/23/2018	Limited Approval and Limited Disapproval.

Areas classified as Moderate or above nonattainment for an ozone standard must implement RACT for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of VOCs and NO_x (see CAA section 182(b)(2), (f)). The MDAQMD contains parts of the Western Mojave Desert ozone nonattainment areas, which is classified as Severe-15 nonattainment for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the 2008 8-hour ozone NAAQS (see 40 CFR 81.305).

In the 2021 final rule, we determined that although the MDAQMD rule strengthened the SIP and was largely consistent with the requirements of the CAA, the submitted rule included three deficiencies that precluded our full approval of the rule into the SIP. MDAQMD’s previously submitted Rule 1160 allowed for engines to comply

with an alternative emission reduction provision instead of the concentration-based emission limits for NO_x. The EPA found that this provision was not sufficiently clear to constitute an enforceable emission limitation, control measure, means or technique, as required under section 110(a)(2) of the Act, contained unapprovable director’s discretion, and had not been sufficiently justified as meeting RACT stringency levels. Second, under the alternative emission reduction option, the rule allowed units operating at the same facility to aggregate their emissions in order to comply with a percentage reduction. The rule provisions did not meet the criteria for economic incentive program (EIP) integrity because they failed to require that any excess emission reductions credited through the provision be surplus (*i.e.*, not required by any other federally

enforceable provision).¹ This omission could allow reductions that are otherwise federally required to be aggregated and therefore allow greater emissions at other units.

Finally, the compliance determination requirements under the rule did not require adequate source testing for emission units without emission control equipment.

Pursuant to section 179 of the CAA and our regulations at 40 CFR part 52, the disapproval action on Rule 1160 under title I, part D started a sanctions clock for imposition of offset sanctions 18 months after the action’s effective date of October 12, 2021, and highway sanctions 6 months later.

On January 23, 2023, the MDAQMD revised Rule 1160, and on March 3, 2023, CARB submitted it to the EPA for approval into the California SIP as shown in Table 2 below.

TABLE 2—SUBMITTED RULE

Rule No.	Rule title	Revised	Submitted
1160	Internal Combustion Engines	01/23/2023	03/03/2023

On March 17, 2023, the Submittal for MDAQMD Rule 1160 was determined to meet the completeness criteria in 40

CFR part 51, appendix V, which must be met before formal EPA review.

The revised MDAQMD Rule 1160 in Table 2 is intended to address the disapproval issues in our 2021 final

¹ See “Improving Air Quality with Economic Incentive Programs” (EPA–452/R–01–001, January 2001).

rule. In the Proposed Rules section of this issue of the **Federal Register**, we have proposed approval of the revised MDAQMD Rule 1160. Based on this proposed action approving Rule 1160 into the California SIP, we are also making this interim final determination, effective on publication, to defer imposition of the offset sanctions and highway sanctions that were triggered by our 2021 final rule on Rule 1160, because we believe that the submittal corrects the deficiencies that triggered such sanctions.

The EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this interim final determination and the proposed approval of MDAQMD Rule 1160, we would take final action to lift this deferral of sanctions under 40 CFR 52.31. If no comments are submitted that change our assessment, then all sanctions and any sanction clocks triggered by our 2021 final rule would be permanently terminated on the effective date of our final approval of Rule 1160.

II. The EPA's Evaluation and Action

We are making an interim final determination to defer CAA section 179 sanctions associated with our limited disapproval action on September 10, 2021, of MDAQMD's Rule 1160 with respect to the requirements of part D of title I of the CAA. This determination is based on our concurrent proposal to fully approve MDAQMD Rule 1160 which resolves the deficiencies that triggered sanctions under section 179 of the CAA.

Because the EPA has preliminarily determined that MDAQMD Rule 1160, amended on January 23, 2023, addresses the limited disapproval issues under part D of title I of the CAA identified in our 2021 final rule and the amended rule is now fully approvable, relief from sanctions should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action, the EPA is providing the public with a chance to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the

State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has submitted a revision to the SIP that corrects deficiencies under part D of the Act that were the basis for the action that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions. The EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while the EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this action is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action defers sanctions and imposes no additional requirements. 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 Clean Air Act.

In addition, 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 action 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).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 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. EPA defines environmental justice (EJ) 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." 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."

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 6, 2023. Filing a petition for reconsideration by the EPA Administrator of this final action does not affect the finality of this action for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such action. This action may not be challenged later in proceedings to

enforce its requirements (see CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection,
Administrative practice and procedure,

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 30, 2023.

Kerry Drake,

Acting Regional Administrator, Region IX.

[FR Doc. 2023–07082 Filed 4–6–23; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 88, No. 67

Friday, April 7, 2023

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS–SC–22–0089]

Pears Grown in Oregon and Washington; Continuance Referendum

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible Oregon and Washington pear growers to determine whether they favor continuance of the marketing order regulating the handling of pears grown in Oregon and Washington.

DATES: The referendum will be conducted from May 8 through May 30, 2023. Only current pear growers who grew pears within the designated production area during the period July 1, 2021, through June 30, 2022, are eligible to vote in this referendum.

ADDRESSES: Copies of the marketing order may be obtained from the office of the referendum agents at 1220 SW 3rd Avenue, Suite 305, Portland, Oregon 97212; Telephone: (503) 326–2724; or the Office of the Docket Clerk, Market Development Division, Specialty Crops Program, Agricultural Marketing Service, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; or on the internet <https://www.ecfr.gov/current/title-7/subtitle-B/chapter-IX/part-927>.

FOR FURTHER INFORMATION CONTACT: Dale Novotny or Gary Olson, Western Region Branch, Market Development Division, Specialty Crops Program, Agricultural Marketing Service, USDA, 1220 SW 3rd Avenue, Suite 305, Portland, Oregon 97212; Telephone: (503) 326–2724, or Email: DaleJ.Novotny@usda.gov or GaryD.Olson@usda.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 927, as amended (7 CFR part 927), hereinafter referred to

as the “Order,” and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act,” it is hereby directed that a referendum be conducted to ascertain whether continuance of the Order is favored by pear growers. The referendum shall be conducted from March 20 to March 31, 2023, among pear growers in the production area. Only current pear growers that were engaged in the production of pears during the period of July 1, 2021, through June 30, 2022, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers favor continuation of marketing order programs. USDA would consider termination of the Order if less than two-thirds of growers voting in the referendum, and growers of less than two-thirds of the volume represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, USDA will not exclusively consider the results of the continuance referendum. USDA will also consider all other relevant information concerning the operation of the Order and the relative benefits and costs to growers, handlers, and consumers to determine whether continued operation of the Order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0189, Fruit Crops. It has been estimated that it will take an average of 20 minutes for each of the approximately 1,500 Oregon and Washington pear growers to cast a ballot. Participation is voluntary. Ballots postmarked after March 31, 2023, will not be included in the vote tabulation.

Dale Novotny and Gary Olson of the Western Region Branch, Market Development Division, Specialty Crops Program, Agricultural Marketing Service, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the “Procedure for the Conduct of

Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended” (7 CFR part 900.400 *et seq.*).

Ballots will be mailed to all eligible pear growers of record and may also be obtained from the referendum agents or their appointees.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2023–07396 Filed 4–6–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2022–BT–STD–0015]

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Public Meetings of the Commercial Unitary Air Conditioner and Commercial Unitary Heat Pump Working Group

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of public meetings and webinars.

SUMMARY: The U.S. Department of Energy (DOE or the Department) announces public meetings and webinars for the Commercial Unitary Air Conditioner and Commercial Unitary Heat Pump (CUAC and CUHP) working group.

DATES: See the **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: The next several rounds of public meetings will be held at National Renewable Energy Laboratory, 901 D Street SW, Suite 930, Washington, DC 20024. Please see the **SUPPLEMENTARY INFORMATION** section of this notice to find the more information for each date. For additional information regarding the public meeting, including webinar registration information, participant instructions, and information about the capabilities available to webinar

participants, please see the Public Participation section of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Lucas Aiden, U.S. Department of Energy, Office of Building Technologies, EE-5B, 950 L'Enfant Plaza SW, Washington, DC 20024. Telephone: (202) 287-5904. Email: ASRAC@ee.doe.gov.

SUPPLEMENTARY INFORMATION: On July 29, 2022, DOE published a notice of intent to establish a working group for CUACs and CUHPs, under the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) in accordance with the Federal Advisory Committee Act and the Negotiated Rulemaking Act, to negotiate recommended test procedures and energy conservation standards for CUAC and CUHP equipment. 87 FR 45703.

Once the working group reaches consensus on recommended test procedures and energy conservation standards, these recommendations are made to ASRAC, which may then use such consensus as the basis for making a recommendation to the Department. The Department, consistent with its legal obligations, may use such consensus as the basis of a rulemaking, which then is published in the **Federal Register**.

The working group for CUACs and CUHPs held public meetings on September 20–21, 2022, October 11–12, 2022, November 9–10, 2022, November 29–30, 2022, December 7–8, 2022, and December 14–15, 2022. As a result of these meetings, the working group successfully reached consensus on a proposed test procedure for CUAC and CUHP equipment. On March 7–8, 2023, and March 21–22, 2023, the working group held public meetings to begin negotiations in an attempt to reach consensus on amended energy conservation standards for CUACs and CUHPs. This notice announces additional public meetings to continue these negotiations.

DOE will host public meetings and webinars on the following dates:

- Wednesday, April 12th, 2023, from 10 a.m. to 5 p.m. at National Renewable Energy Laboratory, 901 D Street SW, Suite 930, Washington, DC 20024.
- Thursday, April 13th, 2023, from 9 a.m. to 3 p.m. at National Renewable Energy Laboratory, 901 D Street SW, Suite 930, Washington, DC 20024.
- Wednesday, April 26th, 2023, from 10 a.m. to 5 p.m. at National Renewable Energy Laboratory, 901 D Street SW, Suite 930, Washington, DC 20024.
- Thursday, April 27th, 2023, from 9 a.m. to 3 p.m. at National Renewable

Energy Laboratory, 901 D Street SW, Suite 930, Washington, DC 20024.

Public Participation:

Attendance at Public Meeting

If you plan to attend the public meetings, please notify the ASRAC staff at asrac@ee.doe.gov. In the email, please indicate your name, organization (if appropriate), citizenship, and contact information.

Please note that foreign nationals participating in the public meetings or webinars are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meetings or webinars, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586-1214 or by email: Regina.Washington@ee.doe.gov so that the necessary procedures can be completed.

Anyone attending the meetings will be required to present a government photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending should arrive early to allow for the extra time needed.

In addition, you can attend the public meetings via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: <https://energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee>. Participants are responsible for ensuring their systems are compatible with the webinar software.

Public Participation and Submission of Written Comments

Members of the public will be heard in the order in which they sign up for the Public Comment Period. Time allotted per speaker will depend on the number of individuals who wish to speak but will not exceed five minutes. Reasonable provisions will be made to include the scheduled oral statements on the agenda. A third-party neutral facilitator will make every effort to allow the presentations of views of all interested parties and to facilitate the orderly conduct of business.

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or

Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **FOR FURTHER INFORMATION CONTACT** section of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by postal mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

Conduct of the Public Meetings

ASRAC's Designated Federal Officer will preside at the public meetings and may also use a professional facilitator to aid discussion. The meetings will not be judicial or evidentiary-type public hearings, but DOE will conduct them in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. A transcript of each public meeting will be included on DOE's website: <https://energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee>. In addition, any person may buy a copy of each transcript from the transcribing reporter. Public comment and statements will be allowed prior to the close of each meeting.

Docket

The docket is available for review at: www.regulations.gov/docket/EERE-2022-BT-STD-0015, including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the www.regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

Signing Authority

This document of the Department of Energy was signed on April 3, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters

the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 4, 2023.

Treena V. Garrett,

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

[FR Doc. 2023-07381 Filed 4-6-23; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2023-0660; Project Identifier MCAI-2022-01561-E]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Rolls-Royce Deutschland Ltd & Co KG (RRD) Trent 1000 model turbofan engines. This proposed AD was prompted by reports of excessive wear on the inner seal fins of certain high-pressure turbine (HPT) triple seals. This proposed AD would require an inspection of the HPT triple seal for excessive wear and, depending on the results of the inspection, replacement of the HPT triple seal and the intermediate-pressure turbine (IPT) disk, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by May 22, 2023.

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

- **Federal eRulemaking Portal:** Go to *regulations.gov*. Follow the instructions for submitting comments.

- **Fax:** (202) 493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA-2023-0660; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA service information that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu*; website: *easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*.

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available at *regulations.gov* under Docket No. FAA-2023-0660.

FOR FURTHER INFORMATION CONTACT:

Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238-7241; email: *Sungmo.D.Cho@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA-2023-0660; Project Identifier MCAI-2022-01561-E” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and

actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022-0241, dated December 7, 2022 (EASA AD 2022-0241) (also referred to as the MCAI), to correct an unsafe condition for certain RRD Trent 1000-AE3, Trent 1000-CE3, Trent 1000-D3, Trent 1000-G3, Trent 1000-H3, Trent 1000-J3, Trent 1000-K3, Trent 1000-L3, Trent 1000-M3, Trent 1000-N3, Trent 1000-P3, Trent 1000-Q3, and Trent 1000-R3 model turbofan engines. The MCAI states that occurrences have been reported of finding higher than expected levels of wear on the seal fins of certain HPT triple seals. The secondary air system is affected by the resulting increased turbine cooling air leakage, which changes the air flow around the IPT disk.

The Modulated Air System (MAS) was designed to optimize cooling air flow and intended to be active only during cruise conditions, but the design did not account for a high level of seal wear. Rolls-Royce issued Non-Modification Service Bulletin Trent 1000 75-AK642, Initial Issue, dated November 30, 2020, to provide instructions for MAS deactivation, and consequently, EASA published EASA AD 2021-0009, dated January 8, 2021, specifying deactivation of the MAS control valves. Despite this, a significantly worn HPT triple seal under flight conditions, while MAS was activated prior to the above action, could have reduced the safety of flight.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA-2023-0660.

Related Service Information Under 14 CFR Part 51

The FAA reviewed EASA AD 2022–0241, which specifies procedures for inspecting the HPT triple seal for excessive wear and, depending on the results of the inspection, replacing the HPT triple seal and the IPT disk.

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

FAA’s Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0241 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and CAAs to use this process. As a result, the FAA proposes to incorporate by reference EASA AD 2022–0241 in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0241 in its entirety through that incorporation, except for any differences identified as exceptions

in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this AD requirement is not limited to the section titled “Required Action(s) and Compliance Time(s)” in EASA AD 2022–0241. Service information required by the EASA AD for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2023–0660 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 4 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect HPT triple seal	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$340

The FAA estimates the following costs to do any necessary replacements that would be required based on the

results of the proposed inspection. The agency has no way of determining the

number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor Cost	Parts Cost	Cost per product
Replace HPT triple seal and IPT disk	4 work-hours × \$85 per hour = \$340	\$737,832	\$738,172

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of

that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce Deutschland Ltd & Co KG:

Docket No. FAA–2023–0660; Project Identifier MCAI–2022–01561–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 22, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to certain Rolls-Royce Deutschland Ltd & Co KG (RRD) Trent 1000–AE3, Trent 1000–CE3, Trent 1000–D3, Trent 1000–G3, Trent 1000–H3, Trent 1000–J3, Trent 1000–K3, Trent 1000–L3, Trent 1000–M3, Trent 1000–N3, Trent 1000–P3, Trent 1000–Q3, and Trent 1000–R3 model turbofan engines, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0241, dated December 7, 2022 (EASA AD 2022–0241).

(d) Subject

Joint Aircraft System Component (JASC) Code 7240, Turbine Engine Combustion Section.

(e) Unsafe Condition

This AD was prompted by reports of excessive wear on the inner seal fins of certain high-pressure turbine (HPT) triple seals. The FAA is issuing this AD to prevent excessive wear on the inner seal fins of certain HPT triple seals. The unsafe condition, if not addressed, could lead to a temperature increase at the intermediate-pressure turbine (IPT) disk rim, possibly resulting in IPT disk failure and high energy debris release, with consequent damage to the airplane and reduced control of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraphs (h) and (i) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, EASA AD 2022–0241.

(h) Exceptions to EASA AD 2022–0241

(1) Where EASA AD 2022–0241 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the Remarks paragraph of EASA AD 2022–0241.

(i) No Reporting Requirement

Although EASA AD 2022–0241 specifies to submit inspection results to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Additional Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7241; email: Sungmo.D.Cho@faa.gov.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency AD 2022–0241, dated December 7, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0241, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADs@easa.europa.eu; website: easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on March 31, 2023.

Christina Underwood,

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

[FR Doc. 2023–07182 Filed 4–6–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0664; Project Identifier MCAI–2022–01527–E]

RIN 2120–AA64

Airworthiness Directives; GE Aviation Czech s.r.o. (Type Certificate Previously Held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.) Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all GE Aviation Czech s.r.o. (GEAC) M601E–11AS, M601E–11S, H75–100, H80–100, and H85–100 model turboprop engines. This proposed AD was prompted by reports of multiple failures of the needle bearing installed in propeller governors having part numbers (P/Ns) P–W11–1 or P–W11–2, caused by self-generated debris from the needle bearing, which led to oil contamination. This proposed AD would require replacement of the affected propeller governors with a redesigned propeller governor, and would prohibit installation of the affected propeller governors, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 22, 2023.

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

- *Federal eRulemaking Portal:* Go to regulations.gov. Follow the instructions for submitting comments.

- *Fax:* (202) 493–2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2023–0664; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except

Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADs@easa.europa.eu; website: easa.europa.eu. You may find this service information on the EASA website at ad.easa.europa.eu. It is also available at regulations.gov under Docket No. FAA-2023-0664.

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this service information at the FAA, call (817) 222-5110.

FOR FURTHER INFORMATION CONTACT:

Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238-7146; email: barbara.caufield@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA-2023-0664; Project Identifier MCAI-2022-01527-E” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your

comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022-0234, dated December 1, 2022 (EASA AD 2022-0234) (also referred to as the MCAI), to address an unsafe condition for all GEAC M601E-11AS, M601E-11S, M601FS, H75-100, H80-100 and H85-100 model turboprop engines. Model M601FS turboprop engines do not have an FAA type certificate, therefore this proposed AD does not include those engines in the applicability. The MCAI states that there have been reports of multiple needle bearing failures that affect propeller governors having P/Ns P-W11-1 and P-W11-2. Further investigation revealed that those failures were caused by self-generated debris from the needle bearing, which led to oil contamination. In response to the unsafe condition, the manufacturer developed a redesigned propeller governor to replace propeller governors having P/Ns P-W11-1 and P-W11-2.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA-2023-0664.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022-0234, which specifies procedures for the replacement of propeller governors having P/Ns P-W11-1 and P-W11-2 with a redesigned propeller governor.

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

FAA’s Determination

These products have been approved by the aviation authority of another

country and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022-0234, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and CAAs to use this process. As a result, the FAA proposes to incorporate by reference EASA AD 2022-0234 in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022-0234 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this AD requirement is not limited to the section titled “Required Action(s) and Compliance Time(s)” in EASA AD 2022-0234. Service information required by the EASA AD for compliance will be available at regulations.gov by searching for and locating Docket No. FAA-2023-0664 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect seven engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove and replace propeller governor	3 work-hours × \$85 per hour = \$255	\$7,000	\$7,255	\$50,785

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

GE Aviation Czech s.r.o. (Type Certificate Previously Held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.):
Docket No. FAA–2023–0664; Project Identifier MCAI–2022–01527–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 22, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to GE Aviation Czech s.r.o. M601E–11AS, M601E–11S, H75–100, H80–100, and H85–100 model turboprop engines, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0234, dated December 1, 2022 (EASA AD 2022–0234).

(d) Subject

Joint Aircraft Service Component (JASC) Code 6122, Propeller governor; 7200, Engine (turbine/turboprop).

(e) Unsafe Condition

This AD was prompted by multiple failures of the needle bearing installed in certain propeller governors, caused by self-generated debris from the needle bearing, which led to oil contamination. The FAA is issuing this AD to prevent needle bearing failures in certain propeller governors. The unsafe condition, if not addressed, could result in loss of propeller control oil pressure, failure of the engine, reduced control of the airplane, and damage to the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Perform all required actions and

compliance times specified in, and in accordance with, EASA AD 2022–0234.

(h) Exceptions to EASA AD 2022–0234

(1) Where EASA AD 2022–0234 specifies compliance from its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the Remarks paragraph of EASA AD 2022–0234.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD and email to: ANE-AD-AMOC@faa.gov.

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

(j) Additional Information

For more information about this AD, contact Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7146; email: barbara.caufield@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency AD 2022–0234, dated December 1, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0234, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADS@easa.europa.eu; website: easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on April 1, 2023.

Christina Underwood,

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

[FR Doc. 2023-07178 Filed 4-6-23; 8:45 am]

BILLING CODE 4910-13-P

POSTAL REGULATORY COMMISSION

39 CFR Parts 3035, 3050, and 3060

[Docket No. PI2023-3; Order No. 6471]

RIN 3211-AA36

Postal Costing

AGENCY: Postal Regulatory Commission.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: Due to recent legislation, the Commission is initiating a review of regulations that relate to postal cost attribution in order to determine whether any revisions to those regulations, or to any analytical principles (including any costing methodologies or cost models) used in postal cost attribution, are appropriate. The Commission takes certain administrative steps and invites public comment.

DATES: *Comments are due:* June 14, 2023; *Reply Comments are due:* July 14, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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- I. Background
- II. Invitation To Comment
- III. Administrative Actions

I. Background

The PSRA, enacted on April 6, 2022, amended Title 39 of the United States Code and other relevant statutory provisions. Among other changes, section 203 of the PSRA added a note to 39 U.S.C. 3633, which requires that the Commission, no later than April 6, 2023, “initiate a review of the regulations issued pursuant to sections 3633(a) and 3652(a)(1) of title 39, United States Code, to determine whether revisions are appropriate to ensure that

all direct and indirect costs attributable to competitive and market-dominant products are properly attributed to those products, including by considering the underlying methodologies in determining cost attribution and considering options to revise such methodologies.” PSRA section 203. Section 203 also specifies that, if, after notice and public comment, the Commission determines “that revisions are appropriate, the Commission shall make modifications or adopt alternative methodologies as necessary.” *See id.*

The Postal Service uses a two-tier costing system to categorize its accrued costs. The Postal Service first identifies all costs that can be reliably and causally linked to individual postal products or groups of products, using Commission-approved analytical principles, and attributes those costs to products or product groupings. All remaining costs are classified as institutional. This two-tier postal costing approach, which is deeply rooted in the Postal Service's historical treatment of costs,¹ has been adopted into Title 39 of the United States Code.² Specifically, Sections 3631(b) and 3622(c) of Title 39 of the United States Code expressly codify “reliably identified causal relationships” as the standard for cost attribution. A detailed description of the approach to postal cost attribution currently employed by the Postal Service and the Commission appears in Docket Nos. RM2017-1 and RM2022-2.³

Since the enactment of the Postal Accountability and Enhancement Act (PAEA) and the Commission's subsequent promulgation of regulations,⁴ the Postal Service has

improved the information used as the basis for cost attribution by changing or upgrading numerous data systems and updating and improving special cost studies. As a result, the Commission has presided over numerous rulemakings that have affected cost attribution.

Cost attribution can be affected in major or minor ways through Commission proceedings that involve changes in “analytical principles.” Analytical principles refer to economic, mathematical, or statistical theories, precepts, or assumptions applied by the Postal Service in producing required periodic reports. *See* 39 CFR 3050.1(c). Analytical principles include, but are not limited to, costing methodologies and cost models that the Postal Service relies upon to generate cost-related data. The Commission has presided over many such proceedings to change accepted analytical principles since the PAEA was enacted.

II. Invitation To Comment

The Commission invites interested persons to comment on regulations related to Postal Service cost attribution, as well as the analytical principles (including costing methodologies or cost models) underlying postal cost attribution. Comments should focus on whether revisions to any regulations or analytical principles are necessary “to ensure that all direct and indirect costs attributable to competitive and market-dominant products are properly attributed to those products” PSRA section 203. Commenters are reminded that the scope of this docket is focused on regulations and analytical principles pertaining to cost attribution.

III. Administrative Actions

Pursuant to section 203 of the PSRA, the Commission establishes Docket No. PI2023-2 in order to review regulations issued pursuant to 39 U.S.C. 3633(a) and 3652(a)(1) relevant to the issue of postal cost attribution, as well as analytical principles (including costing methodologies or cost models) relevant to postal cost attribution. The Commission intends to evaluate the comments received and use those suggestions to help carry out the responsibilities described in section 203 of the PSRA. Comments are due no later than June 14, 2023. Reply comments are due no later than July 14, 2023.

Comments and other material filed in this proceeding will be available for review on the Commission's website unless the information contained therein is subject to an application for non-public treatment. The Commission's rules on non-public materials (including access to

¹ In implementing the Postal Reorganization Act, Public Law 91-375, 84 Stat. 719 (1970), the former Postal Rate Commission developed the two-tier approach to costing. That approach was upheld by the Supreme Court of the United States. *See Nat'l Ass'n of Greeting Card Publishers v. U.S. Postal Serv.*, 462 U.S. 810, 833 (1983) (specifically rejecting the imposition of an intermediary tier of costs, based on extended inferences of causation, between attributable and institutional costs).

² Postal Accountability and Enhancement Act, Public Law 109-435, 120 Stat. 3201, 3205 (2006); 39 U.S.C. 3622(c)(2), 3631(b); *see also* S. Rep. No. 108-318, at 9-10 (2004). The enactment of the PSRA did not disturb this two-tier approach. *See* Docket Nos. RM2017-1 and RM2022-2, Order Finalizing Rule Relating to the Institutional Cost Contribution Requirement for Competitive Products, January 9, 2023, at 37 n. 40 (Order No. 6399).

³ Supplemental Notice of Proposed Rulemaking and Order Initiating the Third Review of the Institutional Cost Contribution Requirement for Competitive Products, November 18, 2021, at 11-35 (Order No. 6043).

⁴ *See generally* Docket No. RM2007-1, Order Establishing Rulemaking Regulations for Market Dominant and Competitive Products, October 29, 2007 (Order No. 43).

documents filed under seal) appear in 39 CFR part 3011.

Pursuant to 39 U.S.C. 505, the Commission appoints Katalin K. Clendenin to represent the interests of the general public (Public Representative) in this proceeding.

By the Commission.

Mallory Richards,
Attorney-Advisor.

[FR Doc. 2023-07327 Filed 4-6-23; 8:45 am]

BILLING CODE 7710-FW-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2023-0202; FRL-10873-01-R9]

Air Plan Approval; California; Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_x) from internal combustion engines. 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 May 8, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2023-0202 at <https://www.regulations.gov>. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, 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 a disability 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: La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3245 or by email at evanshopper.lakenya@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us” and “our” refer to the EPA.

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 - B. Are there other versions of this rule?
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 - A. How is the EPA evaluating the rule?
 - B. Does the rule meet the evaluation criteria?
 - C. Public Comment and Proposed Action
- III. Incorporation by Reference
- IV. Statutory and Executive Order Reviews

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	Amended	Submitted
MDAQMD	1160	Internal Combustion Engines	01/23/23	03/03/23

Pursuant to CAA section 110(k)(1)(B) and 40 CFR part 51, appendix V, the EPA determined that the submittal for MDAQMD Rule 1160 met the completeness criteria on March 17, 2023.

B. Are there other versions of this rule?

On September 10, 2021 (86 FR 50643), we took final action on a limited approval and limited disapproval of an earlier version of Rule 1160. This limited approval final action approved this earlier version of Rule 1160 into the SIP, including those rule provisions identified as deficient. In response to our limited disapproval final action, the MDAQMD adopted revisions to the SIP-approved version on January 23, 2023 and CARB submitted them to us on March 3, 2023. In its submittal letter, CARB requested that, upon approval of

the revised version of Rule 1160, the EPA remove the old version of this rule from the SIP. If we take final action to approve the January 23, 2023 version of Rule 1160, this version will replace the previously approved version of this rule in the SIP.

C. What is the purpose of the submitted rule revision?

Emissions of NO_x and VOCs contribute to the production of ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_x and VOC emissions. Sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas classified as Moderate or above implement reasonably available control technology

(RACT) for any source covered by a Control Techniques Guidelines (CTG) document and for any major source of VOCs or NO_x. Rule 1160 regulates NO_x emissions from major sources of NO_x and has been submitted by CARB and the air district to implement RACT for these sources. The revised version of Rule 1160 was submitted to address the deficiencies identified in our September 10, 2021 limited disapproval final action of the previous version of Rule 1160, and to ensure that the air district implements RACT level controls for all major stationary sources of NO_x.

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)), and must not interfere with applicable

requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)).

Generally, SIP rules must require RACT for each category of sources covered by a CTG document as well as each major source of NO_x and VOCs in ozone nonattainment areas classified as moderate or above (see CAA sections 182(b)(2) and 182(f)). The MDAQMD regulates an ozone nonattainment area classified as Severe-15 for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the 2008 8-hour ozone NAAQS (40 CFR 81.305). Therefore, MDAQMD must implement RACT.

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. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).

2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

3. "Control of Volatile Organic Emissions from Solvent Metal Cleaning," EPA-450/2-77-022, November 1977.

4. "NO_x Emissions from Stationary Reciprocating Internal Combustion Engines," EPA-453/R-93-032, July 1993.

5. "Stationary Spark-Ignited Internal Combustion Engines," CARB, November 2001.

B. Does the rule meet the evaluation criteria?

This rule meets CAA requirements and is consistent with relevant guidance regarding enforceability, RACT, and SIP revisions. The revised version of Rule 1160 removed the alternative compliance option that the EPA identified as deficient in our September 10, 2021 final action. As a result, covered engines in the District no longer have the option to generate an alternative compliance plan in place of complying with the limits in the rule. However, the rule does include a specialized provision that governs five units that previously complied with the rule via an alternative compliance plan. The rule requires five specific internal combustion engines located at the Pacific Gas & Electric Facility Hinkley Compressor Station in Hinkley, California to operate, in aggregate, no greater than 2,600 engine hours per calendar year. Once operations of these engines exceed this limit, the engines

will be subject to the NO_x emission limits of the rule. This represents less than 6% of the total capacity of these engines. Given the costs associated with retrofitting these low-use engines, which the facility needs to keep online for occasional peaking capacity, the EPA concludes that additional controls for these units are not reasonably available. The EPA's reasoning is explained in greater detail in the technical support document (TSD) located in the docket of this rulemaking.

The revised version of Rule 1160 also adds testing and compliance requirements for regulated internal combustion engines without emission control equipment. The lack of compliance requirements for such units was identified as a deficiency in the EPA's prior limited disapproval of Rule 1160. As described in greater detail in our TSD, the EPA concludes that these added compliance requirements cure the previously identified deficiency. The EPA's TSD has more information about this rule.

C. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, 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 May 8, 2023. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable 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 MDAQMD Rule 1160, Internal Combustion Engines, amended on January 23, 2023 which regulates NO_x and VOC emissions from internal combustion engines as discussed in section II of this preamble. 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 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).

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. EPA defines environmental justice (EJ) 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.” 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.”

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

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

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

Dated: March 30, 2023.

Kerry Drake,

Acting Regional Administrator, Region IX.

[FR Doc. 2023-07084 Filed 4-6-23; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[PSHSB: PS Docket No. 23-5; PS Docket No. 15-80; WC Docket No. 18-336; FR ID 133036]

Ensuring the Reliability and Resiliency of the 988 Suicide & Crisis Lifeline; Rules Concerning Disruptions to Communications; Implementation of the National Suicide Hotline Improvement Act of 2018

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes rules designed to ensure that the Commission and those parties that provide life-saving crisis intervention services to people calling the 988 Suicide & Crisis Lifeline (988 Lifeline), which includes the Veterans Crisis Lifeline, receive timely and actionable information about 988 service outages that potentially affect those services' ability to meet the immediate health needs of people in suicidal crisis and mental health distress. These proposed rules respond to the 988 Lifeline nationwide network outage in December 2022, which required the Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA) to redirect callers to alternatives means to contact the hotline once it was made aware of the outage.

DATES: Comments are due on or before May 8, 2023, and reply comments are due on or before June 6, 2023. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public and other interested parties on or before June 6, 2023.

ADDRESSES: You may submit comments, identified by PS Docket No. 23-5; PS Docket No. 15-80; and WC Docket No. 18-336, by any of the following methods:

- *Federal Communications Commission's website:* <https://www.apps.fcc.gov/ecfs/>. Follow the instructions for submitting comments.
- *Mail:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to

mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

- *People with Disabilities.* 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 & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

FOR FURTHER INFORMATION CONTACT: For further information regarding this document, please contact Tara B. Shostek, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418-8130, or by email to Tara.Shostek@fcc.gov. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to PRA@fcc.gov or contact Nicole Ongele, Office of Managing Director, Performance Evaluation and Records Management, 202-418-2991, or by email to PRA@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking*, FCC 23-7, adopted January 26, 2023, and released January 27, 2023. The full text of this document is available by downloading the text from the Commission's website at: <https://docs.fcc.gov/public/attachments/FCC-23-7A1.pdf>.

Initial Paperwork Reduction Act of 1995 Analysis

This document may contain potential new or revised information collection requirements. Therefore, we seek comment on potential new or revised collections subject to the Paperwork Reduction Act of 1995. If the Commission adopts any new or revised final information collection requirements when the final rules are adopted, the Commission will publish a notice in the **Federal Register** inviting further comments from the public on the final information collection requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this document, as required by the PRA. Public and agency comments on the

PRA proposed information collection requirements are due June 6, 2023. Comments should address: (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; (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; and (e) way to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

I. Notice of Proposed Rulemaking

A. Reporting 988 Special Facility Outages

1. The Commission's rules do not currently require notification when access to the 988 Lifeline is compromised or the 988 Lifeline system experiences an outage. To improve the resiliency of the 988 Lifeline system and ensure the Commission, the Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA), the Veteran's Administration (VA), and the 988 Lifeline administrator have timely outage information so they can provide the public with alternative ways to access the 988 Lifeline, the document proposes to require providers that provide the 988 Lifeline with capabilities such as the ability to receive, process, or forward calls to report outages that potentially affect the 988 Lifeline to the Commission's Network Outage Reporting System (NORS). The Commission seeks comment on this proposal.

2. The Commission believes, as in the 911 context, that improving situational awareness of significant network outage issues affecting 988 Lifeline services would provide the Commission (as well as other Federal, state, Tribal, and territorial agencies with public safety responsibilities) with critical insight into the availability and reliability of a vital public health service. In the short term, the Commission expects that these reporting requirements would improve public safety by allowing the

Commission and other agencies to assess the magnitude of major outages and, in the long term, to identify network reliability trends and determine whether the outages likely could have been prevented or mitigated had the service providers followed certain network reliability best practices.

3. The document seeks comment on how it should define the universe of providers that would be subject to this new requirement. The document proposes to define "covered 988 service providers" as those providers that provide the 988 Lifeline with capabilities such as the ability to receive, process, or forward calls. Are there additional entities that provide services or functionalities in the 988 call pathway that should be included in the definition of a covered 988 service provider?

4. The document proposes that 988 outage reports be filed with the Commission in NORS, consistent with current outage filing processes. In this regard, the Commission expects that the use of the NORS database will minimize costs to providers of implementation as providers already file outage reports in NORS, and we expect that the vast majority of outages that potentially affect 988 special facilities are already being reported in this system. The Commission also proposes that covered 988 service providers be required to notify the Commission in this regard when the provider experiences a service outage that results in a loss of the ability of the 988 Suicide & Crisis Lifeline to receive, process or forward calls for at least 30 minutes and seeks comment on this proposal.

5. In addition to the proposal that covered 988 service providers file outage notifications in NORS, the document seeks comment whether to require cable, satellite, wireless, wireline, and interconnected voice over internet protocol (VoIP) providers (collectively, originating service providers) to report outages that potentially affect the 988 Lifeline to the Commission's NORS. The Commission's existing rules that require the reporting of outages that potentially affect 911 include as outages triggering reporting obligations those that are associated with more general outages as well as those specific to the emergency number. The document seeks comment on whether to adopt a similar requirement for 988. If so, what outage threshold should be considered, *e.g.*, outages impacting the toll free access number lasting at least 30 minutes in duration and potentially affecting at least 900,000 user minutes? Are there any special characteristics of 988 calls that would

make it more effective or efficient for the Commission to adopt alternative outage reporting thresholds that do not resemble the reporting requirements for other communications outages. Do the differences between 911 call routing and 988 Lifeline call routing affect the policy issues around outage reporting by originating service providers?

6. The document seeks comment on whether outages affecting covered 988 texts should be reported, and if they should be reported what thresholds should apply and why? The document asks for specific comments addressing the costs associated with requiring reporting of outages to covered 988 text messages. A covered 988 text message means "a 988 text message in SMS format and any other format that the Wireline Competition Bureau has determined must be supported by covered text providers." 47 CFR 52.201(c)(2). A covered text provider "includes all CMRS providers as well as all providers of interconnected text messaging services that enable consumers to send text messages to and receive text messages from all or substantially all text capable U.S. telephone numbers, including through the use of applications downloaded or otherwise installed on mobile phones." 47 CFR 52.201(c)(3).

7. Is there information that is unique to 988 outages that we should require to be included in an outage report due to its value in understanding the cause or impacts of such an outage? Should the required deadlines for the filing of 988 outage reports be different from the deadlines for filing other types of outage reports? Should the reporting requirements be different for originating service providers that deliver calls to the 988 Lifeline in the first instance versus the covered 988 service provider that handles the call thereafter?

B. Providing Notice of Outages That Potentially Affect 988 Special Facilities

8. The document proposes to require covered 988 service providers to notify 988 special facilities about outages that potentially affect a 988 special facility. The document further proposes that this outage notification obligation mirror our existing 911 special facility notification requirements, as discussed below, and seeks comment on our proposal. Are there any differences between 911 and the 988 Lifeline that would warrant a different approach to 988 special facility notification?

9. *Notification to 988 special facilities.* The document proposes to designate SAMHSA, the VA, and the 988 Lifeline administrator as 988 special facilities that will receive notifications

of outages that potentially affect a 988 special facility and seeks comment on this proposal. The Commission seeks comment on its belief that timely notice of a 988 Lifeline outage will assist SAMHSA, the VA, and the 988 Lifeline administrator to quickly inform the public of alternative ways of contacting the Lifeline while one type of communication is unavailable, such as texting or using the online chat function if calls are not getting through. The Commission does not propose to impose any obligations on SAMHSA or the VA.

10. The document proposes that reliance upon a third-party service provider to manage, route, or otherwise contribute to 988 call processing would not relieve covered 988 service providers of the obligation to provide notification to 988 special facilities under these proposed rules. This is consistent with the Commission's current treatment of 911 notification obligations. The document seeks comment on this approach.

11. In addition to the proposal to require notification by covered 988 service providers, the document seeks comment on whether to require cable, satellite, wireless, wireline, and interconnected VoIP providers to make similar notifications.

12. *Notification to other entities.* The document seeks comment on whether there are additional entities that should receive notice of an outage that potentially affects a 988 special facility. For example, should the local crisis centers to which 988 calls are routed be considered 988 special facilities that should receive 988 outage notifications.

13. The document seeks comment on whether covered 988 service providers should be required to notify originating service providers about 988 outages, enabling originating service providers to voluntarily notify their customers of the outage and alternative ways to obtain crisis assistance. Should originating service providers be required to provide notice to covered 988 service providers of 988 outages? If notice should be required to originating service providers and/or public safety answering points (PSAPs), should the content of the notice be the same or different than the notice 988 special facilities receive? The Commission encourages commenters to address the specific costs and benefits of providing notice to these entities.

14. *Content of 988 notification.* In the 911 context, the Commission determined that PSAPs should receive consistent, timely, and actionable notice of 911 service outages that potentially affect them in order to empower them to lessen the impacts of outages on the provision of emergency services by

rerouting calls or communicating alternatives to the public. The Commission believes that it is similarly important that the information provided during a 988 outage is clear and actionable so that 988 special facilities can make swift judgments as to whether to inform the public about alternative means to contact mental health and suicide prevention services. As required for 911 outages, the document proposes that covered 988 service providers must provide the following material information in their 988 special facility outage notifications:

- An identifier unique to each outage;
- The name, telephone number, and email address at which the notifying service provider can be reached for follow-up;
- The name of the service provider(s) experiencing the outage;
- The date and time when the incident began (including a notation of the relevant time zone);
- The type of communications service(s) affected;
- The geographic area affected by the outage;
- A statement of the notifying service provider's expectations for how the outage potentially affects the 988 special facility (e.g., dropped calls);
- The expected date and time of restoration, including a notation of the relevant time zone;
- The best-known cause of the outage; and
- A statement of whether the message is the notifying service provider's initial notification to the 988 special facility, an update to an initial notification, or a message intended to be the notifying service provider's final assessment of the outage.

The document seeks comment on this proposal. Are there differences between 911 and 988 that would warrant different content requirements for notifications? If we were to adopt rules for originating providers in addition to covered 988 service providers, should we require the same content requirements for notifications?

15. *Means of notification.* The document proposes to require covered 988 service providers to notify 988 special facilities of outages that potentially affect them by telephone and in writing by electronic means and by alternative means if mutually agreed upon in writing in advance by the 988 special facility and the service provider, which is the same manner of notification that originating service providers follow when notifying 911 special facilities of outages that potentially affect them. The Commission seeks comment on its belief

that dual notification will provide the greatest assurance that a 988 special facility, regardless of its size or capability, will receive the outage notification.

16. The document seeks comment on whether there are differences between notifications to 911 special facilities and 988 special facilities that warrant a different form of notification. In addition to the proposal for covered 988 service providers, should the Commission apply similar requirements to originating cable, satellite, wireless, wireline, interconnected VoIP providers?

17. *Maintain contact information.* To better ensure that potentially affected 988 special facilities receive actionable notice about 988 outages, the document proposes to require that covered 988 service providers exercise special diligence to maintain accurate, up-to-date contact information for 988 special facilities, which includes the name and contact information of the person designated by each of these entities to receive notification of 988 outages. "Special diligence" is the diligence expected from a person practicing in a particular field of specialty under circumstances like those at issue. The Commission has imposed this higher level of care in circumstances where a failure to take sufficient care can lead to particularly serious public harms. In these circumstances, "special diligence" would require, for example, actively seeking to confirm the accuracy of contact information and not relying on the absence of a response. Once providers have a 988 special facility contact list in place, special diligence would require them to annually verify the accuracy of their contact list to maintain it up-to-date. The document seeks comment on this proposal. In considering whether the Commission should also designate local crisis centers to be 988 special facilities that are required to receive outage notifications, the document seeks comment on how providers can obtain contact information for these centers. Does SAMHSA or the 988 Lifeline administrator maintain an updated and accurate list of contacts at each of the counseling centers, and could these contacts also be designated to receive notice of 988 Lifeline outages? Parties should address the costs that are involved with keeping an up to date contact list. The document seeks comment on whether we should extend this requirement to originating providers, in addition to our proposal for covered 988 service providers.

18. *Timing of initial notification.* The document proposes that covered 988

service providers be required to provide 988 outage notifications to potentially affected 988 special facilities as soon as possible, but no later than within 30 minutes of discovering that they have experienced, on any facilities that they own, operate, lease, or otherwise utilize, an outage that potentially affects a 988 special facility. The document seeks comment on whether this timeframe is appropriate for 988 outage notification and whether the reporting timeframe should be shortened or extended and if so, why.

19. *Follow-up notification.* The document proposes that covered 988 service providers communicate additional material information, which includes, among other information, the date and time when the incident began, the types of communications services affected, the geographic area affected by the outage, how the outage affects the 988 special facility, the expected date and time of restoration, and the best-known cause of the outage, to potentially affected 988 special facilities in notifications subsequent to the initial notification as soon as possible after that information becomes available, but no later than two hours after the initial contact. The document proposes that for outages lasting longer than two hours, covered 988 service providers would be required to continue to follow up with additional material information to 988 special facilities, SAMHSA, the VA, and 988 Lifeline administrator as soon as possible after discovery of the new material information, and continue providing additional material information until the outage is completely repaired and service is fully restored. The document seeks comment on this proposal. The document also seeks comment on whether we should extend this requirement to originating providers.

20. *988 Lifeline Resiliency and Reliability.* The Commission's part 4 rules require covered 911 service providers to annually file 911 reliability certifications, which the Commission has found are necessary to ensure the 911 network remains resilient and robust as the use of the 911 network continues to expand. The Commission seeks comment on whether covered 988 service providers should similarly be required to file 988 reliability certifications to ensure the network supporting the 988 Lifeline remains resilient and robust. Are there other measures or requirements the Commission could adopt that would further improve the resiliency and reliability of the 988 Lifeline?

21. *Legal Authority.* As noted above, in 2020, similar to its prior action with

respect to 911, Congress further amended Section 251 of the Communications Act of 1934 to specify 988 as the universal telephone number for the National Suicide Prevention Lifeline. The proposed reporting and notice rules are intended to ensure the 988 Lifeline remains operational in accordance with the policies identified by Congress in that 2020 legislation and that any outages are quickly identified and reported, with notice provided to parties who would notify the public of alternative means to access crisis counselors, all of which promotes the safety of life and property. The Commission seeks comment on its legal authority to require the 988 outage reporting and 988 special facility notice requirements proposed herein, including its rulemaking authority pursuant to titles II and III of the Communications Act and Section 104 of the Twenty-First Century Communications and Video Accessibility Act (CVAA), as well as its authority under section 4(i) of the Communications Act, as amended, to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions" which includes "the purpose of promoting safety of life and property. . . .".

C. Assessing the Benefits and Costs

22. The Commission seek comment on the potential benefits and costs of the proposals addressed in this document. The 988 Lifeline directly benefits people in crisis and saves lives. When the 988 Lifeline is interrupted, people's lives are put into jeopardy. In November 2022, the 988 Lifeline answered 195,083 calls, which is an average of over 6,500 answered calls per day. The Commission believes our proposed outage reporting requirements would improve public safety by providing the Commission and other impacted entities with situational awareness of 988 outages, including the magnitude and causes of those outages, and allow for the identification of network reliability trends that can help identify best practices that could improve network reliability by helping to mitigate future outages. The proposed notice and contact information retention requirements are intended to ensure that when 988 calling is disrupted, parties responsible for the varying aspects of the 988 call pathway notify 988 special facilities, share critical information in a timely and standardized manner, and are motivated to hasten the timely restoration of 988 Lifeline services. The description below shows how even a

very small increase in the speed of restoration of access to 988 Lifeline services could provide benefits that outweigh the costs of adopting the proposed requirements.

23. The benefits of reducing suicide via 988 are driven by suicides' staggering societal costs. In 2020, there were 45,979 deaths by suicide in the United States, which, as noted above, averages out to almost one death every 11 minutes. For every suicide death, there were 4 hospitalizations for suicide attempts, 8 suicide-related emergency department visits, and 27 self-reported suicide attempts. In addition to lives saved, time saving network outage protocols will also alleviate the devastating emotional toll wrought by suicide on victims' families, friends, and communities.

24. Notifying SAMHSA, the VA, and the 988 Lifeline administrator of the disruption of access to 988 Lifeline services should allow these parties to manage the impact of outages on their operations, quickly notify the public of the 988 service outage, and promote alternative ways for people to access 988 Lifeline services while 988 Lifeline service is out, which may include notifying the public of alternative call numbers, or encouraging people to text to 988 or use the <https://988lifeline.org/> link to chat with a crisis management counselor. This, in turn, should enhance the 988 Lifeline's ability to direct scarce resources toward mitigating outages rather than seeking out information to whether an outage is occurring, the scope of such an outage or its impact. The Commission can turn its attention to administering the 988 rules and the providers to fulfilling their service obligations. One of the benefits of implementing short dialing for calls to the Lifeline was to reduce the burdens on 911 and other emergency services arising from calls related to mental health and suicide. The Commission believes that the proposed rules will further reduce the burden on 911 and other emergency services by promoting 988 reliability so that 988 calls go through when callers need 988 service the most. The Commission seek comment on the benefits associated with the proposed rules and whether these requirements will help to preserve the public's continuity of access to the 988 special facilities that support them. Are there any other benefits to public health and safety that arise from our proposed rules that have not been described?

25. The document also seeks comment on the burdens associated with the proposed rules. To the extent that there are 988 outages that are not

currently reported to the Commission, the Commission expects that those would be outages experienced by covered 988 service providers that are responsible for receiving, processing, or forwarding 988 calls. The Commission expect that these service providers are already submitting outage reports to the Commission related to other aspects of their operations, so initial compliance costs would be negligible. Assuming that one covered 988 service provider experiences a maximum of one reportable outage per month, the document estimates an annual compliance cost for that one covered 988 service provider of \$1,000. As a consequence, the Commission expects the actual cost for implementation and compliance of the proposed outage reporting rules will be extremely low, and seeks comment on this analysis.

26. With regard to the proposed requirements to maintain updated contact information for 988 special facilities and to notify those facilities about outages that affect them, the Commission expects that the costs of compliance will also be relatively low when compared to the benefits to the public. The document estimates a one-time industry-wide cost of \$56,000 to create an email survey to biannually solicit 988 special facility contact information. The Commission do not expect any costs arising from the creation or updating of outage notification templates, as the proposed 988 outage notification requirements share the same content and timing as the 911 outage notification requirements with which service providers already comply. The document estimates maximum annually recurring costs of \$1,354,000, which consist of \$1,326,000 for notifying 988 special facilities of outages that potentially affect them pursuant to the standards that we propose in this document and \$28,000 for soliciting appropriate contact information for outage notification from 988 special facilities. The Commission expects that no costs will be incurred related to identifying the 988 special facilities that could potentially be affected by an outage, as the document has proposed that the same three special facilities (SAMHSA, the VA, and the 988 Lifeline administrator) be notified regardless of the geographic area affected by the outage.

27. The document seeks comment on this analysis. How many outages that potentially affect 988 special facilities are estimated to be occurring annually that would be subject to the notification requirements that we propose in this document, and what is the basis for that estimate? In the event that we were to

designate local crisis centers as 988 special facilities, we seek comment on the costs related to the notification of those facilities. Are there steps that can be taken to minimize those costs, such as SAMHSA or the 988 Lifeline administrator agreeing to regularly share updated lists of designated contacts directly with service providers so the local crisis centers do not need to be contacted individually? To what extent have service providers already implemented a notification framework for 911 or other services that would reduce any costs associated with our proposal? The document seeks comment on the extent to which service providers have set up automated triggers for other forms of notifications, whether they may be able to leverage automatic triggers they may already have in place for PSAP notifications, and what costs would be involved.

28. The document seeks comment on additional benefits and costs as well as alternative quantifications of benefits and costs from the proposed rules. The Commission recognizes that it is difficult to quantify the value of continuity of access to 988 service, which includes its capacity to save lives and mitigate and prevent injuries. However, the Commission believe the considerable public safety value of the proposals adopted in this document as described above will exceed the limited costs of implementation, and seeks comment on our assessment. The Commission encourages commenters to quantify both specific costs and benefits that would result from adoption of the proposed notice and reporting requirements.

D. Promoting Digital Equity

29. 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 herein. Specifically, the document seeks comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.

E. Timelines for Compliance

30. The document proposes to set a compliance date for these proposed rules at the later of (1) 30 days after the Commission issues a Public Notice

announcing that the Office of Management and Budget (OMB) has completed review of any new information collection requirements associated with the adopted Report and Order; or (2) 90 days after the publication of final rules in the **Federal Register**. The Commission believe that the revisions proposed constitute only minor changes to existing procedures and it will take a modest amount of time for covered 988 service providers to adjust their processes to meet the proposed rules because the proposed requirements are closely aligned with the notice and reporting requirements for 911 network outages. The document seeks comment on this assessment. The document also seeks comment on whether allowing additional time for small- and medium-sized businesses to comply with the requirements we propose in this document would serve the public interest.

Initial Regulatory Flexibility Analysis

31. 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 a substantial number of small entities by the policies and rules proposed in this document. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the document. The Commission will send a copy of this document, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the document and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

32. In this proceeding, the Commission takes steps to improve the reliability and resiliency of telecommunications networks nationwide and 988 Lifeline network specifically, so that the American public can continue to reach the 988 Suicide & Crisis Lifeline (988 Lifeline) without undue delay or disruption. The document seeks comment on 988 Lifeline outage reporting and notification requirements that are similar to the Commission's rules for reporting 911 outages that would be applicable to originating service providers and proposes outage reporting and notification requirements for a new category of "covered 988 service providers." The new "covered 988 service providers" category would be

defined as those providers that provide the 988 Lifeline with capabilities such as the ability to receive, process, or forward calls. Both the originating service providers and the covered 988 service providers would be required to file 988 outage reports with the Commission, in the Commission's Network Outage Reporting System (NORS).

33. The document seeks comment on whether cable, satellite, wireless, wireline, and interconnected VoIP providers should be required to notify 988 special facilities about outages that affect these facilities pursuant to notification obligations that mirror the Commission's existing 911 special facility notification requirements. The document seeks comment on the appropriate threshold to trigger reporting, including whether it should include outages potentially affecting at least 900,000 user-minutes and/or the outage lasts 30 minutes or more, or whether the absence of a call reroute should be a factor. For covered 988 service providers, the document proposes to require these providers notify the Commission of outages resulting in a loss of the ability of the 988 Suicide & Crisis Lifeline to receive, process, or forward calls for at least 30 minutes in duration. The document also proposes to designate SAMHSA, the VA, and the 988 Lifeline administrator as the 988 special facilities that must be notified of an outage that potentially affects a 988 facility.

34. Additionally, for covered 988 service providers the document proposes that the 988 outage notification to 988 special facilities include specific content requirements, the means by which notification must be made, the timing to file the initial and follow-up notice, and the filing of an annual verification that a provider's information for 988 special facilities is up to date. Further, in the document we set a proposed compliance deadline of the later of 30 days after the Commission issues a Public Notice announcing that OMB has completed review of any new information collection requirements associated with the final rules adopted in a Report and Order; or (2) 90 days after the publication of final rules in the **Federal Register**. We seek comment on all of the proposals we make in the document, and on the benefits and costs analyses we discuss for the proposals. We also seek comment on applying similar provisions to originating service providers as to notice parameters and implementation timeframes.

35. The Commission believes the significant public safety benefits which

include the capacity to save lives, mitigate, and prevent injuries furthers the public interest and outweighs the implementation costs for service providers if the proposed rules are adopted. Since the 988 outage notification requirements proposed in the document are closely aligned with the existing notice and reporting requirements for 911 network outages, we also believe implementation by cable, satellite, wireless, wireline, interconnected VoIP, and covered 988 service providers will only require minor changes to existing processes and procedures.

B. Legal Basis

36. The proposed action is authorized pursuant Sections 1, 4(i), 4(j), 4(n), 201(b), 214, 218, 251(e)(3), 251(e)(4), 301, 303(b), 303(g), 303(r), 307, 309(a), 332, and 403, of the Communications Act of 1934, as amended, and sections 3(b) and 6 of the Wireless Communications and Public Safety Act of 1999, as amended, 47 U.S.C. 151, 154(i), 154(j), 154(n), 201(b), 214, 218, 251(e)(3), 251(e)(4), 301, 303(b), 303(g), 303(r), 307, 309(a), 332, 403, 615, 615a–1, the National Suicide Hotline Improvement Act of 2018, Public Law 115–233, 132 Stat. 2424 (2018), and the National Suicide Hotline Designation Act of 2020, Public Law 116–271 (2020).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

37. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.” A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

38. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility

analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.

39. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

40. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose governments— independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

41. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million

as small. Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year. Of that number, 149 firms operated with revenue of less than \$25 million a year and 44 firms operated with revenue of \$25 million or more. Based on this data, the Commission estimates that a majority of firms in this industry are small.

42. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Based on industry data, there are about 420 cable companies in the U.S. Of these, only seven have more than 400,000 subscribers. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Based on industry data, there are about 4,139 cable systems (headends) in the U.S. Of these, about 639 have more than 15,000 subscribers. Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

43. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice. Based on industry data, only six cable system operators have more than 677,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

44. *Incumbent Local Exchange Carriers*. Neither the Commission nor the SBA have developed a small

business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

45. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

46. *All Other Telecommunications*. This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes

establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (e.g., dial-up ISPs) or voice over internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

47. *Satellite Telecommunications*. This industry comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$38.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than \$25 million. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, a little more than of these providers can be considered small entities.

48. *Telecommunications Resellers*. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission

facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms operated in this industry for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 811 providers that reported they were engaged in the provision of local or toll resale services. Of these providers, the Commission estimates that 784 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

49. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as "establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

50. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA's small

business size standard, most of these providers can be considered small entities.

51. *Wireless Communications Services.* Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to part 27 of the Commission's rules. Wireless Telecommunications Carriers (*except Satellite*) is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in part 27 of the Commission's rules for the specific WCS frequency bands.

52. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

53. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in

operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

54. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (*except Satellite*). The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 407 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services. Of these providers, the Commission estimates that 333 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

55. *Wireless Carriers and Service Providers.* Wireless Telecommunications Carriers (*except Satellite*) is the closest industry with a SBA small business size standard applicable to these service providers. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated

in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

56. The document proposes revisions to outage notification requirements that will impose new or additional reporting, recordkeeping, notice and other compliance requirements on small entities required to report outages affecting 988 Lifeline services. If the rules proposed in the document are adopted, covered 988 service providers would be required to report to the Commission and provide notice to 988 special facilities about outages that potentially affect 988 special facilities. These service providers would be required to: (1) report outages that potentially affect 988 special facilities using NORS, and following processes and procedures similar to the Commission's existing reporting for outages that potentially affect 911; (2) submit notifications, initial reports, and final reports to the Commission consistent with the timing and content requirements proposed in the document, when they experience an outage that potentially affects a 988 special facility; (3) provide notice of 988 outages that potentially affect a 988 special facility to the designated 988 special facilities, including SAMHSA, the VA, and the 988 Lifeline administrator; and (4) make an annual filing verifying that they are maintaining up-to-date contact information for 988 special facilities. The document seeks comment on similar obligations for cable, satellite, wireless, wireline, and interconnected VoIP providers.

57. The Commission is not currently in a position to determine whether, if adopted, the proposed rules in the document will require small entities to hire attorneys, engineers, consultants, or other professionals to comply. We note, however, that some originating service providers and covered 988 service providers are already subject to compliance with outage reporting obligations that would facilitate their ability to comply, and may reduce any

compliance burdens associated with the proposed 988 outage reporting and notification requirements, if adopted. For example, some originating service providers and covered 988 service providers already must comply with the Commission's rules on network outage reporting and 911 outage reporting. In addition, many service providers are likely to already have documented procedures for notifying affected facilities of outages that potentially affect them, and for those that do not, Alliance for Telecommunications Industry Solutions (ATIS) Network Reliability Steering Committee (NRSC) Task Force documents can serve as a useful guide.

58. As discussed in the document, we anticipate that originating service providers are already required to report the vast majority of outages (if not virtually all outages) that prevent 988 calls from successfully completing to the Commission under our existing outage reporting requirements. Therefore we expected small entities who are subject to these requirements will only incur incremental costs to implement the proposed 988 outage reporting requirements. To the extent that there are 988 outages that are not currently reported to the Commission, we expect that those would be outages experienced by covered 988 service providers that are responsible for receiving, processing, or forwarding 988 calls. We expect that these service providers are already submitting outage reports to the Commission related to other aspects of their operations, and anticipate that these providers will likewise only incur incremental costs to comply with the proposed 988 requirements.

59. In the assessment of the potential costs for service providers to report 988 outages to the Commission discussed in the document, we assume that one covered 988 service provider experiences a maximum of one reportable outage per month. We estimate an annual compliance cost of \$1,920 for a provider that experiences a reportable outage based on the estimate that a maximum of two hours total time would be necessary for an employee to prepare and submit all of the required reports to the Commission—15 minutes to complete each notification, a maximum of 45 minutes for each initial report, 60 minutes for each final report, and a labor cost of \$80 per hour for one employee. Based on this assessment. We do not expect the actual cost for implementation and compliance with the proposed outage reporting rules for small entities to be significant, however we have requested comments on our

estimates and assessment. With regard to the proposed requirements for providers to maintain updated contact information for 988 special facilities and to notify those facilities about 988 outages that potentially affect them, we expect the costs of compliance for providers will also be very low and should not be significant for small entities. More specifically, we estimate a one-time total cost of \$50,000 for all providers to create an email survey to biannually solicit 988 special facility contact information. We further estimate maximum annually recurring costs of \$1,283,000, for all providers, consisting of \$1,258,000 for notifying 988 special facilities of outages pursuant to the standards that we propose in this document and \$25,000 to maintain up to date 988 special facility contact information for outage notifications. No costs should be incurred related to identifying the 988 special facilities that could potentially be affected by an outage since we have proposed that the three designated special facilities (SAMHSA, the VA, and the 988 Lifeline administrator) be notified regardless of the geographic area affected by the outage.

60. Based on the above discussion, we do not believe that the costs associated with any of the proposal rule changes in the document will unduly burden small entities. However, we have sought comments from the parties in the proceeding and requested cost and benefit information which may help the Commission identify and evaluate relevant costs and other matters for small entities. We anticipate the proposed rule changes will enable 988 special facilities to accelerate the public's ability to reach the 988 Lifeline during an outage, thereby reducing the probability of lives being lost during such an outage. Moreover, the value of this result and the other public safety benefits generated by our 988 outage notification and reporting requirement proposals outweigh the estimated costs to providers, and therefore is in the public.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Alternatives Considered

61. The RFA requires an agency to describe any significant, specifically small business, 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 rule 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.

62. In the document, the Commission continues to facilitate the reliability of the 988 Lifeline network and meet its public safety obligations for oversight of the integrity of the 988 communications infrastructure by proposing measures to ensure that 988 special facilities can expect consistent and timely outage notifications whenever there is an outage that potentially affects 988 Lifeline service. While doing so, the Commission is mindful that small entities and other covered 988 service providers may incur costs should the proposals we make, and the alternatives upon which we seek comment in the document, be adopted.

63. The Commission has taken several steps that could reduce the economic impact for small entities. First, the elements for 988 outage reporting that we propose largely track the same standards applicable to 911 outage reporting. For example, the document proposes to use NORS for 988 outage reporting, which is already used for 911 outage reporting. The document also seeks comment on using the 911 outage duration and user minute thresholds to trigger the 988 outage reporting requirements. Therefore, to the extent small entities have or will implement the 911 outage reporting requirements already adopted by the Commission, compliance with 988 reporting requirements should not impose significant additional costs.

64. We considered whether there are any special characteristics of 988 calls that would make it more effective or efficient for the Commission to adopt alternative outage reporting requirements that do not resemble the reporting requirements for 911 or other communications outages; whether our proposed outage duration and user minute thresholds are appropriate, and whether there may be information that is unique to 988 outages that we should require to be included in an outage report due to its value in understanding the cause or impacts of such an outage, and determined that seeking comment from providers on these issues could provide more comprehensive insight on these issues. In comments, small entities can include any steps that we have not already proposed to prevent the costs of our proposals from being unduly burdensome for them. Small entities can also identify which proposed requirements are particularly difficult or

costly for them, and how different, simplified, or consolidated requirements would address those difficulties, and propose any modifications or exemptions from the proposed requirements discussing the effect of any such modifications on public safety, and the reliability of 988 Lifeline operations. For the alternatives we discuss in the document, or that are subsequently filed in comments, we have requested that commenters address the costs and benefits. We have also sought comment on the costs and benefits of implementing and maintaining the 911 procedures for 988 outage notification and reporting.

65. To increase public awareness of 988 availability and to help protect the public's safety when 988 services are disrupted, we have proposed SAMHSA, the VA, and the 988 Lifeline administrator as the designated 988 special facilities to receive notification of outages. In the document however, we also seek comment on whether there are additional entities that should receive notice, whether covered 988 service providers should give notice to originating service providers when an outage occurs to notify their customers of 988 outages, and whether PSAPs should be notified so they can be prepared for call volume increases. We propose that notifications be made by telephone and in writing by electronic means, and also give providers the flexibility to provide notice by alternative means if mutually agreed upon in writing in advance by the 988 special facility and the provider, as we currently allow covered 911 service providers to do. We believe that this means of communication will not be a very resource intensive or costly method for small entities and other service providers to provide notice. We seek comment on this approach in the document and on requiring other methods of notification, which may identify additional opportunities to reduce costs for small entities and other providers.

66. Next, our actions specifically seeking comment on whether the public interest would be served by allowing additional time for small and medium-sized businesses to comply, could reduce the economic impact for small entities. In doing so, we have provided small entities the opportunity to address whether and how they would benefit from different reporting requirements or timetables that take into account their limited resources; simplification or consolidation of reporting requirements for small entities; or an exemption from any reporting requirements.

67. The Commission expects to consider more fully the economic impact on small entities following its review of any comments filed in response to the document, including any costs and benefits information we receive. The Commission's evaluation of the comments filed in this proceeding will shape the final alternatives we consider, the final conclusions we reach, and any final actions we ultimately take in this proceeding to minimize any significant economic impact that may occur on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

68. None.

List of Subjects in 47 CFR Part 4

Airports, Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

The Federal Communications Commission proposes to amend chapter I of title 47 of the Code of Federal Regulations as follows:

PART 4—DISRUPTIONS TO COMMUNICATIONS

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 47 U.S.C. 34–39, 151, 154, 155, 157, 201, 251, 307, 316, 615a–1, 1302(a), and 1302(b); 5 U.S.C. 301, and Executive Order no. 10530.

■ 2. Section 4.3 is amended by adding paragraph (j) to read as follows:

§ 4.3 Communications providers covered by the requirements of this part.

* * * * *

(j) *Covered 988 service providers* are providers that provide the 988 Suicide & Crisis Lifeline with capabilities such as the ability to receive, process, or forward calls.

■ 3. Section 4.5 is amended by revising the section heading and adding paragraph (f) to read as follows:

§ 4.5 Definitions of outage, special offices and facilities, 911 special facilities, and 988 special facilities.

* * * * *

(f) An outage that potentially affects a 988 special facility occurs whenever there is a loss of the ability of the 988 Suicide & Crisis Lifeline to receive, process, or forward calls for at least 30 minutes duration.

■ 4. Section 4.9 is amended by revising paragraphs (a)(4), (c)(2)(iv), (e)(1)(v), (f)(4), and (g)(1)(i) and adding paragraph (i) to read as follows:

§ 4.9 Outage reporting requirements—threshold criteria.

(a) * * *

(4) Potentially affects a 911 special facility (as defined in § 4.5(e)) or potentially affects a 988 special facility (as defined in § 4.5(f)), in which case they also shall notify the affected facility in the manner described in paragraph (h) of this section. Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than 30 days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of § 4.11.

* * * * *

(c) * * *

(2) * * *

(iv) Potentially affecting a 911 special facility (as defined in § 4.5(e)) or potentially affecting a 988 special facility (as defined in § 4.5(f)), in which case the affected facility shall be notified in the manner described in paragraph (h) of this section.

* * * * *

(e) * * *

(1) * * *

(v) That potentially affects a 911 special facility (as defined in § 4.5(e)) or potentially affects a 988 special facility (as defined in § 4.5(f)), in which case they also shall notify the affected facility in the manner described in paragraph (h) of this section.

* * * * *

(f) * * *

(4) Potentially affects a 911 special facility (as defined in § 4.5(e)) or potentially affects a 988 special facility (as defined in § 4.5(f)), in which case they also shall notify the affected facility in the manner described in paragraph (h) of this section. Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than 30 days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of § 4.11.

(g) * * *

(1) * * *

(i) Within 240 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that potentially affects a 911 special facility (as defined in § 4.5(e)) or potentially affects a 988 special facility (as defined in § 4.5(f)), in which case they also shall notify the affected facility in the manner described in paragraph (h) of this section; or

* * * * *

(i) *988 special facility outage notification.* All covered 988 service providers shall notify any official at a 988 special facility who has been designated by the affected special facility as the provider's contact person(s) for communications outages at the facility of any outage that potentially affects that 988 special facility (as defined in § 4.5(f)) in the following manner:

(1) *Appropriate contact information.* To ensure prompt delivery of outage notifications to 988 special facilities, covered 988 service providers shall exercise special diligence to identify, maintain, and, on an annual basis, confirm current contact information appropriate for outage notification for each 988 special facility that serves areas that the service provider serves.

(2) *Content of notification.* Covered 988 service providers' outage notifications must convey all available material information about the outage. For the purpose of this paragraph (i), *material information* includes the following, where available:

(i) An identifier unique to each outage;

(ii) The name, telephone number, and email address at which the notifying 988 service provider can be reached for follow up;

(iii) The name of the covered 988 service provider experiencing the outage;

(iv) The date and time when the incident began (including a notation of the relevant time zone);

(v) The types of communications service(s) affected;

(vi) The geographic area affected by the outage;

(vii) A statement of the notifying covered 988 service provider's expectations for how the outage potentially affects the special facility (e.g., dropped calls or missing metadata);

(viii) Expected date and time of restoration, including a notation of the relevant time zone;

(ix) The best-known cause of the outage; and

(x) A statement of whether the message is the notifying covered 988 service provider's initial notification to the special facility, an update to an initial notification, or a message intended to be the service provider's final assessment of the outage.

(3) *Means of notification.* Covered 988 service providers' outage notifications must be transmitted by telephone and in writing via electronic means in the absence of another method mutually agreed upon in writing in advance by the special facility and the service provider.

(4) *Timing of initial notification.* Covered 988 service providers shall provide an outage notification to a potentially affected 988 special facility as soon as possible, but no later than within 30 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage that potentially affects a 988 special facility (as defined in § 4.5(f)).

(5) *Follow-up notification.* Covered 988 service providers shall communicate additional material information to potentially affected 988 special facilities in notifications subsequent to the initial notification as soon as possible after that information becomes available, but providers shall send the first follow-up notification to potentially affected 988 special facilities no later than two hours after the initial contact. After that, covered 988 service providers are required to continue to provide material information to the special facilities as soon as possible after discovery of the new material information until the outage is completely repaired and service is fully restored.

[FR Doc. 2023-06712 Filed 4-6-23; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64

[CG Docket Nos. 02-278, 21-402; FCC 23-21; FR ID 134449]

Targeting and Eliminating Unlawful Text Messages

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on whether to require terminating mobile wireless providers to block text messages when notified by the Commission that they are likely scams. The Commission also

seeks comment on text message authentication. In addition, the Commission seeks comment on extending Do-Not-Call protections to marketing text messages. Finally, the Commission seeks comment on banning the practice of obtaining a single consumer consent as justification for calls and texts from multiple sellers and potential fraudsters.

DATES: Comments are due on or before May 8, 2023 and reply comments are due on or before June 6, 2023.

ADDRESSES: You may submit comments, identified by CG Docket Nos. 02–278 and 21–402, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>. In the event that the Commission announces the lifting of COVID–19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis, MD 20701.

People with Disabilities. 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 & Governmental Affairs Bureau at 202–418–0530 (voice).

FOR FURTHER INFORMATION CONTACT: Mika Savir of the Consumer Policy

Division, Consumer and Governmental Affairs Bureau, at mika.savir@fcc.gov or (202) 418–0384.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM), in CG Docket Nos. 02–278 and 21–402; FCC 23–21, adopted on March 16, 2023 and released on March 17, 2023. The full text of this document is available online at <https://docs.fcc.gov/public/attachments/FCC-23-21A1.pdf>.

This matter 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 oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. See 47 CFR 1.1206(b). Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Initial Paperwork Reduction Act of 1995 Analysis

The Further Notice of Proposed Rulemaking (FNPRM) may contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on any information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how to further reduce the information collection burden for small business concerns with fewer than 25 employees.

Synopsis

1. In this FNPRM, the Commission seeks comment on additional protections for consumers against illegal robocalls. The Commission first seeks comment on whether to require terminating mobile wireless providers to block text messages when notified by the Commission that they are likely scams. The Commission also seeks comment on text message authentication. In addition, the Commission proposes to extend the National Do-Not-Call (DNC) Registry protections to marketing text messages. Finally, the Commission seeks to ban the practice of obtaining a single

consumer consent as justification for calls and texts from multiple, sometimes hundreds, of sellers and potential fraudsters.

2. First, the Commission proposes to require terminating mobile wireless providers to investigate and potentially block texts from a sender after they are on notice from the Commission that the sender is transmitting suspected illegal texts, similar to our requirement for gateway providers with respect to voice calls. Where texts are clearly illegal, and the Commission has put providers on notice of the illegal texts, mobile wireless providers should have no legitimate reason to transmit the texts. The Commission therefore seeks comment on extending this approach, which is in place for call blocking, to text blocking.

3. Specifically, the Commission's rules (in 47 CFR 64.1200(n)(5)) require the Commission's Enforcement Bureau to issue a Notification of Suspected Illegal Traffic that: (1) identifies with as much particularity as possible the suspected illegal traffic; (2) provides the basis for the Enforcement Bureau's reasonable belief that the identified traffic is unlawful; (3) cites the statutory or regulatory provisions the suspected illegal traffic appears to violate; and (4) directs the provider receiving the notice that it must comply with the requirements in section 64.1200(n)(5) of the Commission's rules by a specified date that gives the provider a minimum of 14 days to comply. Notified gateway voice providers must then promptly investigate the identified traffic and either block the identified traffic and substantially similar traffic on an ongoing basis or respond to the Commission that the provider has a reasonable basis for concluding that the identified calls are not illegal. If a provider fails to comply, the Commission established a process through which the Enforcement Bureau can require all providers immediately downstream from that gateway provider to block all traffic from that provider.

4. The Commission seeks comment on whether there are any differences between calling and texting that would suggest that this model would not work well for texting. The Commission seeks comment on the cost to providers of implementing such a requirement. The Commission also seeks comment on whether providers and the Commission's Enforcement Bureau can properly trace text messages to their originating provider to effectuate these rules. Are there additional requirements the Commission should adopt to ease any traceback efforts for text messaging? Because providers state that they

already do a considerable amount of text blocking, the Commission does not expect the proposal to impose material additional costs. The Commission seeks comment on these questions specifically and this recommendation generally.

5. Second, the Commission seeks comment on the extent of number spoofing and if there are other solutions that are better targeted to address the problem of spoofed text messages. In the robocalling context, the Commission has found that a subset of small voice service providers are responsible for a large number of illegal robocalls. The Commission seeks comment on whether a similar dynamic at issue with robotexts. If so, how might the Commission target these specific providers? How might the Commission encourage industry members to collaborate and finalize technical solutions for authenticating text messages and mitigating illegal text messages? For example, should the Commission adopt a deadline for providers to develop a text message authentication solution or an alternative technical solution for addressing the problem of spoofed text messages? Commenters should address how the Commission can ensure non-discriminatory policies in adopting text authentication measures.

6. Third, the Commission proposes to clarify that the National Do-Not-Call Registry protections apply to text messages as well as voice calls and to codify this clarification in the Commission's rules. The National DNC Registry has been operational for almost two decades and currently protects over 246 million telephone numbers from telemarketing sales calls, or telephone solicitations. As such, it represents a critical component of the policy strategy against unwanted calls. Although the Commission has stated that text messages are calls for Telephone Consumer Protection Act (TCPA) purposes, it has not explicitly included text messages in the codified DNC rules that protect wireless phone subscribers by requiring prior express invitation or permission in writing for calls to wireless numbers on the National DNC Registry. The Commission's rules require that, before sending a marketing text to consumers, the texter must have the consumer's prior express invitation or permission, which must be evidenced by a signed, written agreement between the consumer and seller, which states that the consumer agrees to be contacted by this seller and includes the telephone number to which the calls may be placed.

7. The Commission seeks comment on whether codifying the DNC protections

to marketing texts further protect consumers from unwanted marketing text messages. We note that the DNC protections do not depend on whether the caller uses an autodialer, unlike some provisions of the TCPA. The Commission seeks comment on whether the proposal would also represent an important codification of consumer protections. Are there downsides to the proposal?

8. Finally, the Commission proposes to ban the practice of obtaining a single consumer consent as grounds for delivering calls and text messages from multiple marketers on subjects beyond the scope of the original consent. In an illustration of the issue, Assurance IQ describes a website that purports to enable consumers to comparison shop for insurance. The website sought consumer consent for calls and texts from insurance companies and other various entities, including Assurance IQ's partner companies that were listed in a hyperlink on the web page (*i.e.*, they were not displayed on the website without clicking on the link) and the list of partner companies included both insurance companies and other entities that did not appear to be related to insurance. The telemarketer that obtains the consumer's contact information from the lead generator may believe that it has the consumer's prior express consent, but, commenters argue, the consumer has not consented to the particular caller or callers, which may be listed as partner companies in these arrangements.

9. The Commission seeks comment on amending the TCPA consent requirements to require that such consent be considered granted only to callers logically and topically associated with the website that solicits consent and whose names are clearly disclosed on the same web page. The Commission has not addressed this aspect of consent in the past. Would this proposal better protect consumers from receiving large numbers of calls and texts they do not wish to receive when they visit websites such as comparison shopping websites? Consumers may find comparison shopping websites helpful; how can we ensure that they can consent to obtain further information from the site without receiving numerous calls and texts from unrelated companies? Commenters should discuss whether the proposal would limit the value of comparison-shopping sites to consumers. Are there alternatives that would better protect consumers from the harms identified? The Commission also seeks comment on whether prior express consent to receive calls or texts must be made directly to one entity at

a time. More broadly, the Commission seeks comment on the extent of the problem, the proposed rule, and whether the proposed rule will clarify consent and help to eliminate illegal text messages and calls. Are there different or additional limitations on multi-party consent the Commission should consider?

Initial Regulatory Flexibility Analysis

10. 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 a substantial number of small entities by the policies proposed in this *FNPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM*, provided on the first page of the *FNPRM*. The Commission will send a copy of the entire *FNPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

11. *Need for, and Objectives of, the Proposed Rules.* The *FNPRM* seeks comment on several issues, specifically, (i) whether to require terminating mobile wireless providers to block text messages when notified by the Commission that they are likely scams; (ii) text message authentication; (iii) extending Do-Not-Call protections to marketing text messages; and (iv) banning the practice of obtaining a single consumer consent as justification for calls and texts from multiple sellers and potential fraudsters.

12. *Legal Basis.* This action, including publication of proposed rules, is authorized under sections 4(i), 4(j), 201(b), 227(e), 254, 257, 301, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201(b), 227(e), 254, 257, 301, and 303.

13. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation;

and (3) satisfies any additional criteria established by the SBA.

14. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.

15. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

16. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose governments-independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."

17. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have

spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (e.g., dial-up ISPs) or voice over internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

19. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* This FNPRM may include a change to the Commission's current information collection, reporting, recordkeeping, or compliance requirements.

20. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in

reaching its 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 or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for such small entities.

21. The FNPRM seeks comment on (i) whether to require terminating mobile wireless providers to block text messages when notified by the Commission that they are likely scams; (ii) text message authentication; (iii) extending Do-Not-Call protections to marketing text messages; and (iv) banning the practice of obtaining a single consumer consent as justification for calls and texts from multiple sellers and potential fraudsters.

22. These proposals would probably not be burdensome for small entities. The proposal to require those seeking consent from consumers to a list of entities, to clearly and conspicuously display the list where consent is requested would, if adopted, prevent those lead generators or telemarketers from failing to advise the consumer of the list of entities; instead the list would be displayed where the consent is requested. This should not be burdensome to small entities, as it merely requires disclosing the list where consent is requested, instead of in a hyperlink, and should reduce unwanted text messages and calls to consumers. The proposal to include texts in the DNC rules should not have an impact on small entities. Wireline and wireless phones are already included and this would just clarify that not only calls to wireless phones on the DNC list are covered, but text messages, too. The Commission anticipates that these rules, if adopted, would also reduce unwanted calls and texts to small entities. The proposal to require service providers to block texts after notice from the Commission of suspected illegality, including fraud should not be burdensome for small entities. Mobile wireless providers are already diligent in blocking fraudulent calls and texts to their customers and this would assist them in those efforts.

23. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping

requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposed to amend 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation to part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 617, 620, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

■ 2. Amend § 64.1200 by revising paragraphs (e) and (f)(9) to read as follows:

§ 64.1200 Delivery Restrictions.

* * * * *

(e) The rules set forth in paragraph (c) and (d) of this section are applicable to any person or entity making telephone solicitations or telemarketing calls or texts to wireless telephone numbers to the extent described in the Commission's Report and Order, CG Docket No. 02–278, FCC 03–153, "Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991."

(f) * * *

(9) The term prior express written consent means an agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered to the person called advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice, and the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered. Prior express written consent for a call or text may be to a single entity, or to multiple entities logically and topically associated. If the prior express written consent is to multiple entities, the entire list of entities to which the consumer is giving consent must be clearly and conspicuously displayed to the consumer at the time consent is requested. To be clearly and conspicuously displayed, the list must, at a minimum, be displayed on the same

web page where the consumer gives consent.

* * * * *

[FR Doc. 2023–07069 Filed 4–6–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket Nos. 12–375, 23–62; FCC 23–19; FR ID 134047]

Incarcerated People's Communication Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment from the public on the scope and implementation of the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act or the Act). Through the Martha Wright-Reed Act, Congress expanded the Commission's jurisdiction over incarcerated people's communications services and expressly directs that the Commission adopt just and reasonable rates and charges for incarcerated people's audio and video communications services in correctional institutions. Specifically, the Commission seeks comment on how to interpret the Act's language to effectively implement the statute consistent with Congress's intent. The Commission seeks comment on how Congress's amendments to sections 2(b), 3(1), and 276 of the Communications Act of 1934 (Communications Act) affect the Commission's regulatory authority over incarcerated people's communications services and how to draft regulations to implement such authority. The Commission also seeks comment on how the Martha Wright-Reed Act affects its ability to ensure that incarcerated people's communications services and associated equipment are accessible to and usable by incarcerated people with disabilities.

DATES: Comments are due on or before May 8, 2023; and reply comments are due on or before June 6, 2023.

ADDRESSES: You may submit comments, identified by WC Docket Nos. 12–375 and 23–62, by either of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the internet by accessing the Electronic Comment

Filing System (ECFS): <https://apps.fcc.gov/ecfs/>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

People with Disabilities: 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).

FOR FURTHER INFORMATION CONTACT: Peter Bean, Pricing Policy Division of the Wireline Competition Bureau, at (202) 418–0786 or via email at peter.bean@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), in WC Docket Nos. 12–375 and 23–62; FCC 23–19, adopted on March 16, 2023 and released on March 17, 2023. The full text of this document is available on the following internet address: <https://docs.fcc.gov/public/attachments/FCC-23-19A1.pdf>.

Synopsis

1. Nearly twenty years have passed since Martha Wright-Reed and her fellow petitioners first sought Commission relief from the exorbitant telephone rates they had to pay to talk to their incarcerated family members. More than a decade has passed since the Commission began to respond to those

petitioners' request and embarked on a process to pursue just and reasonable rates for telephone calls between incarcerated people and their loved ones. The Commission's ability to achieve that objective, however, was limited by statutory provisions, as explained by the United States Court of Appeals for the District of Columbia Circuit in *Global Tel*Link v. FCC (GTL v. FCC)*. Recently, Congress, through the Martha Wright-Reed Act, addressed these limitations and significantly expanded the Commission's jurisdiction over incarcerated people's communications services. In response to the D.C. Circuit's decision, and recognizing the increasing role of advanced communications, including video, in connecting incarcerated people with their families and friends, Congress now expressly directs that the Commission "ensure just and reasonable charges for telephone and advanced communications services in correctional and detention facilities."

2. In this item, the Commission builds on its efforts to date, bolstered by the new tools Congress has bestowed, and begins the process of implementing the Martha Wright-Reed Act to adopt just and reasonable rates and charges for incarcerated people's audio and video communications services. This item continues ongoing efforts to reform providers' rates, charges, and practices in connection with interstate and international inmate calling services. At the same time, this item initiates a new docket, WC Docket No. 23–62, to specifically address implementation of, and changes required by, the provisions of the Martha Wright-Reed Act. The Commission seeks comment on how it should interpret the Act's language to ensure that it implements the statute in a manner that fulfills Congress's intent. The Commission also seeks comment on how the Act affects the Commission's ability to ensure that such services and associated equipment are accessible to and usable by incarcerated people with disabilities.

Statutory Authority

3. On January 5, 2023, President Biden signed into law the Martha Wright-Reed Act. Martha Wright-Reed Act, Public Law 117–338, 136 Stat. 6156. The Act was the product of efforts by multiple individuals and committed stakeholders over a number of years to comprehensively address the persistent problem of unreasonably high rates and charges incarcerated people and their families pay for communications services. At its core, the Act removes the principal statutory limitations that have prevented the Commission from setting

comprehensive and effective just and reasonable rates for incarcerated people's communications services.

4. Specifically, the Martha Wright-Reed Act modifies section 276 of the Communications Act to explicitly enable the Commission to require that rates for incarcerated people's communications services be just and reasonable, irrespective of the "calling device" used. It also expands the definition of payphone service in correctional institutions to encompass all advanced communications services (other than electronic messaging), including "any audio or video communications service used by inmates . . . regardless of technology used." In addition, the new statute amends section 2(b) of the Communications Act to make clear that the Commission's jurisdiction extends to intrastate as well as interstate and international communications services used by incarcerated people. And, in direct response to the *GTL v. FCC* decision, the Act expressly allows the Commission to "use industry-wide average costs," as well as the "average costs of service of a communications service provider" in setting just and reasonable rates. The Martha Wright-Reed Act also requires that the Commission "shall consider," as part of its ratemaking, "costs associated with any safety and security measures necessary to provide" telephone service and advanced communications services. Finally, the statute directs the Commission to promulgate regulations necessary to implement the statutory provisions not earlier than 18 months and not later than 24 months after the date of its enactment.

Background

5. In 2003, Martha Wright and her fellow petitioners, then-current and former incarcerated people and their relatives and legal counsel (collectively, the Wright Petitioners) filed petitions seeking a rulemaking to address "excessive" rates for incarcerated people's telephone services. The Wright Petitioners filed an alternative petition in 2007, in which they emphasized the urgent need for the Commission to act on "exorbitant" rates for calling services for incarcerated people. In 2012, the Commission commenced a rulemaking proceeding, releasing the *2012 ICS Notice*, 78 FR 4369, January 22, 2013, seeking comment on the Wright Petitioners' petitions and on establishing rate caps for interstate calling services for incarcerated people. Unless specifically noted, references herein to "interstate" include both

interstate and international communications services.

6. In the *2013 ICS Order*, 78 FR 67956, November 13, 2013, that followed, the Commission adopted interim interstate rate caps and adopted the Commission's first mandatory data collection regarding inmate calling services (ICS), requiring all providers of those services to submit data on their underlying costs of service. It also adopted an annual reporting obligation requiring providers to provide specific information on their operations, including their rates and ancillary service charges.

7. In *2015 ICS Order*, 80 FR 79135, December 18, 2015, in light of record evidence of continued "egregiously high" rates, the Commission adopted a comprehensive framework for regulating rates and charges for both interstate and intrastate calling services for incarcerated people, re-adopting the interim interstate rate caps, and extending them to intrastate calls. The Commission used industry-wide average costs based on data from the First Mandatory Data Collection, explaining that this approach would allow providers to "recover average costs at each and every tier." The Commission readopted the interim interstate rate caps it had adopted in 2013 and extended them to intrastate calls, pending the effectiveness of the new rate caps. The Commission also adopted a Second Mandatory Data Collection to enable it to identify trends in the market and adopt further reforms.

8. As part of that framework, the Commission concluded that site commissions—payments made by inmate calling providers to correctional facilities or state authorities—were not costs reasonably related to the provision of inmate calling services and thus excluded those payments from the cost data used to set the rate caps. The Commission's rules define "Site Commissions" to mean "any form of monetary payment, in-kind payment, gift, exchange of services or goods, fee, technology allowance, or product that a Provider of Inmate Calling Services or affiliate of a Provider of Inmate Calling Services may pay, give, donate, or otherwise provide to an entity that operates a correctional institution, an entity with which the Provider of Inmate Calling Services enters into an agreement to provide Inmate Calling Services, a governmental agency that oversees a correctional facility, the city, county, or state where a facility is located, or an agent of any such facility."

9. In 2016, the Commission continued its reform of the inmate calling services marketplace by, among other things,

amending its rate caps to better allow inmate calling service providers to recover costs incurred as a result of providing such services, including certain correctional facility costs that the Commission found, based on the record then before it, were reasonably and directly related to the provision of inmate calling services.

10. Several parties appealed the Commission's 2015 *ICS Order*, as well as a subsequent Commission Order on Reconsideration. The D.C. Circuit addressed the appeal of the 2015 *ICS Order* in its 2017 decision in *GTL v. FCC*, holding that the Commission lacked statutory authority to regulate intrastate rates and vacating the intrastate rate caps adopted in the 2015 *ICS Order*. The Court also ruled that the Commission's use of industry-wide average costs to set its interstate rate caps "lack[ed] justification in the record and [was] not supported by reasoned decisionmaking" in the *Order*, and it vacated a reporting requirement related to video visitation services, finding the requirement was "too attenuated to the Commission's statutory authority."

11. Finally, the Court concluded that the "Commission's categorical exclusion of site commissions from the calculus used to set [inmate calling services] rate caps defie[d] reasoned decision making because site commissions obviously are costs of doing business incurred by [inmate calling services] providers." The Court directed the Commission to "assess on remand which portions of site commissions might be directly related to the provision of [inmate calling services] and therefore legitimate, and which are not."

12. Subsequently, in its 2020 *ICS Notice*, 85 FR 67480, October 23, 2020, the Commission sought comment on, among other things: (1) its proposal to lower the interstate rate caps on an interim basis and cap international rates; (2) the steps necessary to address unreasonable rates; and (3) the methodology to be employed in setting permanent interstate and international rate caps. Subsequently, the Commission released the comprehensive 2021 *ICS Order*, 86 FR 40340, July 28, 2021, in which, among other actions, it reformed the treatment of site commissions, set new interim interstate rate caps for prisons and jails with average daily populations of 1,000 or more incarcerated people, and capped international calling rates for the first time.

13. In the 2021 *ICS Order*, the Commission also sought to improve the data it collected on calling services for incarcerated people as part of its efforts to set reasonable permanent rate caps. It

delegated authority to the Wireline Competition Bureau (WCB) and the Office of Economics and Analytics (OEA) to establish a Third Mandatory Data Collection to collect uniform cost data to use in setting rate caps that more closely reflect inmate service providers' costs of providing service at correctional facilities. After seeking public comment, in January 2022, WCB and OEA released an Order adopting the data collection. Parties' responses to the Third Mandatory Data Collection were due June 30, 2022, and the Commission affirmatively incorporated those responses into the record in this proceeding.

14. Finally, in September 2022, while analyzing the data from the Third Mandatory Data Collection, the Commission issued the 2022 *ICS Order*, 87 FR 75496, December 9, 2022, which adopted requirements to improve access to communications services for incarcerated people with communication disabilities and targeted reforms to lessen the financial burden on incarcerated people and their loved ones when using calling services. The Commission also issued the 2022 *ICS Notice*, 87 FR 68416, November 15, 2022, seeking additional stakeholder input and evidence relating to additional reforms concerning incarcerated people with communication disabilities and providers' rates, charges, and practices in connection with interstate and international calling services. Among other things, the 2022 *ICS Notice* sought comment on how to use inmate calling services providers' responses to the Mandatory Data Collections to establish "reasonable, permanent caps on rates and ancillary service charges for interstate and international calling services for incarcerated people."

Notice of Proposed Rulemaking

15. The ability to communicate through affordable audio and video communications is essential to allowing incarcerated people to stay connected to their family and loved ones, clergy, counsel, and other critical support systems. Studies consistently show that incarcerated people who have regular contact with family members are more likely to succeed after release and have lower recidivism rates. The Commission interprets the Martha Wright-Reed Act as providing it with the authority it needs to ensure that the charges associated with communications services for incarcerated people are just and reasonable and do not create an unnecessary deterrent to their ability to stay connected with the world outside their correctional facilities. The

Commission invites comment on this interpretation.

16. Historically, the Commission used the term "inmate calling services" or "ICS" when referencing payphone service in the incarceration context. The Commission will now use the term "incarcerated people's communications services" or "IPCS" instead of "inmate calling services" or "ICS" to refer to the broader range of communications services subject to the Commission's jurisdiction as a result of the Act. In connection with this change in terminology, the Commission is also changing references to "inmates" to "incarcerated people" at the request of public interest advocates. The Commission seeks comment on codifying this updated terminology.

17. As a threshold matter, the Commission interprets the Martha Wright-Reed Act, taken as a whole, as enhancing and supplementing its existing jurisdiction, and effectively addressing the constraints imposed by the D.C. Circuit's interpretation of the Commission's jurisdiction in *GTL v. FCC*, and seeks comment on this interpretation. Specifically, the Commission interprets the statute as expanding its existing jurisdiction over communications services for incarcerated people as specified in the technical amendments and implementation sections of the law. The Martha Wright-Reed Act does not contain language limiting the Commission's pre-existing authority over international services. As a result, the Commission's authority over international services remains intact and will now include all incarcerated people's international communications services covered by the statute. In the Commission's view, through this Act, Congress effectively granted the Commission broad, plenary authority over the rates and charges for "any [inmate] audio or video communications service." The Commission proposes to read the Act, in the context of the *GTL* decision and its aftermath, as removing any limitations on the Commission's authority over incarcerated people's audio and video communications services and empowering the Commission to prohibit unreasonably high rates and charges for, and in connection with, all such services, including intrastate services. The Commission seeks comment on this interpretation. To the extent that parties have a more limited view of the Commission's authority or suggest that the Commission must make additional jurisdictional findings, the Commission asks that the parties describe in detail those limits and additional findings.

The Commission further seeks comment on the ultimate goal of Congress in passing the Martha Wright-Reed Act, described in the legislative history as legislation that “will help reduce financial burdens that prevent [incarcerated] people from being able to communicate with loved ones and friends.”

18. The Commission encourages all parties to comment on the issues raised in the *NPRM*, and specifically invites previous participants in the proceeding to update their prior submissions to reflect changed circumstances stemming from the passage of the Martha Wright-Reed Act. The Commission thus seeks renewed comment on all the issues raised in its prior Notice of Proposed Rulemakings in light of the statutory amendments contained in the Martha Wright-Reed Act. The Commission emphasizes that unresolved issues previously raised in WC Docket No. 12–375 remain pending and are now incorporated in this dual-captioned proceeding to be addressed in forthcoming Commission orders considering the record developed in response to the *NPRM* to the extent applicable. As part of their responses, parties are welcome to update filings previously submitted regarding these pending matters in light of the enactment of the Martha Wright-Reed Act.

19. *Purpose and Scope of Martha Wright-Reed Act Amendments.* As part of the commission’s effort to fulfill Congress’s directives in the Martha Wright-Reed Act, the Commission seeks comment on the effect of the amendments Congress made to the authority granted to the Commission in section 276(b)(1)(A) of the Communications Act. Do commenters agree that, taken as a whole, these amendments fundamentally expand the scope of the Commission’s authority pursuant to sections 2(b) and 276 and effectively moot the concerns the D.C. Circuit raised about the Commission’s jurisdiction in *GTL v. FCC*?

20. Prior to the enactment of the Martha Wright-Reed Act, section 276(b)(1)(A) focused on requiring that service providers be “fairly compensated” for “each and every” completed call. Congress has now eliminated the “each and every” call language and added a new dimension to section 276 of the Communications Act by requiring the Commission to “establish a compensation plan to ensure that . . . all rates and charges” for incarcerated people’s communications services “are just and reasonable.” The Commission seeks comment on whether the amendments

to section 276(b)(1)(A) change the central focus of the section from ensuring that payphone service providers are “fairly compensated” for voice calls with little, if any, “considerations of fairness to the consumer,” to a more balanced approach emphasizing consumers’ (particularly incarcerated people’s) and providers’ right to just and reasonable rates and charges for each audio and video communications service now encompassed within the statutory definition of “payphone service.” How should the Commission balance these interests going forward? Does the addition of “just and reasonable” inform the meaning of “fair compensation?” If not, how should the Commission interpret Congress’s apparent emphasis on affordability for consumers? Conversely, does the requirement that providers be “fairly compensated” for completed calls inform the meaning of “just and reasonable?” In this regard, the Commission seeks comment, generally, on the relationship between the requirement that providers be “fairly compensated” and the requirement that their rates and charges be “just and reasonable.”

21. Relatedly, the Commission seeks comment on Congress’s intent in striking the “per call” and “each and every [call]” language from section 276(b)(1)(A), particularly the effect of these changes to the “fairly compensated” requirement in the context of communications services for incarcerated people under this new Act. As originally conceived, the “fairly compensated” requirement of section 276(b)(1)(A) was designed to fix the specific problem of uncompensated payphone calls at that time. But the situation is quite different in the context of communications services for incarcerated people. Providers generally receive compensation for the calls they carry through the per-minute rates charged to consumers of calling services for incarcerated people. No other entity receives compensation for calls other than through a contractual arrangement with the provider. It is therefore difficult to discern what the “fairly compensated” requirement adds to the “just and reasonable” requirement in the context of communications services for incarcerated people, especially given the historical backdrop underlying this provision. Prior to the enactment of the Martha Wright-Reed Act, the Commission reasoned that “fair compensation” in the context of audio calling services for incarcerated people “does not mean that each and every completed call must make the same

contribution to a provider’s indirect costs. Nor does it mean a provider is entitled to recover the total ‘cost’ it claims it incurs in connection with each and every separate inmate calling services call.” Instead, the Commission found compensation to be fair “if the price for each service or group of services ‘recovers at least its incremental costs, and no one service . . . recovers more than its stand-alone cost.’”

22. The Commission interprets the elimination of the “per call” and “each and every [call]” language from section 276 as a signal of Congress’s intent to restrict the application of the “fairly compensated” requirement with respect to communications services for incarcerated people by no longer requiring the Commission to ensure that its compensation plan allows for “fair” compensation for “each and every” completed call. The Commission seeks comment on this interpretation. This interpretation appears to be consistent with Congress’s decision to allow the Commission to set rates based on average costs. Do commenters agree that the Commission is no longer required to ensure that providers are “fairly compensated” for every call they carry or facilitate? Does elimination of the “per call” language give the Commission additional flexibility to consider rates or rate caps that apply to units other than minutes? What independent meaning does the “fairly compensated” requirement have for communications services for incarcerated people in light of the other provisions of the Martha Wright-Reed Act, including the newly-added requirement to ensure “just and reasonable” rates and charges? For example, does the “fairly compensated” requirement circumscribe the Commission’s analysis of “just and reasonable” rates? Does it require the Commission to ensure that providers are able to recover their costs of providing incarcerated people’s communications services, at least on average, even if not on a per-call basis? Does the fair compensation requirement affect the Commission’s analysis of other issues related to incarcerated people’s communications services, such as the payment of site commissions or the imposition of ancillary service charges? The Commission seeks comment on these questions.

23. *Other Calling Devices.* The Martha Wright-Reed Act extends the Commission’s authority over communications services to include not just incarcerated people’s audio and video communications using traditional payphones, but also their

communications using “other calling device[s].” Given the absence of additional qualifying language in the new statute, the Commission proposes to interpret “other calling device[s]” broadly to encompass all devices that incarcerated people either use presently or may use in the future to communicate with individuals not confined within the incarcerated person’s correctional institution. Under this proposed interpretation, “other calling device[s]” would encompass all wireline and wireless phones, computers, tablets, and other communications equipment capable of sending or receiving the audio or video communications described in section 276(d), regardless of transmission format.

24. That interpretation also would encompass all wireline and wireless equipment, whether audio, video, or both, that incarcerated people with disabilities presently use to communicate, through any payphone service, with the non-incarcerated, including but not limited to videophones, captioned telephones, and peripheral devices for accessibility, such as braille display readers, screen readers, and TTYs. Where a person with a disability must use a peripheral device to access an advanced communications service or device, that service or device is required to be compatible with such peripheral devices, unless that is not achievable. The Commission’s interpretation would also encompass other potential devices, not yet in use, to the extent incarcerated people use them in the future to communicate with people not confined within the incarcerated person’s correctional institution. The Commission seeks comment on this proposal. Are there any additional devices that should be included within “other calling device[s]”? Conversely, are there any devices that are excluded from the Commission’s jurisdiction? If so, what is the statutory basis for concluding that Congress intended to exclude audio or video communications using those devices from the Commission’s jurisdiction?

25. *Just and Reasonable.* The Commission next seeks comment on the Martha Wright-Reed Act’s addition to section 276(b)(1)(A) requiring that the Commission “establish a compensation plan to ensure that . . . all rates and charges” for incarcerated people’s communications services be “just and reasonable.” This language mirrors the “just and reasonable” language in section 201(b) of the Communications Act and other federal statutes, which has a long interpretive history.

26. The “traditional regulatory notion of the ‘just and reasonable’ rate was aimed at navigating the straits between gouging utility customers and confiscating utility property.” Setting “just and reasonable” rates therefore “involves a balancing of the investor and the consumer interests.” Given the parallel between the “just and reasonable” language in section 276(b)(1)(A) and the same language in section 201(b) and other federal statutes, the Commission proposes to interpret “just and reasonable” in section 276(b)(1)(A) to have the same meaning given to that term in section 201(b) and relevant precedent interpreting that standard in the ratemaking context. The Commission seeks comment on this proposal. To the extent commenters disagree, how should the Commission understand the “just and reasonable” requirement in section 276(b)(1)(A) and how would the Commission distinguish between the “just and reasonable” requirement in section 276(b)(1)(A) and the “just and reasonable” requirement in section 201(b) if they are not the same?

27. The Commission also seeks comment on how the “just and reasonable” standard in section 276(b)(1)(A) relates to the issue of site commission payments. How should section 276(b)(1)(A)’s requirement that rates for communications services for incarcerated people be “just and reasonable” affect the Commission’s treatment of site commission payments? In implementing the “just and reasonable” requirement in section 201(b), the Commission traditionally relies on the “used and useful” framework to separate costs and expenses that may be recovered through rates from those that may not.

28. Under the “used and useful” framework, the determination of “just and reasonable” rates focuses on affording the regulated entity an opportunity to “recover[] prudently incurred investments and expenses that are ‘used and useful’ in the provision of the regulated service for which rates are being set.” That framework, which “is rooted in American legal theory and particularly in the constitutional limitations on the taking of private property for public use,” balances the “equitable principle that public utilities must be compensated for the use of their property in providing service to the public” with the “[e]qually central . . . equitable principle that the ratepayers may not fairly be forced to pay a return except on investment which can be shown directly to benefit them.” In applying these principles, “the Commission considers whether the

investment or expense ‘promotes customer benefits, or is primarily for the benefit of the carrier.’” Should the Commission apply the “used and useful” ratemaking concept as a limiting factor in considering the costs and expenses allowable in the rates for communications services for incarcerated people? Why or why not? If not, what principle or framework should the Commission use in evaluating “just and reasonable” rates and charges under section 276(b)(1)(A) and why would any such principle or framework be preferable to the well-established framework the Commission routinely uses when implementing identical language in section 201(b)?

29. The Commission invites comment on how it should apply the “used and useful” concept, or any alternative principle or framework commenters suggest, to providers’ site commission payments. The Commission has previously sought broad comment on the ratemaking treatment of those payments, including on whether it is appropriate to permit providers to recover any portion of their site commission payments from end users through calling services rates and on whether it “should preempt state and local laws that impose these payments on interstate and international” inmate calling services. The Commission incorporates its prior questions on site commissions into the *NPRM*, and requests that commenters address each of them in relation to each incarcerated people’s communications service now subject to the Commission’s ratemaking authority. Should the Commission’s ratemaking calculations include providers’ site commission payments only to the extent, if any, that they compensate facilities for used and useful costs that the facilities themselves incur? Why or why not? And if the Commission takes that approach, how should it determine the facilities’ used and useful costs? Should the Commission make generalized findings as to what used and useful costs facilities typically incur and allow each facility to show through the waiver process that its costs exceed the typical amount? Or should the Commission instead allow those costs only to the extent an individual facility establishes the extent to which it incurs used and useful costs?

30. *Fairly Compensated.* The Commission also invites comment on how the requirement that providers be “fairly compensated . . . for completed intrastate and interstate communications” should affect the Commission’s ratemaking decisions, including its treatment of site

commissions. What factors should the Commission consider in determining whether a provider is fairly compensated for completed communications? Does the “fairly compensated” requirement mean that the Commission must include all or part of providers’ site commission payments in its ratemaking calculus irrespective of their utility in the completion of incarcerated people’s communications? Why or why not? How should the answers to these questions affect the Commission’s policies regarding site commissions and, in particular, the Commission’s decision on whether it should preempt state and local laws that impose site commission payments on incarcerated people’s communications services providers?

31. *Rates and Charges.* The Commission next seeks comment on what constitutes the “rates and charges” mentioned in the amendments to section 276(b)(1)(A). The Commission proposes to interpret “rates” to refer to the amounts paid by consumers of incarcerated people’s communications services for calls or other audio or video communications covered by the statute or the Commission’s rules. And the Commission proposes to interpret “charges” to refer to all other amounts assessed on consumers of incarcerated people’s communications services in connection with those services. These would include ancillary service charges, authorized fees, mandatory taxes and fees, and any other charges a provider may seek to impose on consumers of communications services for incarcerated people. These interpretations are consistent with the Commission’s rules, which currently carve out ancillary service charges, authorized fees, and mandatory taxes and fees as separate from rate caps. Do commenters agree with the Commission’s proposed interpretations of these terms? If not, what alternative interpretations do commenters propose and what is the justification for these alternative interpretations?

32. *Compensation Plan.* The Commission also proposes finding that setting industry-wide rate caps or rate caps applying to groups of providers, grouped by categories such as facility size or other characteristics, as opposed to separate rates for individual providers, would be sufficient to “establish a compensation plan,” as required by the Act. The Commission notes that setting industry-wide rate caps for incarcerated people’s communications services would be consistent with the Commission’s previous rules regulating rates for these services. Do commenters agree that

mandatory rate caps would constitute a “compensation plan” within the meaning of section 276(b)(1)(A)? Are there other rate regimes that the Commission should consider that are consistent with—or required by—section 276(b)(1)(A)? If so, what are they and how do they square with the statutory language and Congress’s intent?

33. The Commission’s current rate caps for inmate calling services limit the amount providers may charge any individual consumer for any particular call. Other forms of rate cap regulation allow providers to charge different amounts for particular services as long as the total charges (weighted by demand) for all services do not exceed an overall cap, or specify that the providers’ total revenues must not exceed a specified revenue cap. The Commission seeks comment on whether a regime that constrains rates and ancillary service charges collectively across all service categories (e.g., audio communications services and video communications services) and allows providers to set different rates and charges for the various different services (e.g., lower rates and charges for audio communications services and higher rates and charges for video communications services or vice versa) would constitute a “compensation plan” sufficient to ensure just and reasonable rates and that providers are fairly compensated for completed communications, as required by the Act. Commenters should address how such a regime would protect individual consumers against unreasonably high rates. Would sub-caps on rates and charges for different services within each service category be needed and, if so, how should they be structured?

34. The Commission seeks comment on whether section 276(b)(1)(A)’s mandate that the Commission “establish a compensation plan to ensure that . . . all rates and charges” for incarcerated people’s communications services be “just and reasonable” extends to ensuring that the providers’ practices, classifications, and regulations for or in connection with those services are just and reasonable. Specifically, does Congress’s reference to a “compensation plan” in section 276(b)(1)(A) allow—or require—that the Commission go beyond simply “determining just and reasonable rates,” as set forth in section 3(b) of the Martha Wright-Reed Act, and ensure that providers implement those rates justly and reasonably? The Commission asks for detailed comment on this area, including on the extent of its section 276(b)(1)(A) authority, if any, to address providers’ practices,

classifications, and regulations, as well as any limitations on that authority. What other authority, if any, does the Commission have to address the practices, classifications, and regulations for or in connection with incarcerated people’s communications services?

35. The Commission also asks how its authority to address unjust and unreasonable “practices, classifications, and regulations” under section 201(b) of the Communications Act should affect the Commission’s treatment of practices, classifications, and regulations for or in connection with incarcerated people’s communications services. The Commission has previously recognized that where it “has jurisdiction under section 201(b) . . . to regulate rates, charges, and practices of interstate communications services, the impossibility exception extends that authority to the intrastate portion of jurisdictionally mixed services ‘where it is impossible or impractical to separate the service’s intrastate from interstate components’ and state regulation of the intrastate component would interfere with valid federal rules applicable to the interstate component.” Given the provisions of the Martha Wright-Reed Act granting the Commission authority over intrastate communications services and advanced communications services generally in the incarceration context, the Commission asks whether it may similarly extend its section 201(b) authority to regulate practices, classifications, and regulations for or in connection with incarcerated people’s intrastate communications services that were previously subject to state regulation and video services that were unregulated prior to the enactment of the Act. Can providers practicably separate incarcerated people’s communications services into interstate and intrastate, or regulated and nonregulated, components?

36. *Advanced Communications Services.* Prior to the enactment of the Martha Wright-Reed Act, the Commission’s authority under section 276 was limited to “payphone service,” a term then defined as “the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services.” The new Act expands the Commission’s authority over services in correctional institutions under section 276 to include “advanced communications services,” as defined in sections 3(1)(A), (B), (D), and new (E) of the Communications Act.

37. Those provisions of section 3(1), in turn, define “advanced communications services” as including

(1) “interconnected VoIP service,” (2) “non-interconnected VoIP service,” (3) “interoperable video conferencing service,” and (4) “any audio or video communications service used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used.” Apart from the restriction to communications with individuals “outside the correctional institution” in section 3(1)(E), and the exclusion of “electronic messaging service” from the revised definition of “payphone service,” the language in the new statute appears to confer on the Commission broad jurisdiction to develop a compensation plan for the categories of audio and video communications now included in the definition of “payphone services” and includes no other limitation except for a limitation to communications “by wire and radio” arising from sections 1 and 2(a) of the Communications Act. The Commission seeks comment on this unequivocal expansion of its statutory authority under section 276, including how each of the first three types of “advanced communications services” provides additional statutory authority under section 276 beyond what is added by new subsection 3(1)(E) and how each type applies to communications services for incarcerated people.

38. The Martha Wright-Reed Act extends the Commission’s ratemaking authority to “interoperable video conferencing service” by including subparagraph 3(1)(D) of the Communications Act in the definition of “payphone service” in section 276(d) of that Act. The Communications Act defines “interoperable video conferencing service” as “a service that provides real-time video communications, including audio, to enable users to share information of the user’s choosing.” The Commission has a pending proceeding seeking further comment on the kinds of other services that should be encompassed by the term “interoperable video conferencing services.” The Commission seeks comment on which video services used, or potentially used, by incarcerated people are included within this definition and whether any are excluded. Are video visitation services used by incarcerated people “interoperable video conferencing service[s]” under this statutory definition? How should the Commission interpret the phrases “real-time video communications” and “enable users to share information of the user’s choosing” in the context of incarcerated

people’s communications services? Are there types of video communications services for incarcerated people that are not real-time? If so, what are they? Would it include real-time video that is based in applications or other technologies? Additionally, given the statutory phrase “any audio or video communications . . . regardless of technology used” in new section 3(1)(E), the Commission seeks comment on how to address non-traditional audio and video communications technologies or applications that could effectively enable providers of communications services to incarcerated people to circumvent the Commission’s rate-making authority. Consistent with Congressional intent, the Commission will be vigilant in overseeing the provision of all forms of audio and video communications, and invite comment on the steps the Commission should take to ensure that its rules adequately address all forms of audio and video communications subject to its authority.

39. The Commission seeks comment on the proper scope of the limiting phrase “used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held” as used in new section 3(1)(E) of the Communications Act. The Commission notes that phrase appears only in section 3(1)(E) and there is no language within section 3(1)(E), or elsewhere in the Communications Act or the Martha Wright-Reed Act, extending this limitation to the other categories of advanced communications services identified in section 2(a)(2) of the Martha Wright-Reed Act. More specifically, the Commission interprets the use of the limiting phrase of new subsection 3(1)(E) as not applying to the other subsections of section 3(1) that are now referenced in section 276(d). In addition, this limiting phrase has no application to any other aspect of section (3)(1) outside the context of section 276. The Commission invites comment on the proper scope of the limitation included in section 3(1)(E).

40. The Commission proposes to interpret the phrase “any audio or video communications service” in subsection 3(1)(E) as encompassing every method that incarcerated people may presently, or in the future, use to communicate, by wire or radio, by voice, sign language, or other audio or visual media. The Commission seeks comment on this proposal. The Commission also seeks comment on how to interpret the phrase “used by inmates for the purpose of communicating with individuals outside the correctional institution

where the inmate is held, regardless of technology used.” Does this phrase include all types of audio or video communications services—regardless of whether the communication is interstate, intrastate, or international—that an incarcerated person uses to communicate with a person not confined within the incarcerated person’s correctional institution, regardless of that person’s physical location at the time of the communication? In other words, if a calling service is typically used for communicating with family, friends, or loved ones, is that person’s physical location at the time of the call determinative, so that, for example, the Commission’s authority over an incarcerated person’s calls to family members’ cell phones might cease when the family members enter the incarcerated person’s correctional institution as opposed to when they are at their homes?

41. The Commission seeks comment on the meaning of the phrase “outside the correctional institution where the inmate is held” with reference to the audio and video communications services covered by section 2(b)(3) of the Martha Wright-Reed Act. Does it refer to any physical location not subject to involuntary confinement restrictions? As discussed in the *NPRM*, a chief defining characteristic of correctional institutions is that they are places where people are involuntarily confined. Could physical locations “outside” the correctional institution include any location not used for confinement purposes, including rooms designated for communicating with, or visitation by, persons not subject to confinement, including family, friends, and members of the general public not subject to confinement? Similarly, could “individuals outside the correctional institution” refer to people who are neither confined in nor employed by the institution, even if they are temporarily located on the premises of the institution for purposes of communicating with incarcerated individuals through some form of audio or video communications service? The Commission invites comment on these potential interpretations. Are there additional types of communications encompassed within these statutory phrases? Conversely, are there other types of communications that fall outside those phrases? For example, should the Commission interpret the statutory language as excluding all audio and video communications between employees of the correctional institution and incarcerated people from

the definition of “payphone service” as revised by the Act?

42. Under certain of the interpretations suggested above, the Commission’s newly expanded authority under section 276(b)(1)(A) could extend to onsite video visitation services (*i.e.*, services in which video communication between persons located within the same building or site substitute for traditional in-person visitation), either because: (1) they are interoperable video conferencing services within the meaning of section 3(1)(D) or because (2) they are video services within the meaning of section 3(1)(E). In the latter case, incarcerated people would use onsite video visitation services to communicate with persons not confined in or employed by a correctional institution—and with whom the incarcerated person is only allowed to communicate via an audio or video communications service and only when they are at a location where the incarcerated person is unable to be. The Commission seeks comment on whether these interpretations of the Martha Wright-Reed Act are consistent with the language of the statute and would further the purposes of the Act. The Commission notes that on-site video visitation services are typically operated by providers of inmate calling services as currently defined in the Commission’s rules, and the same services and equipment may be used by an incarcerated person regardless of whether the “visitor” is on-site, at home, or at another remote location.

43. The Commission also seeks comment on whether the phrase “regardless of technology used” in section 3(1)(E) of the Communications Act encompasses the technology used for video visitation, now and in the future. The record shows that some institutions are restricting or prohibiting in-person visits in favor of video visitation and a visitor may lack sufficient broadband service or equipment to enable video visitation from their home or elsewhere. To the extent a service provider charges for video visitation at the facility, should those charges be subject to the Commission’s ratemaking authority?

44. In light of these concerns, the Commission seeks comment on interpreting the Act broadly to achieve its stated goal of ensuring “just and reasonable charges for telephone and advanced communications services in correctional and detention facilities.” Further, the Commission seeks comment on whether a broad interpretation will advance the goal of section 716 of the Communications Act to ensure that services and equipment

used for advanced communications services are accessible to and usable by people with disabilities. The Commission invites comment on whether a broad interpretation would be a correct reading of section 2(b)(3) of the Martha Wright-Reed Act. Are there other onsite audio and video services that the Commission should consider within its authority under this interpretation of the statutory language? Finally, if the Commission interprets video communications services as including onsite video visitation, the Commission seeks comment on how it can ensure that all forms of onsite video visitation services within the scope of its authority that are used to communicate with non-incarcerated people are subject to the rules the Commission adopts to implement the Act. Are there instances where correctional institutions impose charges on video visitation or predicate its use on charges for other related or unrelated services?

45. *The Commission’s Authority Over Intrastate Services.* The Martha Wright-Reed Act amends section 2(b) of the Communications Act, which generally acts as a limitation on the Commission’s jurisdiction over intrastate communications, as well as a rule for interpreting other provisions of the Communications Act. Section 2(b) enumerates certain statutory provisions that are not subject to the generally applicable limitation on the Commission’s jurisdiction. When Congress enacted the Martha Wright-Reed Act, it added section 276 of the Communications Act to section 2(b)’s list of exceptions to the general limitation on the Commission’s authority over intrastate communications. This change, when coupled with the broad language in the amended section 276, suggests that Congress intended to grant the Commission authority over all intrastate communications services between incarcerated people and non-incarcerated people with whom they wish to communicate. Do commenters agree?

46. The Commission proposes finding that, in combination, the amendments to section 276 and the addition of section 276 to the exceptions contained in section 2(b) of the Communications Act grant the Commission plenary authority over intrastate communications services provided to incarcerated people. Specifically, the Commission’s authority to adopt rules for intrastate incarcerated people’s communications service is further supported by section 276(b)(1)’s directive that the Commission adopt regulations to implement, among other

things, section 276(b)(1)(A), along with the broad authority in provisions such as section 201(b) of the Communications Act, which authorizes the Commission to “prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act.”

47. In addition, the Commission proposes finding that its expanded jurisdiction over intrastate communications extends to any communications service now covered by section 276, including the “advanced communications services” added to the definition of “payphone service.” The revised definition of advanced communications services includes “any audio or video communications service used by inmates . . . regardless of technology used,” which was added to the definition of “payphone service” for purposes of section 276 of the Communications Act. The Commission seeks comment on these proposed findings and on whether the inclusion of section 276 in the section 2(b) exemption list now provides the Commission with definitive authority to regulate all audio and video communications services covered by section 276.

48. *The Commission’s Approach to Ratemaking.* Section 3(a) of the Martha Wright-Reed Act directs the Commission to “promulgate any regulations necessary to implement” that Act, including its mandate that “all rates and charges” for completed payphone communications be “just and reasonable.” Below, the Commission seeks comment on how it can best discharge this statutory mandate.

49. The Commission’s prior efforts to ensure just and reasonable rates for inmate calling services focused on capping, on an industry-wide basis, the rates and ancillary services charges providers could assess for, or in connection with, voice calls, based on providers’ costs. The Commission seeks comment on whether it should follow this approach with regard to all communications services provided to incarcerated people. Should the Commission instead set separate caps on rates and charges for different types of providers or, alternatively, for each individual provider? The Commission asks that commenters address the relative benefits and burdens of each approach, including the potential impact on consumers, providers, and Commission resources.

50. The Commission also seeks comment on whether it should set separate rate and ancillary services rate caps for audio and video services. Do the costs of providing audio and video

services vary significantly? Do the costs of ancillary services depend on whether these services are ancillary to audio or video services? Would separate caps for different services benefit incarcerated people and their families, and other consumers? Would providers incur additional costs if separate rate caps were implemented, and if so, how would these costs compare to any benefits consumers might receive from separate caps? Is there a risk that separate caps for different services could be exploited in a way that would harm consumers? What burdens, if any, would separate rates and charges impose on providers? Would it be difficult for providers to separate their costs in a meaningful way for different services for purposes of submitting the data the Commission would need to set separate rate caps? Are there any voice and video services that are, or could be, combined such that it would be burdensome to assess separate rates and charges for them? If so, what are they? Should the Commission allow voice and video services to be offered as bundles? If so, should the Commission require that all rates, charges, and terms and conditions of service be included in the same contract, and the rates and charges for each type of service and bundle be separately listed so as to be easily identifiable?

51. In the event the Commission decides to set separate caps for audio and video services, should the Commission subdivide either category into different types of services for ratemaking purposes? If so, what should those subcategories be? What types of audio and video services do providers offer? Do providers offer different audio and video services as part of a package? Do different types of audio and video services make different demands on provider resources and, if so, how should the Commission reflect those differences in its ratemaking? If the Commission were to set separate caps for different services, how would the Commission decide what caps to apply to any new covered services providers may introduce in the future?

52. Assuming that the Martha Wright-Reed Act expands the Commission's existing jurisdiction over ratemaking to include all communications services for incarcerated people, including intrastate services, the Commission must ensure that intrastate rates are also just and reasonable. In the past, the Commission did not distinguish between costs for interstate and intrastate voice services in setting rate caps for interstate inmate calling services. Rather it adopted a total industry cost approach, explaining that: "Our calculations use total industry

costs, both interstate and intrastate, because the available data do not suggest that there are any differences between the costs of providing interstate and intrastate inmate calling services. Nor do such data suggest a method for separating reported costs between the intrastate and interstate jurisdictions that might capture such differences, if any. Finally, providers do not assert any such differences."

53. The Commission followed this total cost approach in the *2021 ICS Order*, as detailed in the Appendices to that *Order*. The Commission proposes to take a similar approach in implementing the Martha Wright-Reed Act and to continue to treat costs for interstate voice services and intrastate voice services as having identical per-unit costs. Do commenters agree with this approach? If not, they should address in detail how costs differ between interstate and intrastate voice services and how to measure these differences. Commenters should also address whether such differences are substantial enough to warrant different rate caps based on the jurisdiction of a voice call, taking into account the burden associated with such a separation. In the time since the *2020 ICS Notice*, have providers developed ways to separate intrastate voice costs from interstate voice costs? What burdens would be associated with such a separation process?

54. The Commission also seeks comment on whether it should take a total cost approach to video services and assume that the average costs for intrastate video communications services are identical to the average costs for interstate video communications. If parties disagree with that assumption, they should explain how costs differ based on the jurisdictional nature of video communications. Can the jurisdictional nature of video communications services even be determined or are such services inherently interstate? Parties should also address whether such differences are substantial enough to warrant different rate caps for interstate and intrastate video communications services. Is there a way for providers to separate the costs associated with interstate video services in a meaningful way from the costs associated with intrastate video services? What burdens would be associated with such a separation?

55. The Commission invites comment on the types of pricing plans it should allow for the audio and video communications services subject to its section 276 ratemaking authority. The Commission's rules currently prohibit

providers from charging incarcerated people or their loved ones for calls on a per-call or per-connection basis and require providers to price their interstate, international, and jurisdictionally indeterminate calling services at or below specific per-minute rate caps. This structure results in incarcerated persons and their families paying for their interstate and international phone calls on a per-minute basis. In the *2022 ICS Notice*, the Commission sought comment on whether it should authorize pilot programs under which providers of incarcerated people's calling services could offer alternative pricing structures for voice calls, including structures under which an incarcerated person would receive a specified—or unlimited—number of monthly minutes of use for a predetermined monthly charge. Do commenters agree that nothing in the Act precludes the Commission from adopting alternative pricing structures for audio or video communications, should the record support this action?

56. The Commission seeks comment on whether it should require a specific pricing structure for incarcerated people's video communications services. If so, what should that structure be? Should the Commission require that providers offer such video communications services at per-minute rates? If not, what alternative structure do commenters support, and what would the benefits and burdens be of any alternative structure? How can the Commission best ensure that the rates for video communications services are just and reasonable? The Commission seeks broad comment on the pricing structures under which providers presently offer video services to incarcerated people and whether those structures can harm consumers or lead to unreasonably high rates. What would be the benefits or burdens of allowing providers to continue to use their current pricing structures for video communications services, either under pilot programs or on a permanent basis? Should the Commission allow providers to use these alternative structures for audio services? If so, what conditions should the Commission impose on providers to ensure just and reasonable rates for both incarcerated people's audio and video communications services?

57. *The Commission's Use of Data in Ratemaking*. Section 3(b)(1) of the Martha Wright-Reed Act specifies that the Commission "may use industry-wide average costs of telephone service and advanced communications services" in promulgating implementing

regulations and determining just and reasonable rates. That section also specifies that the Commission may use “the average costs of service of a communications service provider” for such purposes. In the Commission’s view, these authorizations, when read in conjunction with the elimination of the requirement that providers be “fairly compensated for each and every” completed call, respond directly to the D.C. Circuit’s holding that, in the 2015 *ICS Order*, the Commission had improperly used industry-wide average costs in setting interstate rate caps. The Commission invites comment on its view that the language of the new statutory provisions allows, but does not require, the Commission to rely on average costs—either on an industry-wide, or provider-specific basis—to set rate caps for all forms of incarcerated people’s communications services.

58. The Commission also seeks comment on the meaning of “industry-wide,” as used in section 3(b)(1) of the Act. Should the Commission interpret “industry-wide” as referring exclusively to entities that provide “any audio or video communications service used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used”? Or should the Commission read “industry-wide” as referring collectively to all providers of “telephone service and advanced communications services”? Alternatively, should the Commission interpret “industry-wide” to refer only to some subset of providers of incarcerated people’s communications services? Similarly, does the phrase “average costs of service of a communications service provider” refer to all communications service providers? Or only to providers of incarcerated people’s communications service or even an individual provider of communications services for incarcerated people? The Commission asks that parties explain the basis for their preferred interpretation of these statutory phrases.

59. The Commission seeks comment on the best approach to using industry-wide average costs to determine just and reasonable rates for both traditional telephone service and advanced communications services provided to incarcerated people. Are there any circumstances under which setting rates based on industry-wide average costs would result in unreasonably high or unreasonably low rates for any particular group of providers or consumers? If so, does the statutory language permit the Commission to

divide the relevant industry into groups based on their average costs per unit of service or specific cost-related characteristics, such as whether the provider serves facilities primarily located in rural or urban areas; and, if so, which specific cost-related characteristics should the Commission consider? If the Commission takes that step, what additional steps should it take to discharge its obligation, under section 3(b)(2) of the Martha Wright-Reed Act, to “consider . . . differences in the [average costs of telephone service and advanced communications services] by small, medium, or large facilities”?

60. The Commission also seeks comment on how it might use “the average costs of service of a communications service provider” to set just and reasonable rates. Would this statutory language allow the Commission to use the average costs of an efficient (*i.e.*, least cost) provider holding quality and provided services constant, or a group of efficient providers, to set industry-wide rates or to set rates for a subset of the industry? Does any commenter view the statutory language as allowing—or even requiring—the Commission to set rates for each provider based on that provider’s average costs of service? Assuming the Commission has the flexibility to adopt rate caps on an industry-wide or individual-provider basis, which approach would best allow it to ensure that rates and charges are just and reasonable? Additionally, the Commission seeks comment on whether using average costs of service to set rates for smaller subsets of the industry would raise any confidentiality concerns and whether those concerns might be outweighed by the public interest benefits of using average costs.

61. *Necessary Safety and Security Costs.* The Commission seeks comment on the directive in section 3(b)(2) of the Martha Wright-Reed Act that the Commission “shall consider costs associated with any safety and security measures necessary to provide” telephone service and advanced communications services to incarcerated people. The Commission seeks comment on what “shall consider” means. How much discretion, if any, does that phrase give the Commission in evaluating safety and security costs? Is the Commission required to treat all safety and security costs identified by providers or facilities as costs recoverable through rates for communications services for incarcerated people? Could the Commission “consider” such costs, but ultimately decide to exclude all of them

from its rate calculations as unnecessary? Is there a middle ground whereby the Commission could consider safety and security costs and decide to include some of those costs, but exclude others, from its rate calculations? To what extent does the Commission’s duty to consider “costs” depend on the strength or credibility of the record documenting such costs?

62. The Commission seeks comment on several aspects of the phrase “necessary safety and security measures.” How is the Commission to understand the word “necessary” here? How does a standard of “necessary” compare to the “used and useful” standard the Commission traditionally uses in analyzing whether rates are just and reasonable rates under section 201(b)? The Commission has, in the past, interpreted “necessary” as having essentially the same meaning as “used and useful.” But the D.C. Circuit has previously found that interpretation overly broad, explaining that “necessary” “must be construed in a fashion that is consistent with the ordinary and fair meaning of the word, *i.e.*, so as to limit ‘necessary’ to that which is required to achieve a desired goal.” The Commission later revised its interpretation of “necessary” in line with a D.C. Circuit opinion. For example, the Commission concluded that equipment is “necessary” for purposes of interconnection or access to unbundled network elements under section 251(c)(6) if “an inability to deploy equipment would, as a practical, economic, or operational matter, preclude the requesting carrier from obtaining interconnection or access to unbundled network elements.” The D.C. Circuit also observed that “courts have frequently interpreted the word ‘necessary’ to mean less than absolutely essential, and have explicitly found that a measure may be ‘necessary’ even though acceptable alternatives have not been exhausted.” How should the Commission implement the D.C. Circuit’s guidance in this context? What is the “ordinary and fair meaning” of the word “necessary” as used in section 3(b)(2) of the Martha Wright-Reed Act? Should the Commission interpret “necessary” in that section to mean something less than absolutely essential or indispensable? Is it something more than “used and useful”? What interpretation do commenters suggest, and why?

63. The Commission seeks detailed, specific comment on which safety and security measures are “necessary” to the provision of telephone and advanced communications services for incarcerated people and why those

measures are “necessary.” The Commission has previously sought comment on similar issues regarding telephone service for incarcerated people. Are any safety and security measures “necessary” to the provision of those services? Or are such measures core features of the correctional environment, rather than features needed to adapt communications services to that environment?

64. Some commenters assert that safety and security measures can cover a wide range of tasks, including, but not limited to, enrolling incarcerated people into voice biometrics systems, call monitoring, responding to alerts, blocking and unblocking numbers, and analyzing call recordings. The Commission seeks comment not only on what constitute safety and security measures, but also which of those measures, if any, are “necessary” within the meaning of the statutory language. Commenters should identify and describe any safety and security measures they consider “necessary” to the provision of any form of communications services for incarcerated people and to explain in detail why they deem each identified service to be “necessary.” Conversely, the Commission invites comment on why specific safety and security measures, or even broad categories of such measures, are not “necessary” to the provision of communications services for incarcerated people. The Commission also seeks comment on whether the Commission should interpret the Martha Wright-Reed Act’s use of the term “safety and security” as having the same or different meaning as the term “security and surveillance” previously used in this proceeding.

65. In addition, the Commission invites comment on the extent to which resources (*e.g.*, labor, tangible and intangible assets, and materials) of the provider—as opposed to the resources of carceral facilities or authorities—are used to provide any “necessary” safety and security measures. To the extent more data are required from providers regarding safety and security measures, WCB and OEA should seek to obtain those data in the forthcoming supplemental data collection. The Commission also invites comment on how the Commission can determine the “costs associated with” any necessary safety and security measures to the extent resources of the facilities are used to provide these measures. The Commission asks for detailed comment on what steps, if any, the Commission should take to determine those costs and on how it should proceed if it is unable to determine those costs. The

Commission also seeks comment on how it should address any information it has regarding those costs in setting just and reasonable rates for communications services for incarcerated people. For example, if the Commission determines that a particular safety or security measure is necessary to provide a covered service, would it be appropriate to include the underlying costs in rates and let the provider and facility determine how to appropriately share those costs?

66. Finally, the Commission invites detailed comment on the relationship, if any, between safety and security measures and site commission payments. For example, to what extent do monetary site commission payments compensate correctional institutions for costs they bear in connection with “necessary” safety and security services they incur, if any, using their own resources? Do providers offer safety and security products and services at discounted rates or at no cost to correctional institutions? If so, what are these products and services? Do correctional facilities instruct providers to furnish safety and security products and services on their behalf? If so, what products and services do correctional facilities typically ask providers to furnish? Do providers introduce new security and surveillance services during the contract negotiation process or at some point during the duration of a contract? If so, why do they do so and what effect do such services have on end-user rates? To the extent commenters argue that safety and security measures are embedded in site commission payments, to what extent, if any, do these payments serve to reimburse correctional facilities for costs they incur to ensure that the provision of communications services for incarcerated people does not pose any associated safety or security risk? If so, what information do correctional facilities have documenting those costs? Do correctional facilities ever provide data regarding their safety and security costs during the contract negotiation process? The Commission invites comment on these and any other matters that would assist it in understanding the relationship between safety and security measures and site commission payments.

67. *Size and Type of Correctional Institution.* The Martha Wright-Reed Act directs that the Commission “shall consider . . . differences in the [average costs of telephone service and advanced communications services] by small, medium, or large facilities.” The Commission seeks comment on certain questions raised by this language.

68. The Commission first seeks comment on the Martha Wright-Reed Act’s use of differing terms to refer to incarceration facilities, apparently interchangeably, including “correctional institutions,” “correctional facilities,” “detention facilities,” and “facilities.” The Commission proposes to interpret each of these statutory terms as generically and interchangeably referencing places where people are involuntarily confined. The Commission seeks comment on this proposal. The Commission also seeks comment on the meaning of the terms “detention facility” and “detention facilities,” as used in the Martha Wright-Reed Act. The statute neither defines these terms nor provides direction on how the Commission should interpret them. Neither do the Commission’s rules. Should the Commission interpret the term “detention facilities” as having the same meaning as the Commission’s existing definition of “correctional institution” or “correctional facility”? Does “detention facility” have a meaning different from jails and prisons? Are there compelling reasons to make any definitional distinctions between correctional institutions and detention facilities?

69. The Commission also seeks comment on whether the terms currently defined in its rules—“correctional facility or correctional institution”—could be used as generic terms to encompass the different terms used in the Martha Wright-Reed Act. The Commission proposes to continue to interpret these terms as applying to all portions of a correctional institution, collectively, to avoid the risk of any particular institution being divided into multiple entities of differing sizes in an effort to take advantage of whatever size-based rate tiers the Commission may adopt as part of its rate structure for incarcerated people’s communications services. The Commission invites comment on this proposal.

70. The Commission’s current rules define “Correctional Facility or Correctional Institution” as “a jail or a prison” and then separately define “Jail” and “Prison.” The Commission proposes to continue to interpret the term “Correctional Institution” to include all the facilities encompassed within the current definitions of “Prison” and “Jail.” The Commission seeks comment on this proposal, as well as on whether the Commission should expand those definitions to include other types of facilities. By way of example, the Commission has previously sought comment on including “civil commitment facilities,

residential facilities, group facilities, and nursing facilities in which people with disabilities, substance abuse problems, or other conditions are routinely detained” as part of the definition of “Correctional Facility.” Should the Commission include those, or any other additional facilities, in its definitions of “Jail,” “Prison,” or “Correctional Facility”?

71. The Martha Wright-Reed Act states that the Commission “shall consider . . . differences in the costs . . . by small, medium or large facilities or other characteristics,” as part of its rate-setting process. The Commission seeks comment on how to interpret “small, medium, or large facilities.” What size categories should the Commission adopt to implement this language? What size thresholds should apply to each category? What metrics should the Commission use to define size categories, and what data should the Commission consider in setting size thresholds? The Commission also seeks comment on whether the directive to consider size differences is only relevant if the Commission uses cost-averaging in setting rates for incarcerated people’s communications services, as addressed in section 3(b)(1) of the Act. In other words, if the Commission were to base its rates on something other than industry-wide average costs, would it still be obligated to consider potential cost differences associated with serving different-sized facilities?

72. The Commission’s current rate structure distinguishes among different types and sizes of correctional institutions, establishing separate rate caps for prisons and jails, as well as separate rate tiers for different-sized jails. This seems consistent with the Martha Wright-Reed Act’s reference to “small, medium, or large facilities,” but the Commission seeks comment on whether the Act allows or requires any change in the Commission’s current approach to analyzing providers’ costs based on the type and size of correctional institution being served. Does the Martha Wright-Reed Act require the Commission to implement more or fewer rate tiers based on type or size? The Commission invites parties to provide information in support of any claims they may make in regard to the differences or similarities in the costs associated with serving different types or sizes of facilities. Could the Commission set the same rates for small, medium, and large facilities after considering cost differences, if any?

73. To the extent the Commission continues to use multiple rate tiers for different-sized correctional institutions,

the Commission seeks comment on its continued use of average daily population as the primary metric for measuring the size of correctional institutions. The Commission incorporates and renews prior calls for comments on how average daily population should factor into the rate caps, if at all. Should the Commission adjust the current distinction between jails with average daily populations below 1,000, and jails with average daily populations at or above 1,000 based on the Act’s use of the terms “small, medium, or large”? Should the Commission adopt other size thresholds to account for differing cost characteristics of different-sized correctional institutions? Are there compelling reasons to adopt a different metric for determining size other than average daily population?

74. The Martha Wright-Reed Act also directs the Commission to consider “other characteristics” besides size-based distinctions in setting rates for incarcerated people’s communications services. The Commission seeks comment on what other characteristics it should consider in setting rates, including correctional institution type (whether it is a prison, jail, or other kind of institution), geographic location (whether it is in an urban, as opposed to a rural, area), and the technology used (whether it is wireline as opposed to wireless, internet protocol-based as opposed to circuit-switched, or is connected to the public switched telephone network (PSTN) as opposed to transmitted only via the internet). How do these characteristics affect costs? Should the Commission use “other characteristics” in tandem with the size of a facility when setting new rate caps? If so, how do these characteristics impact costs? How much weight should be given to the impact of other characteristics on the underlying costs? Is the primary driver of costs for some types of calls the number of calls, minutes, bits, phones, tablets, incarcerated people, network capacity, some combination of these, or something else? How does this vary with the nature of the call, for example, whether it is connected to the PSTN or is an app-to-app call, or whether it is a video or audio call regardless of the mode of transmission? Can the Commission disregard the size of the facility if some “other characteristic” provides more compelling cost-related differences?

75. *Effect of the Act on Other Laws.* Section 4 of the Martha Wright-Reed Act states that: “[n]othing in this Act shall be construed to modify or affect any Federal, State or local law to require

telephone service or advanced communications services at a State or local prison, jail, or detention facility or prohibit the implementation of any safety and security measures related to such services at such facilities.” The Commission seeks comment on the meaning and purpose of this provision. As an initial matter, the Commission proposes finding that the phrase “this Act,” as used in section 4, refers specifically to the Martha Wright-Reed Act, as opposed to the Communications Act. This seems to be the most logical reading of that reference, and the Commission seeks comment on this proposed finding.

76. The Commission next invites comment on the meaning of the language in the first clause of section 4 of the new Act providing that “[n]othing in this Act shall be construed to modify or affect any Federal, State or local law to require telephone service or advanced communications services at a State or local prison, jail, or detention facility.” The Commission seeks comment on how it should interpret this language as a general matter. Does the language of this clause simply mean that the Martha Wright-Reed Act does not create any new obligation for state or local facilities to provide any form of incarcerated people’s calling services? Does the language carry any different or additional meanings? Should the Commission interpret “to require” in this context as referring to all Federal, State, and local laws that affirmatively mandate the provision of telephone service or advanced communications services? Are there other possible meanings of the phrase in this provision? The Commission observes that the statute uses the phrase “to require,” as opposed to “to provide,” or “to offer.” What is the significance of the choice of the word “require” in section 4? The Commission invites comment about any of the other language in this clause and about the interplay between this language and any of the proposals contained in the *NPRM*.

77. The Commission also seeks comment on how it should interpret the second clause of section 4, which specifies that nothing in the Act shall “prohibit the implementation of any safety and security measures related to such services at such facilities.” Does the language of this clause simply mean that the just and reasonable ratemaking focus of the Martha Wright-Reed Act is not intended to interfere with any correctional official’s decision on whether to implement any type of safety or security measure that the official desires in conjunction with audio or video communications services? Why or

why not? How broadly should the Commission interpret the phrase “safety and security measures” in this section? Should the Commission rely on prior definitions of safety and security measures in these types of facilities? The Commission also seeks comment on how it should construe the word “related.” What does it mean when safety and security measures are “related” to telephone service or advanced communications services?

78. The Commission notes that the Martha Wright-Reed Act also references “safety and security measures” in section 3(b)(2), which requires the Commission to consider the costs associated with “necessary” safety and security measures in determining just and reasonable rates. How do commenters propose that the Commission reconcile the language of this clause with the Commission’s duty under the Act to ensure that rates are “just and reasonable”? The provision in section 3(b)(2) requires that the Commission consider certain costs when determining just and reasonable rates, whereas the reference in section 4 ensures that correctional officials retain the ability to implement “related” safety and security measures. Thus, under section 4, correctional officials remain free to implement any safety and security measures related to inmate telephone service or advanced communications services. The Commission seeks comment on this analysis.

79. Consistent with the above analysis, the Commission seeks comment on what relationship, if any, section 4 may have with the Commission’s consideration of “necessary” safety and security costs in its ratemaking calculus under section 3. The Commission has recognized that, in some circumstances, correctional officials may have used monetary site commission payments to implement safety and security measures that, for ratemaking purposes, are not necessary for the provision of incarcerated people’s communications services. Contracts between correctional officials and incarcerated people’s communications services providers also may require, as in-kind site commission payments, that the providers implement safety and security measures unrelated to the provision of communications services. Do commenters agree that the Commission’s decision to exclude the costs of such “unnecessary” measures from its ratemaking calculus will not proscribe correctional facilities’ prerogatives to implement them as contemplated by section 4? If not, why not? Are there other considerations the

Commission should take into account with respect to the “safety and security measures” clause in section 4?

80. Finally, the Commission seeks comment on the relationship of section 4 to section 276(c) of the Communications Act, as amended, which remains unchanged by the Martha Wright-Reed Act. Section 276(c) provides that, “[t]o the extent that any State requirements are inconsistent with the Commission’s regulations, the Commission’s regulations on such matters shall preempt such State requirements.” In practice, the Commission has relied on the “impossibility exception” to preempt intrastate rates and charges where it is impossible or impracticable to separate the intrastate components of a service from interstate components regulated by the Commission’s rules. The impossibility exception applied to such “jurisdictionally mixed” rates and charges when the Commission adopted rate caps pursuant to its authority under section 201(b) of the Act. Since the Commission proposes to interpret the Martha Wright-Reed Act to provide it clear authority to establish a compensation plan ensuring “just and reasonable” rates and charges and fair compensation for providers for both interstate and intrastate services under section 276 of the Communications Act, the Commission proposes to find that state regulations that exceed the rates or rate caps the Commission adopt pursuant to the Martha Wright-Reed Act shall be preempted under section 276(c).

81. The Commission also seeks comment on the proper exercise of its preemption authority as it relates to state laws that mandate lower rates and charges for incarcerated people’s communications services or that mandate that such services be offered free to consumers. In light of the Commission’s proposal to find that it has plenary authority over intrastate communications services provided to incarcerated people, the Commission invites comment on what steps, if any, the Commission should consider following a state mandate where a provider is able to claim, and clearly substantiate its claim, that an unreasonably low rate leads to unfair compensation to providers. Additionally, to be clear, the Commission proposes to find that section 4 is no bar to its preemption authority with respect to establishing the rates and charges for audio and video communications in correctional facilities and prohibiting state or local requirements that would require higher rates or charges. The Commission seeks

comment on these proposed findings. Further, the Commission proposes to find that nothing in section 4 affects its prior preemption policies under the impossibility exception, and the Commission seeks comment on this proposed finding. To the extent a party contends there is such an effect, the Commission asks for detailed comment on how it should take that effect into account in our regulation of incarcerated people’s communication services. Finally, the Commission seeks comment broadly on the scope of its preemption authority in light of the Martha Wright-Reed Act, including in particular, its authority over site commissions.

82. *Necessary Rule Changes.* The Martha Wright-Reed Act specifies that the Commission “shall promulgate any regulations necessary to implement this Act and the amendments made by this Act” not earlier than 18 months and not later than 24 months after the date of enactment. As discussed above, the Commission interprets the statutory amendments to sections 2, 3, and 276 of the Communications Act as providing the Commission plenary authority over all audio or video communications services (other than electronic messaging), by wire or radio, between incarcerated people and individuals not subject to involuntary confinement. As part of the Act, the Commission must ensure that all payphone providers are fairly compensated and that all rates and charges are just and reasonable. In addition, some entities that are not subject to the Commission’s current inmate calling services rules are now “payphone service providers” within the meaning of section 276(b)(1) of the Communications Act and thus will be subject to our new rules implementing these statutory mandates. The Commission seeks comment on what specific rule changes or new rules are necessary to effectuate the Martha Wright-Reed Act. Any comments proposing new or amended rules should include, as part of the commenter’s submission, a draft rule or markup of an existing rule to be incorporated into Subpart FF of Part 64 of the Commission’s rules. The Commission notes that while the Act precludes the Commission’s implementing rules from becoming effective earlier than July 2024, the statutory amendments became effective upon enactment on January 5, 2023 and are effective today. Pending the effective date of any new rules the Commission adopts, any entity that is an inmate calling services provider within the meaning of the Commission’s

existing rules must comply fully with those rules.

83. The Act allows or requires that the Commission make certain types of data analyses in promulgating implementing regulations. The Commission proposes to interpret the Act as allowing it to perform any and all acts and issue any orders, including orders requiring the submission of data and other information from audio and video communications service providers now covered by the Act, conducive to the discharge of these and its other implementation responsibilities under the Martha Wright-Reed Act. The Commission invites comment on this proposal.

84. *Accessibility Rule Changes Necessitated by the Expanded Definition of Advanced Communications Services.* The Commission also seeks comment on the extent to which the Martha Wright-Reed Act expands its ability to ensure that any audio and video communications services used by incarcerated people are accessible to and usable by people with disabilities. With the addition of this new category of services to the definition of “advanced communications services,” some of these services, as well as some equipment used for such services, regardless of technology used, may be newly subject to accessibility requirements under section 716 of the Communications Act. Section 716, added to the Communications Act by the Twenty-First Century Communications and Video Accessibility Act of 2010, requires providers of advanced communications services and manufacturers of equipment used with such services to ensure that such services and equipment are accessible to and usable by people with disabilities, unless doing so is not achievable. If accessibility is not achievable either by building it into the service or equipment or by using third party accessibility solutions, then a manufacturer or service provider must ensure that its equipment or service is compatible with existing peripheral devices or specialized customer premises equipment, unless not achievable. Each provider of advanced communications services has a duty not to install network features, functions, or capabilities that impede accessibility or usability. In 2011, the Commission adopted Part 14 of its rules, which implements these statutory provisions, requiring service providers and equipment manufacturers of all types of advanced communications services and equipment to meet specific obligations,

performance objectives, recordkeeping, and reporting requirements.

85. The Commission seeks comment generally on what changes to Part 14 of its rules are needed to implement the amended definition of “advanced communications services.” The Commission specifically proposes to amend the Part 14 definition of “advanced communications services” to incorporate the amended statutory definition, and seeks comment on this proposal. Is there any reason the Commission should not adopt the statutory definition verbatim? Are there specific terms in the new category of advanced communications services, apart from those raised above, that the Commission should separately define in section 14.10 of its rules, and if so, how should they be defined?

86. The Commission also seeks comment on whether any changes are needed to other provisions of Part 14 to reflect the inclusion of these services and equipment. For example, are there specific performance objectives or recordkeeping requirements that should be added or modified to ensure that providers of covered communications services and manufacturers of associated equipment used by incarcerated people are in full compliance with their accessibility obligations?

87. *Payphones Other Than in the Incarceration Context.* Although the Martha Wright-Reed Act specifically addresses payphones in the incarceration context, certain amendments to section 276 of the Communications Act apply to payphones more generally, including both those used by incarcerated people and those used by the public, in the case of more traditional payphones. In 1999, the Commission determined that traditional (*i.e.*, non-inmate calling services) payphones do not require pricing regulation because that portion of the payphone market was sufficiently competitive. In addition, advancements in mobile and wireless technology have made traditional payphones virtually obsolete. For payphone service outside of the incarceration context, the Commission proposes to find that no new regulations are “necessary” to implement the Martha Wright-Reed Act and its amendments to the Communications Act pursuant to section 3(a) of the Act. Accordingly, the Commission proposes relying on its existing rules governing traditional payphone service to ensure that all payphone providers outside of the incarceration context are fairly compensated and that their rates and charges are just and reasonable,

consistent with section 276(b)(1)(a), as amended. The Commission seeks comment on the proposal to find new payphone service rules unnecessary and to continue relying on its existing rules to satisfy any of the new statutory requirements that apply outside the incarceration context.

88. *Effect on Small Entities.* The Commission recognizes that its actions in this proceeding may affect several groups of small entities. For example, payphone service providers that provide only limited communications services to incarcerated people, or that provide communications services to incarcerated people via technologies not previously covered by section 276, will be subject to new regulatory requirements. In addition, the Commission’s implementation of the Martha Wright-Reed Act may subject entities currently subject to its inmate calling services rules to new regulatory obligations. The Commission therefore seeks comment on how it should take into account the impact on small businesses and, in particular, any disproportionate impact or unique burdens that small businesses may face, in effectuating the mandates set forth in the Martha Wright-Reed Act and the Communications Act. Parties should also address any alternative proposals that would minimize the burdens on small businesses.

89. *Other Reforms Related to Incarcerated People’s Communications Services.* In addition to seeking comment on actions the Commission should take to implement the Martha Wright-Reed Act, the Commission proposes revisions to its rules to reflect updated language used to refer to calls made by incarcerated people. The Commission’s rules currently use “inmate calling services” or “ICS” to refer to “a service that allows Inmates to make calls to individuals outside the Correctional Facility where the Inmate is being held, regardless of the technology used to deliver the service.” With the Martha Wright-Reed Act’s expansion of the Commission’s authority beyond calling services to include all audio and video communications services used by incarcerated people, the Commission uses today and will use going forward the term “incarcerated people’s communications services” or “IPCS” to refer to these broader service offerings. In connection with this change in terminology, the Commission has also changed references to “inmates” to “incarcerated people” at the request of public interest advocates. To reflect this evolution in terminology, the Commission proposes codifying these

changes in its existing rules and in any new rules the Commission adopts pursuant to this proceeding. The Commission seeks comment on this proposal.

90. Finally, the Commission invites parties to comment on any other matters that may be relevant to its implementation of the Martha Wright-Reed Act to adopt just and reasonable rates and charges for incarcerated people's audio and video communications services.

Digital Equity and Inclusion

91. 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 herein. Specifically, the Commission seeks comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.

Procedural Matters

92. *Ex Parte Rules.* The proceeding that the Notice of Proposed Rulemaking initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 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 the 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.

93. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of the rule and policy changes contained in the Notice of Proposed Rulemaking.

94. *Initial Paperwork Reduction Act of 1995 Analysis.* The Notice of Proposed Rulemaking may contain new or modified information collection(s) subject to the PRA. If the Commission adopts any new or modified information collection requirements, they will be submitted to the OMB for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in these proceedings. 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."

Initial Regulatory Flexibility Analysis

95. 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 a substantial number of small entities by the policies and rules proposed in the Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed

by the deadlines for comments in the Notice of Proposed Rulemaking. The Commission will send a copy of the Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for and Objectives of, the Proposed Rules

96. In the *NPRM*, the Commission seeks comment on implementing the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act or Act), enacted by Congress to ensure just and reasonable rates for telephone and advanced communications services in correctional and detention facilities. The Act was passed in an effort to remedy decades of exorbitant rates for telecommunications services paid by family members, clergy, counsel and other critical support systems.

97. The Commission seeks comment on the purpose and scope of the amendments made to its authority and how the Act expands its authority over incarcerated people's communications services, including over advanced communications services, intrastate services, and "any audio or video communications service used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used." The Commission also seeks comment on the Act's directions regarding how it should consider implementing the Act, including when it is to adopt rules, the use of data to set just and reasonable rates, the costs of facility safety and security measures, and the size of correctional facilities. Lastly, the Commission also seeks comment on how the Act affects its ability to ensure that incarcerated people's communications services and associated equipment promote digital equity and are accessible to and usable by incarcerated people with disabilities.

Legal Basis

98. The proposed action is authorized pursuant to sections 1, 2, 4(i)–(j), 5(c), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Public Law 117–338, 136 Stat 6156 (2022).

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

99. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

100. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission’s actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.

101. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

102. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions

consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county or municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments— independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

103. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including Voice over Internet Protocol (VoIP) services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

104. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA’s small business size standard, most of these providers can be considered small entities.

105. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to

local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA’s small business size standard, most of these providers can be considered small entities.

106. *Competitive Local Exchange Carriers (CLECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees. Consequently, using the SBA’s small business size standard, most of these providers can be considered small entities.

107. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The

SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

108. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

109. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers is the closest industry with a SBA small

business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 518 providers that reported they were engaged in the provision of toll services. Of these providers, the Commission estimates that 495 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

110. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 115 providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 113 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

111. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA have developed a small business size standard specifically for payphone service providers, a group that includes incarcerated people's communications services providers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 58 providers that reported they were engaged in the provision of payphone services. Of these providers, the Commission estimates that 57 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

112. *Telecommunications Relay Service (TRS) Providers.* Telecommunications relay services enable individuals who are deaf, hard of hearing, deaf-blind, or who have a speech disability to communicate by telephone in a manner that is functionally equivalent to using voice communication services. Internet-based TRS (*iTRS*) connects an individual with a hearing or a speech disability to a TRS communications assistant using an internet Protocol-enabled device via the internet, rather than the public switched telephone network. Video Relay Service (VRS) one form of *iTRS*, enables people with hearing or speech disabilities who use sign language to communicate with voice telephone users over a broadband connection using a video communication device. Internet Protocol Captioned Telephone Service (IP CTS) another form of *iTRS*, permits a person with hearing loss to have a telephone conversation while reading

captions of what the other party is saying on an internet-connected device. Providers must be certified by the Commission to provide VRS and IP CTS and to receive compensation from the TRS Fund for TRS provided in accordance with applicable rules.

113. Neither the Commission nor the SBA have developed a small business size standard specifically for TRS Providers. All Other Telecommunications is the closest industry with a SBA small business size standard. Internet Service Providers (ISPs) and Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on Commission data there are ten certified *iTRS* providers. The Commission however does not compile financial information for these providers. Nevertheless, based on available information, the Commission estimates that most providers in this industry are small entities.

114. *All Other Telecommunications*. This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (e.g., dial-up ISPs) or VoIP services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

115. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*. In the *NPRM*, the Commission

seeks comment on further reforms to the regulations governing incarcerated people’s communications services, which could potentially affect potential reporting and compliance requirements for small entities and for providers of incarcerated people’s communications services of all sizes. For example, the *NPRM* seeks comment on whether to continue using a “total industry cost” approach in setting rate caps, which would result in the same per-unit rate caps for interstate and intrastate voice services. Were the Commission to follow this approach in implementing the Act’s “just and reasonable rates” requirement—resulting in a unitary rate cap for any providers of incarcerated people’s interstate and intrastate communications services—it would potentially reduce the compliance burden on smaller providers.

116. The Commission’s implementation of the Martha Wright-Reed Act may require entities, including small entities and incarcerated people’s communications services providers of all sizes, currently subject to the Commission’s inmate calling services rules to be subject to modified or new reporting or other compliance obligations. This may also be the case for providers newly subject to the Commission’s expanded regulatory authority, such as providers offering only intrastate or certain advanced communications. In addition, the Commission recognizes that its actions in this proceeding may affect the reporting, recordkeeping, and other compliance requirements for several groups of small entities. In assessing the cost of compliance for small entities and for providers of incarcerated people’s communications services of all sizes, at this time, the Commission is not in a position to determine whether the proposed rules in the *NPRM* will impose any significant costs for compliance in general, or whether they will require small entities to hire attorneys, engineers, consultants, or other professionals to comply. It is also undetermined at this time if any new software, or modifications to existing software, will be necessary for small entities and for providers of incarcerated people’s communications services of all sizes to effectively comply with the proposed rules.

117. Within 18–24 months following enactment, the Commission is required by the Martha Wright-Reed Act to adopt rules to ensure that the rates and fees for incarcerated people’s communications services are just and reasonable. This may include new ratemaking methodologies, such as the use of industry-wide average costs of

telephonic service and advanced communications data; new services, such as any audio or video communications service used to communicate with persons outside of the facility, regardless of technology used; and new entities, such as providers that are newly subject to our authority. In the *NPRM*, the Commission seeks comment on the collection and use of existing and additional data in determining just and reasonable rates and charges for incarcerated people’s communications services, as well as on the implementation of its newly expanded jurisdictional authority. If rules are adopted pursuant to these proposals, they would apply to incarcerated people’s communications services providers of all sizes, including small providers.

118. The Commission seeks comment on updating and restructuring its current (third) mandatory data collection. First, to the extent that the Commission updates and restructures its most recent data collection, providers of incarcerated people’s communications services of all sizes, including small providers, would need to maintain and report their cost data in accordance with the Commission’s rules. Similarly, if the Commission imposes data collection requirements, or other new rules specific to implementation of the Martha Wright-Reed Act, the data collection requirements and other rules will be applicable to incarcerated people’s communications services providers of all sizes. The Commission also seeks comment on how it should proceed if a particular provider or providers do not provide reliable and accurate information in response to the updated data collection. Any procedures it may adopt would impact reporting requirements for all relevant entities, including small entities. Additionally, the Commission seeks comment how to proceed if information submitted by providers does not allow it to determine with precision the costs attributable to any particular service or function, or groups of services or functions. Any steps the Commission would take to ensure the accuracy or precision of providers’ data submissions could also potentially affect reporting requirements for all relevant entities, including small entities and providers of incarcerated people’s communications services of all sizes.

Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

119. The RFA requires an agency to describe any significant, specifically small business, 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.

120. In the *NPRM*, the Commission seeks to fulfill Congress's intent via the implementation of the Martha Wright-Reed Act, including its directive that the Commission ensure just and reasonable rates and charges for incarcerated people's audio and video communications services. While doing so, the Commission is mindful of the potential impact on small businesses and, in particular, any disproportionate impact or unique burdens that small businesses may face in complying with any rules the Commission may adopt. Below the Commission discusses several steps it has taken that could reduce the economic impact for small entities.

121. Allowing additional time for small and medium-sized businesses to comply with the proposed rules, including the timeframe for compliance, could reduce the economic impact for small entities. The Commission considered and seeks comment on whether such an approach would serve the public interest. In doing so, the Commission has provided small entities the opportunity to offer alternatives not already considered, giving small entities ample time to minimize whatever potential burdens they may face.

122. The Commission also seeks comment on the Martha Wright-Reed Act's directive to consider the size of incarceration facilities in setting just and reasonable rates and charges for services. The Commission seeks comment on whether the "industry-wide" average cost language in the Martha Wright-Reed Act refers only to some subset of providers of incarcerated people's communications services or all such providers. In doing so, the Commission seeks information that will help to determine the appropriate

approach to ensuring just and reasonable rates as required by the Act. The Commission would also benefit by using the information obtained from comments to inform its evaluation of its regulatory options, including those that may potentially be less burdensome for smaller providers.

123. The Martha Wright-Reed Act states that the Commission "shall consider . . . differences in the costs . . . by small, medium or large facilities or other characteristics," as part of its rate-setting process. The Commission seeks comment on how to interpret "small, medium, or large facilities." The Commission considered and seeks comment on whether it is obligated to consider potential cost differences associated with serving different-sized facilities if it sets rates based on something other than industry-wide average costs. This information will assist the Commission in considering alternatives such as whether it should implement more or fewer rate tiers based on the type or size of facility, and whether the Commission should set the same rates for small, medium, and large facilities after considering cost differences, if any.

124. Considering the economic impact on small entities through comments filed in response to the *NPRM* and this *IRFA*, as part of its efforts to implement the Martha Wright-Reed Act and promulgate rules in these proceedings, could allow the Commission to potentially obtain cost-benefit analyses and other input that would enable it to identify reasonable alternatives that may not be readily apparent, and offer alternatives not already considered that could minimize the economic impact on small entities.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

125. None.

Ordering Clauses

126. *It is ordered*, pursuant to sections 1, 2, 4(i)–(j), 5(c), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Public Law 117–338, 136 Stat 6156 (2022), the Notice of Proposed Rulemaking is hereby adopted.

127. *It is further ordered*, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the Notice

of Proposed Rulemaking on or before 30 days after publication of a summary of the Notice of Proposed Rulemaking in the **Federal Register** and reply comments on or before 60 days after publication of a summary of the Notice of Proposed Rulemaking in the **Federal Register**.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–07068 Filed 4–6–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 6, 27, and 52

[FAR Case 2020–010, Docket No. FAR–2020–0010, Sequence No. 1]

RIN 9000–AO12

Federal Acquisition Regulation: Small Business Innovation Research and Technology Transfer Programs

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement changes related to data rights in the Small Business Administration's Policy Directive for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs, published in the **Federal Register** on April 2, 2019. In addition, this proposed rule would implement competition requirements unique to Phase II and III awards under the SBIR/STTR Programs.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before June 6, 2023 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2020–010 to the Federal eRulemaking portal at <https://www.regulations.gov> by searching for "FAR Case 2020–010". Select the link "Comment Now" that corresponds with "FAR Case 2020–010". Follow the instructions provided on the "Comment Now" screen. Please include your name,

company name (if any), and “FAR Case 2020–010” on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite “FAR Case 2020–010” in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at <https://www.regulations.gov/faq>). To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Mahrubia Uddowla, Procurement Analyst, at 703–605–2868, or by email at mahruba.uddowla@gsa.gov. For information pertaining to status, publication schedules, or alternative instructions for submitting comments if <https://www.regulations.gov> cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAR Case 2020–010.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to implement changes related to data rights that are necessary to comply with the Small Business Administration’s SBIR and STTR Policy Directive (PD) published in the **Federal Register** on April 2, 2019 (84 FR 12794). In addition, this rule implements competition requirements unique to Phase II and III awards under the SBIR/STTR Programs.

Prior to the April 2019 revision, the PD, FAR, and Defense Federal Acquisition Regulation Supplement (DFARS) each had different terminology and data rights allocations for SBIR/STTR data. The inconsistencies may have led to confusion and placed an unnecessary burden on small businesses because they had to operate under three different interpretations of the same programs. The revisions to the PD were intended to create uniformity and clarity regarding the Government’s rights in SBIR/STTR data. To achieve this objective, the FAR must be updated to adopt the terminology, definitions, and data rights allocations described in

the most recent update of the SBIR/STTR PD.

II. Discussion and Analysis

The proposed rule reflects SBA’s updated SBIR/STTR PD terminology, revisions to the data rights afforded to the Government and the extension of the SBIR/STTR data rights protection period from a minimum of 4 years to 20 years. The rule also clarifies direction for contracting officers pertaining to document retention and competition requirements. A summary of the proposed changes follows:

A. FAR Part 2

The definitions for “computer database” and “computer software” are revised in FAR part 2 to harmonize terminology that applies to the SBIR/STTR programs with terminology used in the rest of the FAR and DFARS. These definitions reflect those used in SBA’s SBIR/STTR PD to the greatest extent possible. In some instances, similar language has been used to convey the intent of the PD for contracting officers. As a conforming change to the revised definition for “computer software,” a separate definition for “computer program” is added to FAR part 2.

B. FAR Part 4

Due to the expansion of the SBIR/STTR data rights protection period from a minimum of 4 years after acceptance of all items under the contract to 20 years after the date of award, a new records retention category is proposed at FAR 4.805(c)(9) for contracts involving SBIR/STTR data rights. The proposed addition would require SBIR/STTR contracts that contain the revised FAR clause 52.227–20, Rights in Data-SBIR/STTR Programs, to be retained for 20 years after award rather than 6 years after final payment, to coincide with the new protection period.

C. FAR Part 6

The proposed rule adds text at FAR 6.302–5, Authorized or required by statute, to clarify that contracting officers may award sole-source actions under Phase III of the SBIR/STTR programs without further justification based upon the statutory authority in the Small Business Act (15 U.S.C. 638(r)(4)). Guidance is also provided for instances when Phase II sole-source actions may be awarded without justification (15 U.S.C. 638(ff) and the SBA PD).

D. FAR Part 27

Changes were made to the definitions of “data” and “unlimited rights” at FAR

27.401 to reflect the SBIR/STTR PD definitions. The definition of “unlimited rights” was revised to no longer specify data that can be performed or displayed publicly. The revision does not remove the Government’s ability to perform publicly or display publicly; the revision is made to cover the Government’s right to perform and display both in public settings and non-public settings.

A new section is created in subpart 27.4 to cover the SBIR and STTR programs. It would give basic information on the program. It would also provide instructions to contracting officers that are specific to contracts awarded under the SBIR/STTR programs. The instructions relate to the procedures of negotiating a different protection period than the new minimum period of 20 years after award as well as the requirements associated with further release or disclosure of SBIR/STTR data outside the Government. As a result of the creation of this new section, the current section of 27.409 is proposed to be renumbered as 27.410.

The SBIR/STTR PD made several revisions to the SBIR/STTR program which are reflected in the prescription at newly-designated FAR 27.410(h).

E. FAR Part 52

The definitions at FAR clauses 52.227–14, Rights in Data-General; 52.227–17, Rights in Data-Special Works; and 52.227–20, Rights in Data-SBIR/STTR Programs, are revised to reflect the updated 2.101 and 27.401 definitions—see Section II. A and D of this preamble.

FAR clause 52.227–20, Rights in Data-SBIR/STTR Programs, is revised in the title to become “Rights in Data—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs”, and to add definitions for “Government purpose,” “Government purpose rights,” “Operations, maintenance, installation, or training purposes (OMIT) data,” “SBIR/STTR computer software rights,” “SBIR/STTR protection period,” “SBIR/STTR technical data,” and “SBIR/STTR technical data rights.” These definitions reflect those used in SBA’s SBIR/STTR PD to the greatest extent possible. In some instances, different language has been used to harmonize terminology that applies to the SBIR/STTR programs with terminology used in the rest of the FAR and DFARS. Also, in some instances additional or different language is used in the definition to provide further clarity to contracting officers and contractors. Regardless of

whether the definitions proposed for the FAR are the same or different from the definitions in the PD, the intent is for the FAR definitions to be consistent with the SBIR/STTR PD.

The terms “SBIR data” and “SBIR rights” in FAR clause 52.227–20 have been updated as “SBIR/STTR data” and “SBIR/STTR data rights”, and to reflect both SBIR/STTR programs. The definitions of the two terms have been updated to be consistent with the SBIR and STTR PD. The definition of “technical data” is not being revised in the FAR since the FAR definition is statutory (41 U.S.C. 116). SBA has confirmed that the “technical data” definition in the SBIR and STTR PD was not intended to differ from the statutory definition. Language is also added at 52.227–20(b) to clarify that the SBIR/STTR data rights provided in the clause are to be interpreted consistent with the SBIR and STTR PD. However, if there is inconsistency between the FAR clause and the SBIR and STTR PD, the clause governs; this is standard protocol in the FAR. If there are substantive changes to the PD in the future, DoD, GSA, and NASA will pursue rulemaking to update the FAR accordingly.

The Rights Notice in FAR clause 52.227–20(d) is revised to reflect the fact that the clause now covers both SBIR/STTR programs and to reflect the increase in the protection period from 4 years after acceptance of all items under the contract to 20 years after the date of award. As a logistical matter that will promote compliance with the protection period, the Notice is revised to require inclusion of the contract award date. The Notice is also revised to reflect the new terminology and definitions added to the clause.

Consistent with the SBIR/STTR PD, FAR clause 52.227–20 is also revised to authorize contractors and contracting officers to negotiate a different protection period, after award of the contract. The clause at paragraph (d)(2) will require contractors, in such a scenario, to update their Rights Notice to reflect the negotiated protection period.

Conforming changes are proposed for all the clauses and provisions prescribed in FAR subpart 27.4, due to the renumbering of the section containing the prescriptions from 27.409 to 27.410.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items) or for Commercial Services

This rule amends the clauses at FAR 52.227–14, Rights in Data—General, 52.227–17, Rights in Data—Special Works, and 52.227–20, Rights in Data—SBIR/STTR Programs, but this rule does not change the applicability of these existing clauses included in contracts valued at or below the SAT, or for commercial products (including COTS items) and commercial services.

IV. Expected Impact of the Rule

This rule is expected to impact the contractors awarded contracts under the SBIR/STTR programs and subject to FAR clause 52.227–20, which addresses data rights.

Contractors awarded contracts under the SBIR/STTR programs will benefit from having a single FAR clause that will uniformly govern awards under both programs, provide for a longer protection period, and use consistent terminology across the programs and other contract awards outside the programs that are subject to the FAR or DFARS.

The FAR does not currently contain a clause applicable to contracts awarded under the STTR program. SBA has combined the SBIR and STTR policy directives into a single document, which makes it easier for this proposed rule to update the FAR SBIR clause to cover both programs. Currently in the FAR, the period of time during which the Government is obligated to protect a contractor's SBIR/STTR data against unauthorized use and disclosure, *i.e.*, protection period, is four years. Consistent with the SBIR/STTR PD, this proposed rule seeks to increase the protection period to 20 years. The longer protection period incentivizes the Government to make subsequent awards, under phases II and III, to the small business that developed the technology under a phase I award. Therefore, small businesses are incentivized to participate in the SBIR/STTR programs in the first place. An added benefit of the 20-year protection period is that it covers the timeframe necessary for many technologies to be commercialized and mirrors the length of the patent protection period. In addition, this rule is expected to reduce confusion and burden on small businesses by adopting the updates to the SBIR/STTR PD, which in turn created uniformity and clarity regarding

contractors' and the Government's rights in SBIR/STTR data.

This rule is also expected to benefit contractors that participate under the SBIR/STTR programs by clarifying for contracting officers the authority to make sole-source awards under phases II and III under the programs. Clarifying the authority should drive greater use of the programs by the Government and perhaps greater participation by small businesses.

On the Government side, the rule is expected to reduce burden on contracting officers by clarifying that further justification is not necessary when using the sole-source authority provided under the SBIR/STTR programs. This is also expected to reduce the burden and confusion on contracting officers because the protection period will have a clear start and end date. Previously, the start date was four years from the date of acceptance of all deliverables. The triggers for the protection period were not always clear. This proposed rule changes the start date of the protection period to the date of award, which is something that is clearly noted on the contract itself. Therefore there is no reason for confusion. The proposed rule also provides explicit direction on the records retention period for contracts subject to the FAR clause. This will benefit the Government by ensuring contract files are retained long enough for the Government to comply with the data rights requirements, enforce its data rights, and defend itself in the event of litigation.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612, because small business contractors

under the SBIR/STTR Programs represent less than one percent of all small businesses that are looking for Federal contract opportunities. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to revise the FAR to implement changes related to data rights in the Small Business Administration's Policy Directive for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs, published in the **Federal Register** on April 2, 2019 (84 FR 12794).

The objective of this rule is to update the FAR coverage related to the SBIR and STTR Programs to be consistent with the 2019 changes SBA made to the Policy Directive governing those Programs. In addition, this rule is intended to implement competition requirements unique to Phase II and III awards under the SBIR/STTR Programs.

Section 9 of the Small Business Act (15 U.S.C. 638) requires SBA to issue a policy directive setting forth guidance to the Federal agencies participating in the SBIR/STTR Programs. In addition, 15 U.S.C. 638(r)(4) authorizes sole-source awards under phase III of the SBIR and STTR Programs.

Prior to SBA's 2019 revision of the Policy Directive, there were different terminology and data rights allocations for SBIR/STTR data contained in SBA's Policy Directive, the FAR, and DoD's supplement to the FAR, the Defense Federal Acquisition Regulation Supplement. This inconsistency may have led to confusion and created a burden on small businesses to understand three different data rights regimes for the same programs. SBA's intent when revising the data rights provisions of the Policy Directive was to create uniformity and clarity regarding the Government's rights in SBIR/STTR data. To achieve this goal the FAR must be updated to adopt the terminology, definitions, and data rights allocations described in the most recent update of the Policy Directive.

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. As of January 2022, there were over 415,000 small business registrants in the System for Award Management. This rule will impact entities awarded contracts under the SBIR/STTR Programs. Based on data from the Federal Procurement Data System (FPDS) for fiscal years 2020 through 2022, there were approximately 12,736 contract awards made to 4,961 unique entities under the SBIR and STTR Programs. Of those 4,961 unique entities, 4,882 were small businesses. While past awards under the SBIR and STTR Programs are not a perfect indicator of all small entities that may be impacted by this rule (*i.e.*, there may be more, fewer, or different small entities that receive future awards under the Programs than the entities that received the awards in the past), considering the combined data from three fiscal years is a reasonable estimator of the scope/scale of the rule's

likely impact. The 4,882 small business contractors under the SBIR and STTR Programs represent approximately 1 percent of all small businesses that are looking for Federal contract opportunities.

Of the limited number of small businesses to which this rule will apply, there is expected to be positive economic impact. Beyond standardizing and clarifying terminology, this rule also implements the change in the Policy Directive, which extends the data rights protection period from 4 years to 20 years. This longer protection period benefits small businesses by providing the timeframe necessary for many technologies to be commercialized and by mirroring the length of the patent protection period.

This proposed rule does not include any new substantive reporting, recordkeeping, or other compliance requirements for small businesses. The rule does not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501–3521), Control Number 9000–0090, Rights in Data and Copyrights. The existing information collection already accounts for the reporting associated with the requirement to affix a notice to SBIR/STTR data delivered under the contract. The notice already requires the contractor to fill in the contract and subcontract number; this rule proposes the notice to also include a fill-in for the contract award date. The burden associated with the additional fill-in is considered de minimis.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD, GSA, and NASA were unable to identify any alternatives to the rule that would reduce the impact on small entities and still implement requirements consistent with the 2019 SBA Policy Directive.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2020–010), in correspondence.

VII. Paperwork Reduction Act

This rule affects the information collection requirements in the clause at FAR 52.227–20, currently approved under OMB Control Number 9000–0090, Rights in Data and Copyrights, in accordance with the Paperwork

Reduction Act (44 U.S.C. 3501–3521). The impact, however, is negligible. The existing information collection already accounts for the reporting associated with the requirement to affix a notice to SBIR/STTR data delivered under the contract. The notice already requires the contractor to fill in the contract and subcontract number; this rule proposes the notice to also include a fill-in for the contract award date. The burden associated with the additional fill-in is considered de minimis.

List of Subjects in 48 CFR Parts 2, 4, 6, 27, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 4, 6, 27, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 4, 6, 27, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101, in paragraph (b)(2), by:

■ a. Revising the definition “Computer database or database”;

■ b. Adding in alphabetic order the definition “Computer program”; and

■ c. Revising the definition “Computer software”.

The addition and revisions read as follows:

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

* * * * *

Computer database or database means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

Computer program means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled.

Computer software does not include computer databases or computer software documentation.

* * * * *

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

■ 3. Amend section 4.805 by revising paragraphs (c) introductory text and

(c)(1) and adding paragraph (c)(9) to read as follows:

4.805 Storage, handling, and contract files.

* * * * *

(c) An agency that requires a shorter retention period than those identified in Table 4–1, except for contracts involving data rights under the Small

Business Innovation Research (SBIR) Program or Small Business Technology Transfer (STTR) Program (see paragraph (c)(1) of this section for minimum contract retention period), shall request approval from NARA through the agency's records officer.

TABLE 4–1—RETENTION PERIODS

Record	Retention period
(1) Contracts (and related records or documents, including successful and unsuccessful proposals, except see paragraph (c)(2) of this section regarding contractor payrolls submitted under construction contracts and see paragraph (c)(9) of this section regarding contracts under the SBIR Program or STTR Program.)	6 years after final payment.
* * * * *	* * * * *
(9) Contracts involving SBIR/STTR data rights which include FAR clause 52.227–20.	20 years after contract award, or at the end of the protection period as specified in FAR 52.227–20 as it appears in the contract, whichever is later.

PART 6—COMPETITION REQUIREMENTS

■ 4. Amend section 6.203 by revising the second sentence of paragraph (a) to read as follows:

6.203 Set-asides for small business concerns.

(a) * * * This includes contract actions conducted under the Small Business Innovation Research (SBIR) or Small Business Technology Transfer (STTR) Program established under 15 U.S.C. 638.

* * * * *

■ 5. Amend section 6.302–5 by adding paragraph (b)(8), and revising paragraph (c)(2)(i) to read as follows:

6.302–5 Authorized or required by statute.

* * * * *

(b) * * *

(8)(i) Sole-source awards under phase III of the Small Business Innovation Research (SBIR) or Small Business Technology Transfer (STTR) programs (15 U.S.C. 638(r)(4)).

(ii) One sequential sole-source award under phase II if the award follows a competitive phase II award (15 U.S.C. 638(ff) and section (4)(b)(5) of the SBA “Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Program Policy Directive” (published April 2, 2019; see <https://www.sbir.gov>), as amended).

(c) * * *

(2) * * *

(i) Contracts awarded under paragraph (a)(2)(ii), (b)(2), or (b)(8) of this section;

* * * * *

PART 27—PATENTS, DATA, AND COPYRIGHTS

■ 6. Amend section 27.401 by revising the first sentence in the definition “Data”, and revising the definition “Unlimited rights” to read as follows:

27.401 Definitions.

* * * * *

Data means all recorded information, regardless of the form, method of recording, or the media on which it may be recorded. * * *

* * * * *

Unlimited rights means the rights of the Government to use, modify, prepare derivative works, reproduce, release, perform, display, disclose, or distribute data in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

27.409 [Redesignated as section 27.410]

■ 7. Redesignate section 27.409 as section 27.410.

■ 8. Add a new section 27.409 to read as follows:

27.409 Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs.

(a) The purpose of the SBIR and STTR programs is to strengthen the role of innovative small business concerns in Federally-funded research or research and development. Certain agencies are required to participate in the SBIR/STTR programs.

(b) The SBIR and STTR programs are authorized by 15 U.S.C. 638. The statute directs the Small Business Administration (SBA) to issue a Policy Directive. SBA published its Policy

Directive in the **Federal Register**; SBA keeps the Policy Directive updated by publishing revisions in the **Federal Register**. The current Policy Directive is available online at <https://www.sbir.gov>.

(c) The programs have three phases of awards. The purpose of Phase I awards is to establish technical merit, feasibility, and commercial potential. Phase II awards continue the research and development efforts initiated in Phase I. The purpose of Phase III awards is to pursue commercialization objectives for future sale or use by the Federal Government or commercial markets.

(d) Solicitations and contracts awarded under the SBIR/STTR programs must include clause 52.227–20, Rights in Data—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs (see 27.410(h)).

(1) The period of time during which the Government is obligated to protect SBIR/STTR data against unauthorized use and disclosure, *i.e.*, the SBIR/STTR protection period, begins at award of a SBIR/STTR contract and ends not less than 20 years from that date. After award of the contract, the contractor and the contracting officer may negotiate a different SBIR/STTR protection period. If a different SBIR/STTR protection period is negotiated, paragraph (d) of clause 52.227–20 requires the contractor to revise the SBIR/STTR Rights Notice to reflect the negotiated protection period.

(2) With regard to the release or disclosure of SBIR/STTR data outside the Government, as referenced in the definitions of “SBIR/STTR computer

software rights” and “SBIR/STTR technical data rights” in paragraph (a) of clause 52.227–20, contracting officers shall require prohibition against further use and disclosure by support service contractors or their subcontractors (e.g., by using a nondisclosure agreement). For terms required to be included in the prohibition, consult section 8(c) of the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Program Policy Directive (84 FR 12794, April 2, 2019; see <https://www.sbir.gov>), as amended.

■ 9. Amend the newly redesignated section 27.410 by revising paragraph (h) to read as follows:

27.410 Solicitation provisions and contract clauses

* * * * *

(h) If the contract is a SBIR or STTR contract, insert the clause at 52.227–20, Rights in Data—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs, in all Phase I, Phase II, and Phase III contracts awarded under the SBIR or STTR Program established pursuant to 15 U.S.C. 638. This clause implements 15 U.S.C. 638 and the Small Business Administration’s “Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Program Policy Directive” (84 FR 12794, April 2, 2019; see <https://www.sbir.gov>).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 10. Amend section 52.227–14 by—
- a. Removing from the introductory text the phrase “27.409” and adding “27.410” in its place;
- b. Revising the date of the clause;
- c. In paragraph (a):
- i. Revising the definition “Computer database or database”;
- ii. Adding in alphabetical order the definition “Computer program”;
- iii. Revising the definition “Computer software”;
- iv. Revising the first sentence in the definition of “Data”;
- v. Revising the definition “Unlimited rights”; and
- d. Removing from the introductory text of Alternate I through V the phrase “27.409” and adding “27.410” in its place.

The revisions and addition read as follows:

52.227–14 Rights in Data—General

* * * * *

Rights in Data—General (Date)

(a) * * *

Computer database or database means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

Computer program means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

Data means all recorded information, regardless of the form, method of recording, or the media on which it may be recorded. * * *

* * * * *

Unlimited rights means the rights of the Government to use, modify, prepare derivative works, reproduce, release, perform, display, disclose, or distribute data in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

* * * * *

52.227–15 [Amended]

- 11. Amend section 52.227–15 by removing from the introductory text “27.409” and adding “27.410” in its place.

52.227–16 [Amended]

- 12. Amend section 52.227–16 by removing from the introductory text the phrase “27.409” and adding “27.410” in its place.
- 13. Amend section 52.227–17 by—
- a. Removing from the introductory text the phrase “27.409” and adding “27.410” in its place;
- b. Revising the date of the clause;
- c. In paragraph (a):
- i. Revising the first sentence in the definition of “Data”; and
- ii. Revising the definition “Unlimited rights”.

The revisions read as follows:

52.227–17 Rights in Data—Special Works.

* * * * *

Rights in Data—Special Works (Date)

(a) * * *

Data means all recorded information, regardless of the form, method of recording, or the media on which it may be recorded. * * *

* * * * *

Unlimited rights means the rights of the Government to use, modify, prepare

derivative works, reproduce, release, perform, display, disclose, or distribute data in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

* * * * *

52.227–18 [Amended]

- 14. Amend section 52.227–18 by removing from the introductory text the phrase “27.409” and adding “27.410” in its place.

52.227–19 [Amended]

- 15. Amend section 52.227–19 by removing from the introductory text the phrase “27.409” and adding “27.410” in its place.
- 16. Amend section 52.227–20 by—
- a. Revising the section heading;
- b. Removing from the introductory text the phrase “27.409” and adding “27.410” in its place;
- c. Revising the date and title of the clause;
- d. In paragraph (a):
- i. Revising the definition “Computer database or database”;
- ii. Adding in alphabetical order the definition “Computer program”;
- iii. Revising the definition “Computer software”;
- iv. Revising the first sentence in the definition of “Data”;
- v. Adding in alphabetical order the definitions “Government purpose”, “Government purpose rights”, “Operations, maintenance, installation, or training purposes (OMIT) data”, and “SBIR/STTR computer software rights”;
- vi. Revising the paragraph headings and text of the definitions of “SBIR data” and “SBIR rights”;
- vii. Adding in alphabetical order the definitions “SBIR/STTR protection period”, “SBIR/STTR technical data”, and “SBIR/STTR technical data rights”; and
- viii. Revising the definition of “Unlimited rights”;
- e. In paragraph (b):
- i. Redesignating paragraphs (b)(1) and (2) as paragraphs (b)(2) and (3), and adding a new paragraph (b)(1);
- ii. In the newly redesignated paragraph (b)(2) revising the introductory text, and paragraphs (b)(2)(iii) and (b)(2)(iv);
- iii. In the newly redesignated paragraph (b)(3)(ii) removing the phrase “SBIR rights in SBIR data” and adding “SBIR/STTR data rights in SBIR/STTR data” in its place; and
- iv. In the newly redesignated paragraph (b)(3)(iii) removing the phrase “SBIR rights” and adding “SBIR/STTR data rights” in its place;
- f. Revising paragraph (d);

- g. Removing from paragraph (f) the phrase “(b)(1)(i)” and adding “(b)(2)(i)” in its place; and
 - h. Revising the paragraph (g) heading.
- The revisions and additions read as follows:

52.227–20 Rights in Data—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs.

* * * * *

Rights in Data—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs (DATE)

(a) * * *

Computer database or database means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

Computer program means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

* * * * *

Data means all recorded information, regardless of the form, method of recording, or the media on which it may be recorded. * * *

* * * * *

Government purpose means any activity in which the U.S. Government or a Federally Funded Research and Development Center is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the U.S. Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software for commercial purposes or authorize others to do so.

Government purpose rights means the Government's royalty-free license, after the SBIR/STTR protection period, to use, modify, reproduce, release, perform, display, or disclose SBIR/STTR data within the Government without restriction; and release or disclose SBIR/STTR data outside the Government and authorize persons to whom release or

disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for Government purposes.

* * * * *

Operations, maintenance, installation, or training purposes (OMIT) data means data that is necessary for operation, maintenance, installation, or training purposes (but not including detailed manufacturing or process data).

* * * * *

SBIR/STTR computer software rights means the Government's rights during the SBIR/STTR protection period (for the Government's rights after the protection period see the definition of “government purpose rights” in this clause) to—

(1) Use, modify, reproduce, release, perform, display, or disclose SBIR/STTR data that are computer software within the Government for the following purposes:

- (i) Use in Government computer(s);
- (ii) Archival or backup;
- (iii) Modify, adapt, or combine with other computer software, provided that the modified, adapted or combined portion of the software incorporating any of the delivered, restricted computer software shall be subject to the same SBIR/STTR computer software rights; or

(iv) Distribute to another agency if, prior to the distribution, the Contractor is notified of the distribution and the identity of the recipient, and a copy of the SBIR/STTR computer software rights is provided to the recipient.

(2) Release or disclose SBIR/STTR data that are computer software outside the Government to support service contractors or their subcontractors for purposes described in paragraphs (1)(i) through (1)(iii) of this definition, including evaluation, repair, overhaul, and adaptation, combination, or integration with other computer software, and subject to prohibition against further use and disclosure.

SBIR/STTR data means all data first produced by a Contractor in the performance of an SBIR or STTR award, including technical data and computer software developed or generated in the performance of an SBIR or STTR award. The term does not include publicly available information, information otherwise available to the Government, or information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

SBIR/STTR data rights means the Government's royalty-free license rights in properly marked SBIR/STTR data

during the SBIR/STTR protection period as follows: SBIR/STTR technical data rights and SBIR/STTR computer software rights. Upon expiration of the protection period for SBIR/STTR data, the Government has government purpose rights in perpetuity in the SBIR/STTR data, and is relieved of disclosure prohibitions related to such government purposes and assumes no liability for unauthorized use of these data by third parties.

SBIR/STTR protection period means the period of time during which the Government is obligated to protect SBIR/STTR data against unauthorized use and disclosure in accordance with SBIR/STTR data rights. The SBIR/STTR protection period begins at award of an SBIR or STTR contract and ends not less than 20 years from that date, unless negotiated otherwise after award. (See section 8(b)(4) of the SBIR and STTR Policy Directive, <https://www.sbir.gov>).

SBIR/STTR technical data means SBIR/STTR data that is technical data.

SBIR/STTR technical data rights means the Government's rights to use SBIR/STTR technical data during the SBIR/STTR protection period (for the Government's rights after the protection period see the definition of “government purpose rights” in this clause) to—

(1) Use, modify, reproduce, release, perform, display, or disclose SBIR/STTR technical data within the Government, except for procurement, manufacturing, or commercial purposes without written permission of the Contractor; and

(2) Release or disclose outside the Government, subject to prohibition against further use and disclosure (e.g., nondisclosure agreement), for the following purposes:

- (i) Use (except for manufacturing, procurement or commercial use) by Government support service contractors in performance of a Government support services contract for internal Government use, i.e., furnishing independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of the program or effort to which such technical data or computer software relates, such as providing evaluation, diagnosis, or modification;
- (ii) Evaluation; or
- (iii) Release to a foreign government, if required to serve the interests of the U.S. Government, for informational and evaluation purposes.

* * * * *

Unlimited rights means the rights of the Government to use, modify, prepare derivative works, reproduce, release,

perform, display, disclose, or distribute data in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of rights.* (1) The SBIR/STTR data rights are to be interpreted consistent with SBA's SBIR and STTR policy directive. However, if there is an inconsistency between this clause and the SBIR and STTR policy directive, this clause governs.

(2) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights both during and after the protection period in—

* * * * *

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract, *i.e.*, OMIT data; and

(iv) All other data delivered under this contract unless provided otherwise for SBIR/STTR data in accordance with paragraph (d) of this clause or for limited rights data or restricted computer software in accordance with paragraph (f) of this clause.

* * * * *

(d) *Rights to and marking of SBIR/STTR data.* (1) The Contractor is authorized to affix the following "SBIR/STTR Data Rights Notice" to SBIR/STTR data delivered under this contract and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

SBIR/STTR Data Rights Notice (DATE)

These SBIR/STTR data are furnished with SBIR/STTR data rights under Contract number __, date of award __ (and subcontract number __, if appropriate). For a period of 20 years, starting from the date of award, the Government will have SBIR/STTR technical data rights or SBIR/STTR computer software rights in these data as defined in paragraph (a) of the clause 52.227–20 Rights in Data—Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs, included in the above identified contract, and they shall not be disclosed outside the Government (including disclosure for procurement purposes) during such period without permission of the Contractor (unless specifically permitted elsewhere in the contract pursuant to post-award negotiations), except that, subject to the foregoing use and disclosure prohibitions, these data

may be disclosed for use by support Contractors. After the SBIR/STTR protection period ends, the Government has Government purpose rights in this data as defined in paragraph (a) of 52.227–20. This notice shall be affixed to any reproductions of these data, in whole or in part.

(End of Notice)

(2) If the Contractor and the contracting officer negotiate a different SBIR/STTR protection period after award of the contract, the Contractor shall revise the SBIR/STTR Data Rights Notice to reflect the negotiated protection period.

(3) The Government's sole obligation with respect to any SBIR/STTR data shall be as set forth in this paragraph (d).

* * * * *

(g) *Subcontracts.* * * *

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52.227–21 [Amended]

■ 17. Amend section 52.227–21 by removing from the introductory text "27.409" and adding "27.410" in its place.

52.227–22 [Amended]

■ 18. Amend section 52.227–22 by removing from the introductory text "27.409" and adding "27.410" in its place.

52.227–23 [Amended]

■ 19. Amend section 52.227–23 by removing from the introductory text "27.409" and adding "27.410" in its place.

[FR Doc. 2023–06420 Filed 4–6–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 230403–0090; RTID 0648–XR118]

Endangered and Threatened Wildlife and Plants; Listing the Atlantic Humpback Dolphin as an Endangered Species Under the Endangered Species Act

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

ACTION: Proposed rule; request for comments.

SUMMARY: We, NMFS, have completed a comprehensive status review under the Endangered Species Act (ESA) for the Atlantic humpback dolphin (*Sousa teuszii*) in response to a petition from the Animal Welfare Institute, the Center for Biological Diversity, and VIVA Vaquita to list the species. Based on the best scientific and commercial information available, including the draft status review report, and taking into account efforts being made to protect the species, we have determined that the Atlantic humpback dolphin has a high risk of extinction throughout its range and warrants listing as an endangered species. This species occurs only in coastal Atlantic waters of western Africa. We are authorized to designate critical habitat within U.S. jurisdiction only, and we are not aware of any areas within U.S. jurisdiction that may meet the definition of critical habitat under the ESA. Therefore, we are not proposing to designate critical habitat. We are soliciting public comments on our draft status review report and proposal to list this species.

DATES: Comments on this proposed rule must be received by June 6, 2023. Public hearing requests must be made by May 22, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2021–0110, by the following method:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2021–0110 in the Search box. Click on the "Comment" icon, complete the required fields, and 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 a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

The petition, status review report, Federal Register notices, and the list of references can be accessed electronically online at: <https://www.fisheries.noaa.gov/species/atlantic-humpback-dolphin#conservation-management>.

The peer review report is available online at: <https://www.noaa.gov/information-technology/endangered-species-act-status-review-report-atlantic-humpback-dolphin-sousa-teuszii-id447>.

FOR FURTHER INFORMATION CONTACT:

Heather Austin, NMFS Office of Protected Resources, 301–427–8422.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 2021, we received a petition from the Animal Welfare Institute, the Center for Biological Diversity, and VIVA Vaquita to list the Atlantic humpback dolphin (*Sousa teuszii*) as a threatened or endangered species under the ESA. The petition asserted that the Atlantic humpback dolphin is threatened by four of the ESA section 4(a)(1) factors: (1) the present destruction or modification of its habitat; (2) overutilization for commercial purposes; (3) inadequacy of existing regulatory mechanisms; and (4) manmade factors affecting its continued existence.

On December 2, 2021, we published a 90-day finding for the Atlantic humpback dolphin with our determination that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted (86 FR 68452). We also announced the initiation of a status review of the species, as required by section 4(b)(3)(A) of the ESA, and requested information to inform the agency's decision on whether this species warrants listing as endangered or threatened under the ESA. We received information from the public in response to the 90-day finding and incorporated the information into both the draft status review report (Austin 2023) and this proposed rule.

Listing Determinations Under the ESA

We are responsible for determining whether species are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we first consider whether a group of organisms constitutes a “species,” which is defined in section 3 of the ESA to include “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature” (16 U.S.C. 1532(16)). On February 7, 1996, NMFS and the U.S. Fish and Wildlife Service (USFWS; together, the Services) adopted a policy describing what constitutes a distinct population segment (DPS) of a taxonomic species (“DPS Policy,” 61 FR

4722). The joint DPS Policy identifies two elements that must be considered when identifying a DPS: (1) The discreteness of the population segment in relation to the remainder of the taxon to which it belongs; and (2) the significance of the population segment to the remainder of the taxon to which it belongs.

Section 3 of the ESA defines an endangered species as any species which is in danger of extinction throughout all or a significant portion of its range and a threatened species as one which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(6), 16 U.S.C. 1532(20)). Thus, we interpret an “endangered species” to be one that is presently in danger of extinction. A “threatened species,” on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or not presently but within the foreseeable future (threatened).

Under section 4(a)(1) of the ESA, we must determine whether any species is endangered or threatened as a result of any one or a combination of any of the following factors: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence (16 U.S.C. 1533(a)(1)). We are also required to make listing determinations based solely on the best scientific and commercial data available, after conducting a review of the species' status and after taking into account efforts, if any, being made by any state or foreign nation (or subdivision thereof) to protect the species (16 U.S.C. 1533(b)(1)(A)).

Status Review

To determine whether the Atlantic humpback dolphin warrants listing under the ESA, we completed a draft status review report, which summarizes information on the species' taxonomy, distribution, abundance, life history, ecology, and biology; identifies threats or stressors affecting the status of the species; and assesses the species' current and future extinction risk. We appointed a biologist in the Office of

Protected Resources Endangered Species Conservation Division to compile and complete a scientific review of the best available information on the Atlantic humpback dolphin, including information received in response to our request for information (86 FR 68452, December 2, 2021). Next, we conducted an Extinction Risk Analysis (ERA) to assess the threats affecting the Atlantic humpback dolphin, as well as demographic risk factors (abundance, productivity, spatial distribution, and diversity), using the information in the scientific review. The draft status review report presents our professional judgment of the extinction risk facing the Atlantic humpback dolphin but makes no recommendation as to the listing status of the species. The draft status review report (Austin 2023) is available electronically (see **ADDRESSES**). Information from the draft status review report is summarized below in the Biological Review section, and the results of the ERA from the draft status review report are discussed below.

The draft status review report was subject to independent peer review pursuant to the Office of Management and Budget Final Information Quality Bulletin for Peer Review (M–05–03; December 16, 2004). The draft status review report was peer reviewed by four independent scientists selected from the academic and scientific community with expertise in cetacean biology, conservation, and management, and specific knowledge of Atlantic humpback dolphins. The peer reviewers were asked to evaluate the adequacy, appropriateness, and application of data used in the draft status review report, as well as the findings made in the “Extinction Risk Analysis” section of the report. All peer reviewer comments were addressed prior to finalizing the draft status review report.

We subsequently reviewed the status review report, its cited references, and peer review comments, and conclude the status review report, upon which this proposed rule is based, provides the best available scientific and commercial information on the Atlantic humpback dolphin. Much of the information discussed below on the species' biology, distribution, abundance, threats, and extinction risk is attributable to the status review report. We have applied the statutory provisions of the ESA, including evaluation of the factors set forth in section 4(a)(1)(A)–(E), our regulations regarding listing determinations,¹ and relevant policies

¹ On July 5, 2022, the U.S. District Court for the Northern District of California issued an order

identified herein in making the listing determination. In the sections below, we provide information from the report regarding threats to and the status of the Atlantic humpback dolphin.

Biological Review

Taxonomy and Species Description

The Atlantic humpback dolphin, *S. teuszii*, belongs to the family Delphinidae in the order Artiodactyla, and is one of four currently recognized species of humpback dolphins in the genus *Sousa*: *S. plumbea* (Indian Ocean humpback dolphin), *S. chinensis* (Indo-Pacific humpback dolphin), and *S. sahulensis* (Australian humpback dolphin) (Jefferson and Van Waerebeek 2004; Mendez *et al.* 2013; Jefferson and Rosenbaum 2014). Available data indicate that there is genetic and morphological differentiation between *S. teuszii* and other species of humpback dolphins (Mendez *et al.* 2013). Additionally, a comprehensive study of *Sousa* cranial morphometrics conducted by Jefferson and Van Waerebeek (2004), found that *S. teuszii* have significantly shorter rostra, wider skulls, and lower tooth counts when compared with 222 Southeast African, Arabian/Persian Gulf, and Indian *Sousa* specimens (Jefferson and Van Waerebeek 2004; Jefferson and Rosenbaum 2014; Austin 2023).

The Atlantic humpback dolphin does not share mitochondrial DNA (mtDNA) haplotypes with other species in the genus *Sousa*. A phylogenetic assessment of combined nuclear and mtDNA datasets indicates that *S. teuszii* is most closely related to the Indian Ocean humpback dolphin (*S. plumbea*) from Southeast Africa (Mendez *et al.* 2013). The most plausible mechanism for their isolation is the Benguela upwelling system, an area dominated by cold upwelling that is located within the ~2,000 kilometer (km) distribution gap between *S. teuszii* and *S. plumbea* (Jefferson and Van Waerebeek 2004; Mendez *et al.* 2013; Collins 2015). The complete mitochondrial genome of *S. teuszii* was recently mapped by McGowen *et al.* (2020), and was found

to be 98.1 percent similar to its closest relative with a sequenced mitogenome, the Indo-Pacific humpback dolphin (*S. chinensis*).

The Atlantic humpback dolphin holotype (a skull) was discovered in 1892 in “Bucht des Kameruner Kriegsschiffhafens,” (“Bay of Warships” or “Man O’War Bay”), in Cameroon by the German agronomist Eduard Těusz (Collins *et al.* 2017). The holotype was sent to Germany, where it was examined and first described by the German zoologist Dr. Willy Kükenthal, who based his description primarily on differences in the skull compared to other humpback dolphins known at the time (Kükenthal 1891; Collins 2015). The species was originally placed in the genus *Sotalia*; the genus named *Sousa* came into general use in the 1960s (Kükenthal 1891; Van Waerebeek *et al.* 2004; Collins 2015).

In terms of distinctive physical characteristics, the Atlantic humpback dolphin is characterized by a prominent dorsal hump, ranging from about 26–32 percent of body length, giving the species its common name (Jefferson and Rosenbaum 2014; Austin 2023). A small dorsal fin with a rounded tip is situated at the top of the hump (Jefferson and Rosenbaum 2014; Austin 2023). The species has a well-defined long and slender beak; the lower jaw is paler gray in coloration than the upper jaw (Austin 2023). Individuals are generally uniform dark gray in color with a lighter ventral surface and broad flippers, with a straight trailing edge and rounded tips (Jefferson and Rosenbaum 2014; Austin 2023). Some larger adults are known to have a white margin to the dorsal hump and fin, apparently caused by scarring, and there may be some white or dark oval flecking on the tail stock (Austin 2023). Atlantic humpback dolphins reach maximum body lengths of approximately 2.8 meters (m) (Austin 2023). While sexual dimorphism has not been studied in detail (largely due to small sample sizes of specimens), it is suspected that adult males are larger, heavier, and have a more pronounced dorsal hump, than females. The hump and dorsal fin of some larger adults may be bordered by white pigmentation (Jefferson and Van Waerebeek 2004; Jefferson and Rosenbaum 2014).

Range, Distribution, and Habitat Use

The Atlantic humpback dolphin is considered an obligate shallow water dolphin that is endemic to the tropical and subtropical eastern Atlantic nearshore waters (<30 m) of the west coast of Africa, ranging discontinuously for approximately 7,000 km from Dakhla Bay (Rio de Oro) in Western Sahara

(23°52′ N, 15°47′ W) to Tômbwa (Namibe Province) in Angola (15°46′ S, 11°46′ E) (International Whaling Commission 2011; Collins 2015; Weir and Collins 2015; International Whaling Commission 2017; International Whaling Commission 2020b; Austin 2023).

This species is the only member of the genus that occurs outside of the Indo-Pacific region (Mendez *et al.* 2013; Jefferson and Rosenbaum 2014; Collins 2015). Although each of the 19 countries between (and including) Western Sahara and Angola are presumed to be part of the species’ natural range, the current distribution is uncertain due to incomplete research coverage, including an absence of survey effort in many areas. Currently, there are confirmed records of occurrence (confirmed via sightings, strandings, and bycatch data) in the following 13 countries: Western Sahara, Mauritania, Senegal, The Gambia, Guinea-Bissau, Guinea, Togo, Benin, Nigeria, Cameroon, Gabon, Republic of the Congo, and Angola (Ayissi *et al.* 2014; Weir and Collins 2015; Van Waerebeek *et al.* 2017; CCAHD 2020; Bamy *et al.* 2021, Austin 2023). The six countries with no confirmed records (Sierra Leone, Liberia, Côte d’Ivoire, Ghana, mainland Equatorial Guinea, and the Democratic Republic of the Congo) have received little or no systematic cetacean or coastal research (Collins 2015; Collins *et al.* 2017, Austin 2023). It remains uncertain whether the absence or scarcity of records in many countries is due to lack of observation effort and reporting, scarcity of the species, or a discontinuous distribution (caused by suboptimal habitat and/or local extirpation) (Weir *et al.* 2021, Austin 2023). Additionally, the species is not known to occur around any of the larger offshore islands of the Gulf of Guinea, including Sao Tome and Principe or Bioko (Fernando Póo) and Annabon (Pagalu) (Van Waerebeek *et al.* 2004).

Eleven putative “management stocks” (*i.e.*, subpopulations) of *S. teuszii* were identified by Van Waerebeek *et al.* (2004) based on localities or countries where the species has been recorded and evidence of gaps in the species’ range (Van Waerebeek *et al.* 2004; Austin 2023). These management stocks are meant to serve practical management purposes amongst range countries until intraspecific genetic variation data become available (Van Waerebeek *et al.* 2017). However, Van Waerebeek *et al.* (2017) proposed that the currently recognized management stocks of Canal do Gêba-Bijagós Archipelago (Guinea-Bissau) and South Guinea be combined into a single

vacating the ESA section 4 implementing regulations that were revised or added to 50 CFR part 424 in 2019 (“2019 regulations,” see 84 FR 45020, August 27, 2019) without making a finding on the merits. On September 21, 2022, the U.S. Court of Appeals for the Ninth Circuit granted a temporary stay of the district court’s July 5 order. As a result, the 2019 regulations are once again in effect, and we are applying the 2019 regulations here. For purposes of this determination, we considered whether the analysis or its conclusions would be any different under the pre-2019 regulations. We have determined that our analysis and conclusions presented here would not be any different.

“Guineas” stock due to multiple records reported from the Tristao Islands and the Río Nuñez Estuary (Weir 2015) in northern Guinea.

Throughout its range, the Atlantic humpback dolphin predominantly occurs shoreward of the 20 m depth isobaths, and often in the shallowest (≤ 5 m depth) part of that range, in nearshore waters (average sea surface temperatures ranging from 15.8° to 31.8° Celsius), and in a diverse array of dynamic habitats strongly influenced by tidal patterns (e.g., sandbanks, deltas, estuaries, and mangrove systems) (Collins 2015; Weir and Collins 2015; Taylor *et al.* 2020). In this context, “nearshore” is defined as areas in which the sea floor is affected by wave motion, resulting in dynamic, tide-influenced, habitats (Weir 2015; Weir and Collins 2015). Documented habitats include: large estuarine systems (including mangrove channels, upstream waters with tidal influence, and the estuary-influenced waters further offshore); exposed marine coasts (often within, or just beyond, the surf zone); coastal archipelagos; tidal mudflats, sandbanks and seagrass expanses; and large, sheltered enclosed shallow bays (Van Waerebeek *et al.* 2004; Collins 2015; Weir and Collins 2015; Austin 2023).

Even though recorded sightings are typically coastal, the species may also occur up to at least 13 km from shore when suitable shallow habitat is present (Van Waerebeek *et al.* 2004; Weir and Collins 2015). It has been recorded some distance upriver but there is no evidence that it travels beyond the influence of marine waters, and is not known to enter the coastal lagoons that are a prevalent feature of equatorial Atlantic African coasts (Maigret 1980a; Van Waerebeek *et al.* 2004; Weir and Collins 2015).

Areas of known occurrence of *S. teuszii* may reflect availability of suitable shallow habitat for the species. The Dakhla Bay, Banc d’Arguin, and Saloum-Niumi stocks are separated from each other by distances exceeding 350 km, and few observations have been recorded between them despite fieldwork over several decades (Collins 2015). This suggests that these stocks may currently be reproductively isolated from each other and from more southern stocks, and that the distribution of *S. teuszii* may be naturally discontinuous in some areas, with highest densities in optimal habitats and reduced occurrence on intervening coasts (Van Waerebeek *et al.* 2004; Collins 2015; Van Waerebeek *et al.* 2017). However, Collins (2015) notes that gaps in the species’ range may be a relatively recent phenomenon, due to

increased human pressures in once pristine regions (Van Waerebeek and Perrin 2007; Weir *et al.* 2011). Available data demonstrate that even where dedicated cetacean surveys are conducted, sightings in most areas of known occurrence can be low, and a general absence of records from gap areas may indicate occurrence in extremely low densities rather than absence. For instance, in southern Gabon, where *S. teuszii* occurs in the surf zone on open coastlines, boat-based survey work demonstrates that sightings rates can be very low, even with dedicated effort (Collins 2015; Austin 2023).

Atlantic humpback dolphin migrations and movements are poorly understood largely because the necessary work (e.g., comparison of identification catalogues, genetic sampling and tagging) has not been conducted (Collins *et al.* 2017). Because Atlantic humpback dolphins feed primarily on coastal, estuarine, and reef-associated fishes, localized movements have been linked to feeding opportunities facilitated by tides (Busnel 1973; Collins 2015; Collins *et al.* 2017). Movements on larger scales have never been documented, but have been inferred using local accounts and sightings from fishers, suggesting movement north of the Banc d’Arguin (Maigret 1980a) and sightings between Nouamghar and Nouakchott (Mauritania) may indicate occasional movements south (Robineau and Vely 1998). More recent observations of *S. teuszii* groups passing between Barra and Buniada Points, indicate routine movement between Senegal and Gambia (Collins 2015). Additionally, swim speeds of 1–7 km/hour (hr) (mean of 4 km/hr) were recorded during travel along a linear coastline in Angola, indicating that Atlantic humpback dolphins might be capable of undertaking considerable spatial movements with the potential for relatively large home ranges (Weir 2009). Records suggest transboundary movements between some range countries, such as between Saloum-Niumi (Senegal-The Gambia) and Bijagos (Guinea-Bissau) (Van Waerebeek *et al.* 2004; Collins 2015; Weir 2016; Collins *et al.* 2017). Sightings in the Río Nuñez region suggest this connectivity extends into Guinea (Weir and Collins 2015). Additionally, beach-based observations indicate routine movements of *S. teuszii* across the Gabon/Republic of the Congo border within the Mayumba-Conkouati transboundary protected area; however,

it remains unclear if these individuals range farther afield (Collins 2015).

Diet and Feeding

Information on the Atlantic humpback dolphin’s diet and feeding ecology is limited, as few stomach samples have been examined and direct observations of feeding are rare (Van Waerebeek *et al.* 2004; Collins 2015). Additionally, there have not been any targeted studies of its diet or interactions with prey species. However, based on stomach contents of bycaught *S. teuszii* specimens and direct observations of feeding, it is thought that *S. teuszii* diet consists predominantly of coastal, estuarine, and reef-associated fish (Cadenat and Paraiso 1957; Cadenat 1959; Van Waerebeek *et al.* 2004; Weir 2009; Austin 2023).

There are few accounts of observed Atlantic humpback dolphin predation. In Mauritania, a single Atlantic humpback dolphin was observed twice among bottlenose dolphin pods (*Tursiops truncatus*) fishing for mullet (*Mugil cephalus* and *Liza aurata*) (Busnel 1973; Collins *et al.* 2017). Additionally, *S. teuszii* have been observed chasing mullet in channels between the Tidra and Nair islets (Banc d’Arguin) (Duguy 1976) and feeding on the South African mullet (*Liza richardsonii*) and Atlantic bonito (*Sarda sarda*) off the coast of the Flamingos area of Angola (Weir 2009).

Foraging has been linked to rising (flood) tides (Van Waerebeek *et al.* 2004; Weir 2009). In the Saloum Delta, tides were thought to provide access to inner reaches of mangrove channels and mangrove edges (Maigret 1980a; Collins 2015). Daily movements of individual Atlantic humpback dolphins into channels inshore were coupled with flood tides in Banc d’Arguin (Maigret 1980a), and (Duguy 1976) reported *S. teuszii* at the Banc d’Arguin chasing mullet in the channels between the Tidra and Nair islets. In other areas, feeding activity also coincides with observations of larger group sizes (e.g., 20–40 individuals) (Maigret 1980a; Collins *et al.* 2004; Van Waerebeek *et al.* 2004).

Atlantic humpback dolphins observed off the coast of the Flamingos area of Angola have been observed spending approximately half of the daylight hours engaged in travel and foraging activities and were observed foraging preferentially around rocks and reefs, as well as at the mouths of rivers, including the typically dry Flamingo River (Weir 2009). Off the coast of Guinea, limited observations suggest that *S. teuszii* individuals observed in

the shallow waters west of the Île de Taïdi spent relatively more time foraging than those individuals in deeper waters of the outer Río Nuñez estuary (Weir 2015).

Reproduction and Growth

Data and information regarding life history and reproductive parameters are almost nonexistent for this species. An estimated generation length of 18.4 years is given for the Atlantic humpback dolphin by Taylor *et al.* (2007), although Moore (2015) provided a figure closer to 25 years for the Indo-Pacific humpback dolphin (*S. chinensis*) and Indian Ocean humpback dolphin (*S. plumbea*) (Collins 2015; Collins *et al.* 2017). Available data for other species in the genus can be used to infer that *S. teuszii* likely has a low reproductive rate and low intrinsic potential for population increase (Taylor *et al.* 2007; Jefferson and Rosenbaum 2014; Moore 2015).

In the Saloum Delta (Senegal), births are thought to occur in March and April, based upon observations of juveniles (Maigret 1980b; Van Waerebeek *et al.* 2004; Collins 2015). This pattern was also suggested for Guinea Bissau (Collins 2015). No neonates have been examined, but lengths at birth may be similar to the 100 cm cited for *S. plumbea* from South Africa (Van Waerebeek *et al.* 2004). The species is suspected to be sexually dimorphic (males larger at maturity and with a more prominent dorsal hump (Austin 2023)), but the sample size of carcasses used to formally assess this trait (~20 individuals) is too small to assess this statistically (Jefferson and Rosenbaum 2014). The data required to estimate other *S. teuszii* vital rates remain unavailable.

Social Behavior

Atlantic humpback dolphins have a surfacing behavior that usually comprises calm rolls, during which the beak is often lifted above the water and the body is arched, accentuating its characteristic hump. Overall, the species is naturally unobtrusive, preferring to maintain a distance from boats and engines; however, individuals have been observed occasionally leaping, breaching, spyhopping and tail-slapping (Weir 2015; Austin 2023). Traveling and foraging are the dominant behaviors reported during targeted focal follows of Atlantic humpback dolphins (Weir 2009; Weir 2015; Weir 2016).

Atlantic humpback dolphins typically travel in small groups; 65 percent of reviewed sightings comprised 10 or fewer animals, although larger groups of up to 45 individuals have been reported (Weir and Collins 2015). Mixed-species

associations between Atlantic humpback dolphins and bottlenose dolphins (*Tursiops truncatus*) have been observed in Western Sahara, Mauritania, Senegal, Guinea-Bissau, Gabon, the Republic of the Congo, and Angola (Weir 2009; Weir 2011; Leeney *et al.* 2016).

Population Structure and Genetics

No analyses of Atlantic humpback dolphin population structure have been conducted. Thus, the only information currently available comes from known distribution records and evidence of range gaps, which was the approach initially used by Van Waerebeek *et al.* (2004) to identify Atlantic humpback dolphin management stocks (see *Range, Distribution, and Habitat Use* and Austin 2023). Additionally, while the complete mitochondrial genome of *S. teuszii* has been mapped by McGowen *et al.* (2020), genetic data have been collected for only a few individuals (Mendez *et al.* 2013; Austin 2023). As a result, estimates of genetic diversity across and within populations are currently not available for this species.

Population Abundance and Trends

Atlantic humpback dolphin abundance data are limited and robust abundance estimates are lacking for most putative stocks. However, the available information for the eleven recognized management stocks suggests stocks range from the tens to low hundreds of individuals (Collins 2015; Collins *et al.* 2017; Austin 2023).

Atlantic humpback dolphin populations at the northern (Dakhla Bay, Western Sahara) and southern (Namibe, Angola) extremes of the range appear to be very small (Weir 2009; Collins 2015; Austin 2023). Observations by Beaubrun (1990) described this stock as “miniscule”, and additional sightings in the same area between January 20 and February 14, 1996, by Notarbartolo di Sciara *et al.* (1998) reported only 4 sightings with a mean group size of 6.9 individuals. Furthermore, Van Waerebeek *et al.* (2004) noted that the Dakhla Bay stock is likely limited to a few tens of individuals.

The Banc d'Arguin and Saloum-Niumu stocks have been estimated repeatedly at ~100 animals since the mid-1970s (Maigret 1980a; Van Waerebeek *et al.* 2003; Van Waerebeek *et al.* 2004). Incidental sightings from the southern Banc d'Arguin suggest that the species is sighted relatively frequently (Collins 2015). However, this stock has never been considered large by those who have completed assessments (Maigret 1980a, b; Robineau

and Vely 1998). For the Saloum-Niumi stock, encounter rates and group sizes recorded during surveys since 1997 indicate a small population “unlikely [to] exceed low hundreds, and may be less” (Van Waerebeek *et al.* 2000; Van Waerebeek *et al.* 2004; Austin 2023). However, between October and November 2015, a systematic survey conducted by Weir (2016) in the Saloum Delta of Senegal produced a minimum population size estimate of 103 animals, which is the highest population estimation recorded for *S. teuszii* within the species' range (Austin 2023).

Data and sightings records for the Canal do Gêba-Bijagós Archipelago stock within Guinea-Bissau suggest the continued occurrence of a population of *S. teuszii* into at least the late 1990s (Spaans 1990; Jefferson *et al.* 1997; Van Waerebeek *et al.* 2000; Van Waerebeek *et al.* 2004). A more recent review of sightings records indicates that *S. teuszii* is still relatively widely distributed in the Canal do Gêba-Bijagós Archipelago stock within Guinea-Bissau (Leeney *et al.* 2016), but sightings appear to be declining in regularity (Collins 2015). Within the Guinea stock, six *S. teuszii* sightings were recorded by Weir (2015) during 817.6 kms of boat-based survey effort in the Río Nuñez Estuary. Photo-identification resulting from this survey resulted in a minimum population estimate of 47 individuals (Weir 2015; Austin 2023).

Recently, observations of *S. teuszii* in Togolese waters were recorded for the first time by Van Waerebeek *et al.* (2017), providing evidence confirming Togo as a newly documented range country. Van Waerebeek *et al.* (2017) described five sightings recorded from shore in Togo between 2008 and 2015. However, small group sizes suggest that the species is not very abundant in Togolese waters (Van Waerebeek *et al.* 2017; Austin 2023).

In Benin, a single small group (n=4) of Atlantic humpback dolphins was sighted and photographed west of Cotonou, Benin, making it the first *S. teuszii* record for the Benin stock (Zwart and Weir 2014; Austin 2023). Additionally, Collins (2015) noted that 27 individuals were also observed in Beninese waters. In Nigeria, two dolphins killed in artisanal gillnets off Brass Island in 2011 and 2012 were the first authenticated records of *S. teuszii* for this range country. Recently, however, five additional *S. teuszii* sightings have been documented between 2017 and 2021 off the coast of western Nigeria near Lagos (Austin 2023).

Surveys of the Cameroon Estuary stock between May and June 2011,

yielded a single *S. teuszii* sighting on May 17, 2011, despite extensive beach and boat-based survey effort (Ayissi *et al.* 2014). Additionally, in May 2011, a recorded encounter rate of 0.386 sightings per 100 km (or 3.86 individuals per 100 km) suggests that abundance there may be very low (Ayissi *et al.* 2014; Austin 2023). Boat-based surveys, conducted in Gabon within the Gabon Estuary stock, between 2003 and 2006 yielded five sightings (Collins *et al.* 2010; Collins 2015). Boat surveys conducted off the coast of Gamba region of Gabon between 2013 and 2015, documented *S. teuszii* in Gabonese waters during the survey's first year in 2013 (Minton *et al.* 2017; Austin 2023). However, sightings rates during shore-based work in 2012 in the Republic of the Congo within the Congo stock were much higher (though not directly comparable), and suggest that the coasts of southern Gabon and a limited area in the adjacent Republic of the Congo may harbor a total population in the low hundreds (Collins 2013; Collins 2015; Austin 2023). While most of the Angolan coast is unsurveyed, intensive survey effort in 2008 along a 35 km stretch of coastline off Angola found a small group of 10 resident individuals in the Flamingos area (Weir 2009; Austin 2023).

It is important to note that, while photo-identification work has yielded minimum estimates of the number of Atlantic humpback dolphins in a number of the study areas discussed above (*i.e.*, Saloum Delta region of Senegal, Río Nuñez Estuary of Guinea, and the Flamingos area of Angola), each of these studies had limited temporal and spatial extents, and (with the possible exception of the Angola study conducted by Weir (2009)) are unlikely to have photographed all *S. teuszii* individuals using those areas. Additionally, while encounter rates are available for a number of other studies noted above, they are not directly comparable due to differing sampling methodologies (*e.g.*, platforms, extent of study area, and seasons).

Overall, the best available scientific and commercial information indicates that the Atlantic humpback dolphin has a small total population size (Austin 2023). Comprehensive reviews conducted by Collins (2015) and Collins *et al.* (2017) conclude that the species probably includes fewer than 3,000 individuals (Collins 2015; Collins *et al.* 2017; Austin 2023). If it is assumed that 50 percent of these are mature individuals, then the number of mature individuals in the total population would be no more than 1,500 (Taylor *et*

al. 2007; Collins *et al.* 2017; Brownell *et al.* 2019; Austin 2023).

Apart from the systematic surveys in Angola, Republic of the Congo, Gabon, Cameroon, Senegal, and Guinea, no quantitative assessments of population abundance exist in other range countries, thus precluding any quantitative assessments of trend for this species across its range. However, based on available evidence, and a review of published estimates of abundance in each range country, the best available data and information indicates that most *S. teuszii* stocks are small and that some stocks (*i.e.*, Canal do Gêba-Bijagós Archipelago stock) may be experiencing population declines (Collins 2015; Collins *et al.* 2017; Austin 2023). Limited research effort for each putative *S. teuszii* management stock has either identified significant mortality or yielded strong evidence to infer it (Van Waerebeek *et al.* 2004; Collins 2015; Collins *et al.* 2017). According to Van Waerebeek *et al.* (2003), Van Waerebeek *et al.* (2004), Weir (2009), Collins (2015), Weir (2015), Collins *et al.* (2017), and Van Waerebeek *et al.* (2017), artisanal fishing bycatch and directed takes are the principal causes of these declines, although habitat loss is also likely a contributing factor as well (Collins 2015; Collins *et al.* 2017; Austin 2023).

Extinction Risk Analysis

In evaluating the level of risk faced by a species and determining whether the species is threatened or endangered, we must consider all relevant data and base our conclusions on the best scientific and commercial data available. In evaluating and interpreting the best scientific and commercial data available, we also apply professional judgment in evaluating the level of risk faced by a species in determining whether the species is threatened or endangered. We evaluate both the viability of the species based on its demographic characteristics (abundance, growth rate/productivity, spatial distribution/connectivity, and genetic diversity; see McElhany *et al.* (2000)), and the threats to the species as specified in ESA section 4(a)(1)(A)–(E) (summarized in a separate Threats Assessment section below).

For purposes of assessing the extinction risk for the Atlantic humpback dolphin, we reviewed the best available information on the species and evaluated the overall risk of extinction facing the Atlantic humpback dolphin, now and in the foreseeable future. The term “foreseeable future” was discussed qualitatively in the status review report (Austin 2023) and defined

as the period of time over which we can reasonably determine that both the specific threats facing the species and the species' response to those threats are likely. We note however, that the term foreseeable future is not limited to a period that a species' status can be quantitatively modeled or predicted within predetermined limits of statistical confidence. The foreseeable future also need not be identified as a specific period of time and may vary depending on the particular threat. See generally 50 CFR 424.11(d).

In considering an appropriate foreseeable future for this extinction risk analysis, we took into account the best available information regarding both the life history of the Atlantic humpback dolphin and threats to the species. Due to uncertainty regarding the species' life history parameters, we do not define a quantitative time frame for the foreseeable future in the risk assessment sections below. Thus, foreseeable future is stated qualitatively, in terms of the projected trend of each threat.

Demographic Risk Assessment

In our status review, data and information about demographic risks to the Atlantic humpback dolphin were considered according to four categories—abundance, growth rate/productivity, spatial structure/connectivity, and genetic diversity. Each of these demographic threat categories was then rated according to the following qualitative scale:

Unknown: The current level of information is either unavailable or unknown for this particular factor, such that the contribution of this factor to the species' risk of extinction cannot be determined.

Low risk: It is unlikely that the particular factor directly contributes or will contribute significantly to the species' risk of extinction.

Moderate risk: It is likely that the particular factor directly contributes or will contribute significantly to the species' risk of extinction.

High risk: It is highly likely that the particular factor directly contributes or will contribute significantly to the species' risk of extinction. (Note: the term “significantly” is used here as it is commonly understood—*i.e.*, in a sufficiently great or important way as to be worthy of attention.)

In the sections below, we present information from Austin (2023) to summarize the demographic risks facing the Atlantic humpback dolphin.

Abundance

There are no historical abundance estimates for the Atlantic humpback

dolphin. While historical and robust range-wide abundance estimates are lacking, and there are no robust estimates available for most of the recognized management stocks, the available information suggests stocks range from the tens to low hundreds of individuals (Austin 2023). Most stocks for which data are available are extremely small and several appear to be isolated and at risk of local extirpation (e.g., Dakhla Bay, Banc d'Arguin, and Angola) (Van Waerebeek *et al.* 2003; Van Waerebeek *et al.* 2004; Weir 2009; Weir *et al.* 2011; Collins 2015; Van Waerebeek *et al.* 2017; Austin 2023). Considering the relatively small numbers observed, and taking into account the many areas of the species' range where there has been little or no assessment, available published estimates suggest that the species' total abundance consists of no more than 3,000 individuals (Collins 2015; Collins *et al.* 2017), and indicate that the number of mature individuals is likely less than 1,500 (following Taylor *et al.* 2007). Additionally, declines in abundance have been observed or are suspected, and continued declines are expected due to the ongoing and projected expansion of identified threats throughout the species' range (Austin 2023). Bycatch in fisheries, which is considered the main cause of these declines, has not ceased and may be increasing as new fishing areas are targeted and fishery pressures increase, thus placing additional pressure on already low and declining Atlantic humpback dolphin stocks.

With fewer than 3,000 individuals likely remaining and available information indicating that the species consists of small, fragmented stocks (with some stocks numbering in the tens of individuals), coupled by observed or suspected declines throughout the species' range, single mortality events could impact some of the smaller stocks' continued viability. Furthermore, the species' low abundance and fragmented and narrow distribution greatly increases the impact of anthropogenic perturbations (e.g., coastal development and anthropogenic underwater noise) on the species as a whole, and decreases the species' resilience to environmental change (e.g., climate change) (Davidson *et al.* 2012; Collins 2015; Weir *et al.* 2021; Austin 2023). Overall, the available information indicates that the Atlantic humpback dolphin's low abundance poses a high risk (Austin 2023).

Growth Rate and Productivity

Although information on Atlantic humpback dolphin reproduction is

almost completely absent, some data regarding reproductive parameters for other species in the genus, (e.g., *S. chinensis* and *S. plumbea*), are available. For example, *S. chinensis* has an annual estimated birth rate of 0.053 ± 0.025 , with an annual recruitment rate of 0.028 ± 0.024 , and a calf rate of survival to the age of 1 year of 0.600 ± 0.392 , with females experiencing a long inter-birth interval (4.27 ± 1.06 y) (Zeng *et al.* 2021). *S. plumbea* has a reported ovulation rate of 0.2 with a 5-year calving interval (Plon *et al.* 2015). This can be used to infer that *S. teuszii* likely has a low reproductive rate as well. *S. teuszii*'s likely low reproductive rate coupled with a population growth rate (*r*) of 0.00, calculated by Taylor *et al.* (2007), indicates a low intrinsic potential for population increase (Taylor *et al.* 2007; Jefferson and Rosenbaum 2014; Collins 2015; Moore 2015). However, it should be noted that the calculation by Taylor *et al.* (2007) was based on several reproductive parameters that are lacking for this species. Thus, this calculation may not be indicative of the actual population growth rate for this species (due to data deficiencies) (Austin 2023). Nevertheless, taking into consideration the information available for closely related species, a long estimated generation length of about 18 years (Taylor *et al.* 2007), as well as ongoing and projected increases of identified range-wide threats, this species is likely experiencing a low population growth rate.

Because Atlantic humpback dolphins are thought to consist of small, fragmented stocks, any mortality over and above natural rates is likely to lead to appreciable declines in abundance (Pimm *et al.* 1988). Moore (2015) estimated that, given an inferred generation time of 25 years (as estimated for *S. chinensis* and *S. plumbea*), an average annual adult mortality rate of approximately 4 percent across the species' range would lead to a 50 percent decline over 75 years (i.e., three generations) (Collins 2015; Collins *et al.* 2017). The International Union for Conservation of Nature's (IUCN) assessment for this species uses Moore's estimate and further notes that a slightly higher adult mortality rate of 5.3 percent per year (equal to one or two additional deaths per year per 100 mature individuals) would lead to an 80 percent decline over 75 years (i.e., three generations) (Moore 2015; Collins *et al.* 2017). Data for some areas (e.g., The Republic of the Congo) indicate that human-caused mortality (particularly via bycatch) is high, and when those

data are considered alongside the scale of other anthropogenic pressures (e.g., coastal development), a population decline of 50 percent over three generations is highly likely (Moore 2015; Collins *et al.* 2017; Austin 2023). While the actual rate of decline is unknown, the available abundance and bycatch data (see *Population Abundance and Trends and Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*) suggest the species is declining throughout its range, and there is no information to suggest such a trend would likely reverse. Additionally, given the available information and likely low population growth rate (see *Growth Rate and Productivity*), it is likely that the low population growth rate poses a moderate risk to the species (Austin 2023).

Spatial Structure and Connectivity

The Atlantic humpback dolphin has a restricted range and fragmented distribution, being a shallow water dolphin endemic to (sub)tropical nearshore waters along the Atlantic coast of Africa, ranging discontinuously for approximately 7,000 km from Western Sahara in the north to Angola in the south (Collins 2015; Weir and Collins 2015; Collins *et al.* 2017). Within that range, the species' habitat preferences appear to limit it to habitats shoreward of the 20 m depth isobaths (Weir and Collins 2015; Weir *et al.* 2021), and thus they are often in the immediate vicinity of the coast. Use of nearshore habitat increases the species' vulnerability to incidental capture (i.e., bycatch) in non-selective fishing gears and to habitat-related threats from human activities (i.e., coastal development). Additionally, the species' fragmented distribution makes stocks more vulnerable to local extirpation.

Direct data on connectivity among Atlantic humpback dolphin stocks are sparse. Although the mitogenome of *S. teuszii* (*n* = 1) has been sequenced, genetic data to assess population structure and connectivity are not available. Thus, the genetic connectivity across and within stocks cannot be directly assessed. However, work investigating the genetic substructure for the Indian Ocean humpback dolphin, *S. plumbea* (the species that is geographically and morphologically most similar to *S. teuszii*), indicated appreciable genetic divergence between populations in neighboring regions, and finer scale comparisons have found less diversity among neighboring populations and low overall mtDNA diversity (Mendez *et al.* 2011; Lampert

et al. 2021). This suggests that similar structuring is possible within *S. teuszii* (Collins 2015; Austin 2023).

Research suggests that individuals occur in a series of localized communities with little interchange identified between them (Maigret 1980a; Van Waerebeek *et al.* 2003; Van Waerebeek *et al.* 2004; Weir 2009; Collins 2015; Weir 2016; Collins *et al.* 2017; Austin 2023). Movements on larger scales are rarely documented, but have been inferred (Collins 2015; Austin 2023). While records suggest transboundary movements between some range countries, such as between Saloum-Niumi (Senegal-The Gambia), Bijagos (Guinea-Bissau), and across the Gabon/Congo border, it remains unclear if these individuals range farther afield (Van Waerebeek *et al.* 2004; Collins 2015; Weir 2016; Collins *et al.* 2017). The threat of habitat loss due to coastal development projects (*i.e.*, port development), is widespread and increasing, and frequently overlaps with the species' preferred habitat (Collins 2015; Austin 2023). Habitat loss due to ongoing and expanding coastal development projects could also cause additional fragmentation of stocks, thus increasing the risk of extirpation of stocks in the near future.

Overall, based on the Atlantic humpback dolphin's restricted range and fragmented distribution, coupled with evidence for the species' tendency for localized residency, connectivity of *S. teuszii* is likely limited. Limited exchange between stocks would reduce the recovery potential for resident stocks that have experienced severe declines. Thus, given the available information, we conclude that this demographic factor poses a moderate risk to the species. However, additional research on this topic is needed for the Atlantic humpback dolphin to further elucidate this species' population structure and genetic diversity (Austin 2023).

Genetic Diversity

As discussed in Austin 2023 and in the above section (see *Spatial Structure and Connectivity*), data do not exist to address the genetic diversity of the Atlantic humpback dolphin. Additionally, most of the genetic data that have been collected to date for this species were generated to investigate the overall phylogenetic relationships within the *Sousa* genus, and no study has examined *S. teuszii* population structure or genetic diversity (CCAHD 2020; Austin 2023). Thus, it is unclear how much genetic diversity exists within the species as a whole, whether it occurs as genetically-distinct

populations (with limited inter-population breeding, due to geographic isolation), or if any connectivity in gene flow exists between those populations (either at present, or in the past) (CCAHD 2020; Weir *et al.* 2021). Consequently, without any genetic analyses to determine diversity or effective population size for *S. teuszii*, it is unknown at this time whether this demographic factor is a threat contributing to the species' risk of extinction (Austin 2023).

Summary and Analysis of Section 4(a)(1) Factors Affecting the Atlantic Humpback Dolphin

As described above, section 4(a)(1) of the ESA and NMFS' implementing regulations (50 CFR 424.11(c)) state that we must determine whether a species is endangered or threatened because of any one or a combination of the following factors: the present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence. We evaluated whether and the extent to which each of the foregoing factors contributes to the overall extinction risk of the Atlantic humpback dolphin. In short, we found that the best scientific and commercial data available indicate that overutilization of the species (*e.g.*, fisheries bycatch) and the present or threatened destruction, modification, or curtailment of the species' habitat or range (*e.g.*, coastal development) contribute significantly to the species' risk of extinction. We also determined that the inadequacy of existing regulatory mechanisms to address these threats is also contributing significantly to the Atlantic humpback dolphin's extinction risk. We determined that the other factors, including disease and predation, and other natural or manmade factors affecting the species' continued existence, are not contributing significantly to the species' risk of extinction now or in the foreseeable future. See Austin (2023) for additional discussion of all ESA section 4(a)(1) threat categories. Additional information regarding each of these threats is summarized below according to the factors specified in section 4(a)(1) of the ESA.

The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

We assessed three potential threats that fall under the factor category, present or threatened destruction, modification, or curtailment of its habitat or range. These threats include coastal development, contaminants and pollutants, and climate change. Among these threats, coastal development was the only threat which poses a high risk (Austin 2023). We discuss this threat in detail below. We also considered the potential effects of contaminants and pollutants on the Atlantic humpback dolphin's habitat as well as potential habitat-related impacts stemming from climate change, such as food availability. However, due to the paucity of data, the degree to which these threats contribute to the Atlantic humpback dolphin's extinction risk, now or in the foreseeable future, is unknown (Austin 2023). Additional information on the other threats (*i.e.*, contaminants and pollutants and climate change) can be found in the draft status review report (Austin 2023).

As previously discussed in the *Range, Distribution, and Habitat Use* section of this proposed rule, the Atlantic humpback dolphin is considered an obligate coastal and shallow water nearshore species preferring dynamic habitats strongly influenced by tidal patterns (International Whaling Commission 2011; 2017; Taylor *et al.* 2020; Austin 2023). Additionally, the species has a restricted geographic range, being endemic to the tropical and subtropical nearshore waters along the Atlantic African coast from Western Sahara in the north to the southern region of Angola (Van Waerebeek *et al.* 2004; Collins 2015; Weir and Collins 2015). Within that range, the species' habitat preferences restrict it to a relatively narrow ecological niche (Austin 2023). Thus, the nearshore habitat requirements increase the vulnerability of Atlantic humpback dolphins to a range of human activities and anthropogenic disturbances (Collins *et al.* 2017).

The destruction, deterioration, or fragmentation of the nearshore habitats relied upon by Atlantic humpback dolphins is likely to be a range-wide issue (Li 2020; Weir *et al.* 2021). A variety of anthropogenic activities may adversely impact the capacity of nearshore habitats to support the dolphins, including direct habitat loss to coastal development projects (*e.g.*, construction and expansion of ports, liquefied natural gas plants, and mining), damage to benthic

environments from trawling and dredging, alterations to water flow and quality from upstream activities such as deforestation and damming, reduction of available prey due to destruction of mangroves, and marine pollution originating from terrestrial, atmospheric, and shipping sources (International Whaling Commission 2011, 2017; PWC 2018; International Whaling Commission 2020a, b; Li 2020; Weir *et al.* 2021). The latter potentially includes runoff of agricultural contaminants, discarding of mining aggregates and other industrial wastes, oil spills, and lack of adequate waste disposal for sewage (introducing bacterial, fungal, and viral pathogens into the Atlantic humpback dolphins' habitat).

As noted above, habitat loss can result from a variety of coastal development activities within the Atlantic humpback dolphin's range. Increasing coastal development is a potential concern within the eastern tropical Atlantic (ETA), a biogeographic realm that extends from Mauritania to southern Angola, overlapping with much of this species' range (Weir and Pierce 2013). Approximately 40 percent of the human population inhabiting the ETA region is concentrated in coastal areas (Ukwe 2003; Ukwe and Ibe 2010). For example, 42 percent of Ghana's population lives within 100 km off the coast, while 20 percent of Nigeria's population lives in large coastal cities (Ukwe and Ibe 2010; Weir and Pierce 2013). The human population of most ETA countries is expanding by 2–3 percent annually (Weir and Pierce 2013), and populations in coastal areas are set to double within 20–25 years (Ukwe and Ibe 2010). Additionally, the coastal zone is the site of all ports and most airports along the Atlantic coast of Africa, as well as factories for processing food and raw materials (e.g., petroleum and metals), industrial production of fertilizer, pesticides, pharmaceuticals, paper and plastic, and the agriculture, mining, forestry, and tourism industries (Weir and Pierce 2013).

A number of Atlantic humpback dolphin range countries are also major oil producers, specifically, Angola, Equatorial Guinea, Gabon, Cameroon, Nigeria, and the Republic of the Congo (Ukwe and Ibe 2010; Minton *et al.* 2017; PWC 2018). Additionally, smaller oil fields exist in several other countries such as Senegal, Côte d'Ivoire, Ghana, and São Tomé and Príncipe (Weir and Pierce 2013). Thus habitat loss as a result of coastal construction (due to development of platforms, ports, pipelines, liquefied natural gas plants) and degradation (e.g., due to discharges, accidental oil spills, gas flaring, seismic

exploration and explosives used during installation and decommissioning, and high-amplitude sound associated with shipping) can all negatively impact *S. teuszii* habitat. Impacts on marine environments are already evident in some areas. For example, in the Niger Delta, the Nigerian National Petroleum Corporation (NNPC) indicates that approximately 300 oil spills occurred annually from 1975 to 1995 causing pollution in the marine environment and fish mortality (Osugwu and Olaifa 2018). It has been suggested by Van Waerebeek *et al.* (2004) that *S. teuszii* most likely inhabited the Niger Delta before large-scale oil exploration and extraction altered the coastal environment (International Whaling Commission 2011). Oil-producing companies from Guinea-Bissau to Angola are estimated to discharge 710 tons of oil annually into the coastal and marine environment; a further 2,100 tons originates from oil spills (Ukwe and Ibe 2010). Impacts on small cetaceans, including the Atlantic humpback dolphin, potentially include ingestion of contaminated prey, irritation of skin and eyes, inhalation of toxic fumes causing lung congestion, neurological damage and liver disorders, and displacement from habitat essential to the species (Geraci 1990; Reeves *et al.* 2003; Takeshita *et al.* 2017).

Port developments and other urban construction projects are particularly widespread throughout the Atlantic humpback dolphin's range (Austin 2023), and preferred sites for such developments and projects frequently overlap with *S. teuszii* habitat (Collins 2015). With economic growth of sub-Saharan Africa increasing from 2.6 percent in 2017 to 3.9 percent in 2022 (PWC 2018; IMF 2022), port developments have increased over the years with the potential for continued expansion. At least three ports that have recently undergone or are undergoing expansion are close to the locations of recent sightings of Atlantic humpback dolphins (Rogers 2017). These include Badagry (Nigeria) which is close to the location of recent sightings of *S. teuszii* near Lagos (CCAHD unpublished data), Kamsar Port (Guinea) within the Río Nuñez Estuary (Weir 2015), and the deep-sea port of Kribi (Cameroon) (Van Waerebeek *et al.* 2017). The scale of some ports suggests that they present effective physical barriers and thus have potential for disrupting Atlantic humpback dolphin longshore movements (Austin 2023). Indirect or “non-lethal” disturbances are likely during port construction, and may

become more permanent if maintenance (e.g. dredging) and urban development occurs at port sites (Jefferson *et al.* 2009; Collins 2015).

Habitat loss resulting from mangrove destruction and altered river sediment loads have also been documented in Guinea-Bissau and Senegal. For example, mangrove habitat loss (*i.e.* 29 percent in one protected area) occurred in Guinea-Bissau due to agricultural practices and firewood collection (Vasconcelos *et al.* 2002; Weir and Pierce 2013). Additionally, the completion of the Dama dam on the Senegal River in 1985 resulted in topographical and hydrological changes to the Senegal Delta, with associated ecological changes (e.g. in zooplankton communities) (Champalbert *et al.* 2007). These activities may directly and indirectly (via changes in prey) affect Atlantic humpback dolphins, which regularly inhabit estuarine areas (Collins 2015).

Overall, widespread coastal development results in extensive damage to benthic environments and alterations to water flow and quality, all of which degrade or eliminate the already restricted nearshore habitat of the Atlantic humpback dolphin. Oil and gas development and extraction activities occur in the central and southern portions of the species' range, resulting in an increase in port facilities and other coastal development projects (Collins 2015; Collins *et al.* 2017). Additionally, habitat fragmentation resulting from these activities, has serious implications for a species already restricted to narrow geographic and ecological niches consisting of small, fragmented stocks. Coastal development activities have increased over the past decade, with little indication that these activities will decline or cease in the foreseeable future. Additionally, port developments are widespread throughout the species' range and preferred port sites often overlap with the habitats of these coastal dolphins (Austin 2023). It has also been noted in the Niger Delta that populations of *S. teuszii* may have been displaced due to altered coastal environments from large scale oil exploration and extraction activities, suggesting a link between coastal oil and gas activities and the species' decline in this area (International Whaling Commission 2011; Austin 2023). Thus, the impacts of coastal development activities on the Atlantic humpback dolphin will likely continue and may intensify in the foreseeable future. Because of the possible species' displacement in the Niger Delta coupled by habitat fragmentation resulting from

coastal development activities (which has serious implications for a species already restricted to narrow geographic and ecological niches), the destruction, modification, and curtailment of habitat in the form of coastal development contribute to a high risk of extinction (Austin 2023), and this risk will be exacerbated in the foreseeable future.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We assessed four potential threats that may contribute to the overutilization of the species: fisheries bycatch, use and trade, depletion of prey resources, and ecotourism. Of these four threats, the primary threat facing the Atlantic humpback dolphin is fisheries bycatch, specifically in artisanal gillnets. This type of overutilization is considered widespread throughout the species' range, and is considered to be causing population declines. Thus, fisheries bycatch was determined to pose a high risk (Austin 2023). The use of stranded or bycaught Atlantic humpback dolphins for human consumption or fishing bait, which has been documented throughout the species' range (Clapham and Van Waerebeek 2007; Weir and Pierce 2013; Collins 2015), was also determined to pose a high risk (Austin 2023). Depletion of prey resources resulting from intensive and unsustainable commercial and artisanal exploitation of fish stocks is another factor contributing to declining Atlantic humpback dolphin stocks (Van Waerebeek *et al.* 2004; Weir 2011), and was determined to pose a moderate risk. We discuss these three threats in detail below. While ecotourism is increasing in some countries within the species' range, and the activities associated with ecotourism may affect the Atlantic humpback dolphin and its habitat, it is currently unknown if ecotourism is a threat that contributes to the Atlantic humpback dolphin's extinction risk, now or in the foreseeable future (Austin 2023).

The best scientific and commercial data indicate that the primary threat facing the Atlantic humpback dolphin is bycatch in artisanal gillnets. Bycatch in artisanal gillnets is considered widespread throughout the species' range and has been documented in Mauritania, Senegal, Guinea, Guinea-Bissau, Nigeria, Cameroon, and the Republic of the Congo (Campredon and Cuq 2001; Van Waerebeek *et al.* 2004; Collins 2015; Collins *et al.* 2017; Brownell *et al.* 2019; Jefferson 2019; Weir *et al.* 2021).

A study by Weir and Pierce (2013) summarizing historical accounts of

bycaught and hunted cetaceans in the ETA, noted that the Atlantic humpback dolphin was one of four most frequently documented bycaught species within the ETA (the other three species being the harbor porpoise, common dolphin, and bottlenose dolphin). Specifically, Atlantic humpback dolphins were noted to be particularly vulnerable to bycatch in artisanal gillnets: out of 16 reported bycatch events for this species, 13 animals died in artisanal gillnets in Mauritania, Senegal, and the Republic of the Congo, one died in a fish trap in Guinea-Bissau, and two were taken in unspecified fishing gear (possibly also gillnets) in Senegal and Guinea (Weir and Pierce 2013; International Whaling Commission 2020a; Austin 2023). Weir *et al.* (2011) notes that gillnet density is high in parts of the Atlantic humpback dolphin's range (*e.g.* in Angola). Furthermore, Leeney *et al.* (2015) reports that there are at least 4,700 artisanal fishers in The Gambia, 59,500 in Senegal, and 4,141 in Guinea-Bissau, and potentially a lot more in other countries along the Atlantic Coast of Africa within the species' range. However, Notarbartolo di Sciara (1998) notes that the species has also been "fatally entangled in octopus line", and observations of foraging individuals taken near the stern wake of trawlers indicate potential for bycatch in other fisheries.

Work in Conkouati-Douli National Park (Republic of the Congo) provides some indication of the potential scale of *S. teuszii* bycatch and substantial bycatch risk for the species (Collins 2015). An intensive monitoring, enforcement, and cooperative (incentivized) reporting program identified 19 dolphins that were caught as bycatch over 5 years across all artisanal landing sites ($n = 14$) along a 60-km stretch of protected beach (Collins 2015). Out of the 19 dolphins caught as bycatch, 10 were identified as *S. teuszii*, and the testimony of fishers showed that all were caught in gillnets less than 1 km from shore (Collins 2015; Collins *et al.* 2017). More recently, CCAHD partners in Renatura, Congo documented two adult *S. teuszii* caught in fishing gear in May, 2021 in the village of Bellelo just south of Conkouati-Douli National Park, Congo (CCAHD).

In northern Guinea, bycatch (mostly gillnet entanglements) of Atlantic humpback dolphins has also occurred in small-scale local fisheries surrounding the Marine Protected Area of the Tristao Islands until at least 2017 (Bamy *et al.* 2010; Van Waerebeek *et al.* 2017; Bamy *et al.* 2021) with documented *S. teuszii* specimens

bycaught in low frequency in 2002 ($n=1$) and in slightly higher frequency from 2011–2012 ($n=5$) (Van Waerebeek *et al.* 2017; Austin 2023).

In Cameroon, a capture of an Atlantic humpback dolphin was reported (supported by photographs), landed by small-scale fishers at Campo in southern Cameroon on an unspecified date in 2012 (Ayissi *et al.* 2014). Additionally, Van Waerebeek *et al.* (2017) reported an adult specimen landed at Londji fish landing site (near Kribi) that became accidentally entangled in an artisanal gillnet in Douala-Edea Fauna Reserve on March 22, 2014 (Austin 2023). In the neighboring country of Nigeria, there have been reports of Atlantic humpback dolphins killed in artisanal gillnets off Brass Island (Van Waerebeek *et al.* 2017; Austin 2023). Both individuals were killed for human consumption. Even though mortality figures have also been reported for other areas, including Banc d'Arguin and the Saloum Delta (Campredon and Cuq 2001), these mortality figures are based on single studies, and there are no formal ongoing monitoring programs for cetacean bycatch in these aforementioned areas or anywhere else in the species' range (Van Waerebeek *et al.* 2004; Collins 2015; Collins *et al.* 2017). Thus, the reported bycatch figures are likely to be underestimates of the true level of mortality.

There is some evidence that beach seines may also contribute to dolphin mortality. The first *S. teuszii* specimen records for Togo were two incidentally bycaught individuals found killed in a beach seine at Agbodrafo along Togo's eastern coast (Van Waerebeek *et al.* 2017; Austin 2023). Additionally, in December 2021, eight *S. teuszii* individuals were trapped in a beach seine near Port Gentil, Gabon, and subsequently were released through the collaborative efforts of local fishers, National Parks Agency staff, and a local non-government organization (NGO) (CCAHD; Austin 2023).

Although there is no evidence of any organized, directed fisheries for *S. teuszii*, there is a concern that bycatch can develop into what is known as "directed entanglement" or "non-target-deliberate acquisition", where fishers may intentionally try to catch Atlantic humpback dolphins in gillnets originally intended for other species (especially if there is a market for such catches) (Clapham and Van Waerebeek 2007; Collins 2015). While the scale of this practice is unknown, the use of cetaceans for human consumption has been documented in 15 (71 percent) of the 21 countries bordering the ETA (Weir and Pierce 2013). These countries

provide a potential market for cetacean products (Van Waerebeek *et al.* 2004; Clapham and Van Waerebeek 2007; Collins 2015; Leeney *et al.* 2015; Brownell *et al.* 2019; Jefferson 2019; Ingram D.J. *et al.* 2022). Throughout the ETA, declining fisheries resources and rising human populations have accelerated the displacement of a number of communities from their traditional food sources, resulting in new forms of aquatic meat consumption, as well as the rise of illegal local and international trade to generate revenue (Balinga and Dyc 2018). Consequently, this aquatic harvest is impacting large aquatic mammal, reptile, and avian fauna in the region, including *S. teuszii* (Balinga and Dyc 2018; Ingram D.J. *et al.* 2022). Furthermore, some of the main factors contributing to declines in fish biomass are inadequate policies and institutional frameworks and inadequate enforcement of existing laws and regulations to address illegal, unreported, and unregulated (IUU) fishing, bycatch, and harvesting activities throughout much of the species' range countries (Balinga and Dyc 2018; Weir *et al.* 2021). The sale of dolphin meat (from various species) for either human consumption or bait has been documented or suspected from a number of *S. teuszii* range countries. Evidence for use of *S. teuszii* for bait, consumption, and sale has been reported from Ghana, Mauritania, Senegal, Guinea, Guinea-Bissau, Nigeria, Cameroon, and the Republic of the Congo (Cadenat 1956; Van Waerebeek *et al.* 2004; Collins 2015; Van Waerebeek *et al.* 2015; Collins *et al.* 2017; Van Waerebeek *et al.* 2017; International Whaling Commission 2020a; Weir *et al.* 2021). Furthermore, the use of Atlantic humpback dolphins as bait in some of the aforementioned countries has been documented in longline fisheries targeting sharks (Van Waerebeek *et al.* 2017). Stranded or bycaught Atlantic humpback dolphin carcasses are routinely utilized by local communities for fishing bait, primarily targeting sharks (Van Waerebeek *et al.* 2017; Weir *et al.* 2021). Individual dolphin carcasses are those from either stranded individuals found dead on the shore (primarily having been bycaught in beach seines), or individuals that are found dead after being bycaught in artisanal gillnets offshore and then subsequently brought to shore for use (Weir and Pierce 2013; CCAHD 2020; Weir *et al.* 2021).

Weir and Pierce (2013) documented instances of human consumption of cetaceans, including the Atlantic

humpback dolphin, in 15 of the 21 countries bordering the ETA (Mauritania to Angola). In The Gambia, an unidentified dolphin (either bottlenose or Atlantic humpback) found alive in a fishing net in 1996 was killed and butchered (Weir and Pierce 2013). Off the coast of Fadiouth, Senegal, the meat of an Atlantic humpback dolphin caught (capture method unknown) in June 1997 was sold and the remains dumped (Van Waerebeek *et al.* 2000; Van Waerebeek *et al.* 2004). In Guinea, an Atlantic humpback dolphin was found for sale at the Dixinn fish landing site on March 13, 2002 (Bamy *et al.* 2010). Additionally, Van Waerebeek *et al.* (2017) noted that when locals in Guinea, Nigeria, Cameroon, and Togo were queried, they typically admitted that dolphins were butchered and fully utilized (and many of these instances involve the incidental use of stranded or bycaught dolphins) (Collins 2015; Collins *et al.* 2017; Weir *et al.* 2021).

In the Republic of the Congo, there have been 30 cases of small cetacean carcasses being used for human consumption (30 of 34 bycatches, or 88.2 percent of cases), most of which were identified as Atlantic humpback dolphins (n=18) and bottlenose dolphins (n=7) (Collins 2015; Collins *et al.* 2017). In the Tristao Islands region of northern Guinea, Bamy *et al.* (2021) noted the use of cetaceans for human consumption is synchronous with and thought to be related to declining fish stocks.

In The Gambia, Senegal, and Guinea-Bissau, a survey conducted by Leeney *et al.* (2015) between 2007 and 2012, reported that at least a quarter of respondents in each country stated they had accidentally caught a dolphin at least once, and greater proportions of interviewees stated that other fishers sometimes caught dolphins. Furthermore, while bycaught animals in The Gambia, Senegal, and Guinea-Bissau were usually distributed within the community as food, Leeney *et al.* (2015) found that the meat and oil of dolphins were also used to treat various illnesses. Overall, this survey's results suggested that although dolphin meat was not a major source of income for communities in Guinea-Bissau, The Gambia, and the Saloum Delta, it did provide a supplementary source of food.

Clapham and Van Waerebeek (2007) noted that market surveys conducted in ETA coastal nations indicated that the sale and consumption of cetacean products is common. Additionally, these sales contribute to the economic viability of gillnet fisheries in Ghana, which includes the killing of live entangled animals, and using dolphin

meat as bait (Van Waerebeek *et al.* 2004; Clapham and Van Waerebeek 2007; Collins 2015). However, it is important to note that captures may be concealed because of legal prohibitions, and, therefore, acquiring reliable data from surveys remains a challenge in some areas (Van Waerebeek *et al.* 2004; Collins 2015; Collins *et al.* 2017).

The depletion of prey resulting from intensive and unsustainable commercial and artisanal exploitation of fish stocks is also considered a potential contributing factor to declining Atlantic humpback dolphin populations (Van Waerebeek *et al.* 2004; Weir 2011). As noted in the *Diet and Feeding* section of this proposed rule, knowledge of the species' diet is limited. However, some fish consumed by Atlantic humpback dolphins (*e.g.* mullet, *Mugil* spp.) are also targeted by coastal fisheries (Cadenat 1956; Maigret 1980b; Weir 2016). Additionally, within Atlantic humpback dolphin range countries, there is a high level of reliance on artisanal fishing for the protein intake and livelihoods of impoverished coastal communities (Weir *et al.* 2021). Senegal, Mauritania, Liberia, Ghana, and Sierra Leone are among the countries most affected by IUU fishing (Balinga and Dyc 2018), and the presence of *S. teuszii* has been documented in Senegal and Mauritania. Generally, IUU fishing is widespread throughout the species range (Brashares *et al.* 2004), including within protected marine areas such as Konkouati-Douli National Park in the Republic of the Congo (Collins 2015). Fish biomass in nearshore and offshore waters off the Gulf of Guinea has declined by at least 50 percent since 1977 due to unsustainable fishing by foreign and domestic fleets (Brashares *et al.* 2004). In the Eastern Central Atlantic, 68 percent of the main fisheries are considered to be either at full capacity or in decline (Weir and Pierce 2013). Overall, fish biomass in the northwest region of Africa declined by a factor of 13 between 1960 and 2001 (Christensen *et al.* 2004). Consequently, declines in fish biomass may affect Atlantic humpback dolphin populations by increasing artisanal fishing effort and pressure, leading not only to increased bycatch risk but also potentially reduced prey availability for the species (Collins 2015; Collins *et al.* 2017).

Overall, as noted in the *Range, Distribution, and Habitat Use* section of this proposed rule, the habitat preferences of the Atlantic humpback dolphin increases its susceptibility and exposure to inshore artisanal and commercial fisheries and associated gears, such as artisanal gillnets, beach seines, and octopus line (Austin 2023).

As discussed in depth in the draft status review report (Austin 2023), bycatch in fisheries has not ceased and may intensify in the foreseeable future as new fishing areas are targeted and fishing pressure increases. The use of stranded or bycaught Atlantic humpback dolphins for human consumption or fishing bait has also been documented throughout the species' range (Clapham and Van Waerebeek 2007; Weir and Pierce 2013; Collins 2015; Van Waerebeek *et al.* 2017; Ingram D.J. *et al.* 2022). While there is some indication of secondary (*i.e.* non-targeted) use of dolphin bycatch, it is evident that the species has been, and is directly and increasingly being targeted for food in many areas across its range (Weir and Pierce 2013; Collins 2015; Leeney *et al.* 2015). In addition, effective bycatch monitoring and mitigation has not been documented in most *S. teuszii* range countries (Austin 2023; see *Inadequacy of Existing Regulatory Mechanisms*), and the lack of effective monitoring and enforcement to protect the species from targeted hunting throughout much of the species' range places additional pressure on already small, likely fragmented, and declining Atlantic humpback dolphin stocks (Doubouya *et al.* 2017; CMS 2022; Minton *et al.* 2022). Furthermore, the depletion of prey resulting from intensive and unsustainable commercial and artisanal exploitation of fish stocks (Van Waerebeek *et al.* 2004; Weir 2011) is likely to increase in the foreseeable future, as some fish preyed by Atlantic humpback dolphins are also targets of coastal fisheries. Resource competition between dolphin and human communities will continue for the foreseeable future due to a high reliance on artisanal fishing for the protein intake and livelihoods of impoverished coastal communities within the range countries (Weir *et al.* 2021). Thus, we determined that overutilization of the species in the form of fisheries bycatch and human use contributes to a high risk of extinction, and depletion of prey resources contributes to a moderate risk of extinction (Austin 2023). These risks will be exacerbated in the foreseeable future (Austin 2023).

Inadequacy of Existing Regulatory Mechanisms

We assessed existing regulatory mechanisms to determine whether they may be inadequate to address threats to the Atlantic humpback dolphin from bycatch in commercial and artisanal fisheries as well as coastal development. We determined that inadequacy of existing regulatory mechanisms,

particularly due to lack of enforcement, resources, implementation, and/or effectiveness within each range country, contributes to a high risk of extinction (Austin 2023). Below is a description and evaluation of current and relevant international, regional, and domestic regulatory mechanisms that currently apply to the Atlantic humpback dolphin. More detailed information on these regulatory mechanisms can be found in the draft status review report (Austin 2023).

International Regulatory Mechanisms

A majority of Atlantic humpback dolphin range countries are members or signatories to a diverse array of international conventions and agreements. The Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention) is an environmental treaty of the United Nations that aims to conserve migratory species, their habitats, and their migration routes. CMS establishes obligations for each state joining the convention, promotes collaboration among range states, and provides the legal foundation for coordinating international conservation measures throughout a migratory range. Early recognition of the vulnerability of the *Sousa* species was indicated by their inclusion on the CMS Appendix II in 1991 (Weir *et al.* 2021) and on Appendix I in 2009, thereby obligating parties to work regionally to promote their conservation. Parties include all countries that are in the Atlantic humpback dolphin's range except for Sierra Leone and Western Sahara (Austin 2023). The CMS defines Appendix I species as those "that have been assessed as being in danger of extinction throughout all or a significant portion of their range." The listing under Appendix I is the highest level of protection under CMS and is for species threatened with extinction. The listing obligates the parties to strive towards protecting these animals (including the Atlantic humpback dolphin), conserving and restoring their habitats, mitigating obstacles to migration, and controlling other factors that might endanger them. However, while 17 out of the 19 range countries of *S. teuszii* are parties to CMS, conservation of the Atlantic humpback dolphin is often not a high priority for governments of range countries, despite the efforts of the CMS's National Focal Points to promote the issue. Additionally, relevant government agencies in many range countries currently lack the resources to monitor and enforce CMS provisions (Doubouya *et al.* 2017; CMS 2022; Minton *et al.* 2022).

The CMS has been closely involved with efforts to conserve the Atlantic humpback dolphin since the early 1990s and has funded two West African Cetacean Research and Conservation Programme (WAF CET) projects during the late 1990s to collect information on this (and other) species, and to stimulate regional involvement in conservation efforts (Van Waerebeek *et al.* 2000; Van Waerebeek *et al.* 2003; Van Waerebeek *et al.* 2004; Weir *et al.* 2021). A series of CMS meetings was held on West African cetaceans and culminated in the signing of a Memorandum of Understanding (MoU) Concerning the Conservation of the Manatee and Small Cetaceans of Western Africa and Macaronesia in 2008 (CMS 2008). This MoU came into effect on October 3, 2008, and will remain open for signature indefinitely. It aims to achieve and maintain a favorable conservation status for manatees and small cetaceans of West Africa and Macaronesia (including the Atlantic humpback dolphin) and their habitats to help safeguard the associated values of these species for the people of the region. Thus far, 17 West African and Macaronesian range states and 6 collaborating organizations have signed the MoU. This includes 12 of the countries within the Atlantic humpback dolphin's range (Austin 2023), thereby obligating the signatories to conserve manatees and small cetaceans in West Africa (including the Atlantic humpback dolphin). In 2017, a CMS Concerted Action was adopted specifically for the Atlantic humpback dolphin; the CMS Concerted Action required a meeting of delegates from countries within the species range and the formulation of an action plan covering the years 2018–2023 (Austin 2023). However, progress on its implementation was substantially delayed, and another CMS Concerted Action was adopted in 2020 to revise the action plan's timeline to 2021–2025 (Weir *et al.* 2021). As such, very little progress has been made in applied conservation of the Atlantic humpback dolphin across its range. Additionally, as part of the work on the Atlantic humpback dolphin action plan required by the 2020 Concerted Action, a formal review of the legal status and protections for the species in each range country is also underway (CMS 2022). Based on currently available information, it seems that the species is legally protected under general categories such as "marine mammals," "aquatic animals," or "Family Delphinidae" in most range countries, but species-specific protections are

lacking (CMS 2022; Austin 2023). However, many range countries lack resources to effectively monitor and mitigate bycatch, design and implement other research and conservation measures, or enforce laws relating to retention and use of bycaught individuals (CMS 2022; Minton *et al.* 2022; Austin 2023).

In 2002, the International Whaling Commission's (IWC) Small Cetacean Sub-Committee identified the Atlantic humpback dolphin as a priority for research, spurring a genus-wide review, and in 2010, it identified a range of specific research and conservation objectives for the Atlantic humpback dolphin (IWC 2011). In 2015, the Small Cetaceans Sub-Committee identified the Atlantic humpback dolphin as one of the cetacean species with high priority for designation of task teams for the potential development of Conservation Management Plans (Genov *et al.* 2015). These objectives incorporated expert scientific opinion and considered earlier conservation agreements and strategies, including the Memorandum of Understanding for the Conservation of Small Cetaceans of Western African and Macaronesia (Van Waerebeek and Perrin 2007; CMS 2008; Weir *et al.* 2021). Additionally, the IWC's Bycatch Mitigation Initiative (BMI) is focused on raising awareness of the issue of cetacean bycatch and available approaches and solutions for assessing, monitoring, and reducing bycatch (Austin 2023). Specifically, the IWC's BMI is focused on bycatch in gillnets, particularly in small-scale fishing fleets, which include the fleets of Atlantic humpback dolphin range countries (CCAHD 2020). While a number of *S. teuszii* range countries are IWC member nations and thus are party to the conservation initiatives set forth under the IWC, effective bycatch mitigation and monitoring programs have not been documented in most *S. teuszii* range countries. Additionally, the objectives set forth under the IWC's BMI are either at the planning or pilot project stage, and full implementation of this initiative (and subsequent results) has not been completed within *S. teuszii* range countries (CCAHD 2020; Austin 2023).

The Convention on Wetlands, signed in Ramsar, Iran, in 1971, is an intergovernmental treaty, which provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. As of October 2021, there are 172 parties, which includes 18 out of 19 range countries of *S. teuszii* and 2,347 designated sites (Austin 2023). One of

these is the Saloum Delta, Senegal, which is listed as a Wetland of International Importance under the Convention on Wetlands, and is known to host possibly the largest known population of *S. teuszii*. While the Convention on Wetlands provides indirect benefits to the species by providing protection of key habitat areas along the west coast of Africa, the level of protection varies at each site (Collins 2013; Weir and Pierce 2013; Taylor *et al.* 2020).

Regional Regulatory Mechanisms

The Abidjan Convention covers the marine environment, coastal zones, and related inland waters from Mauritania to Namibia, which covers much of the Atlantic humpback dolphin's range. The Abidjan Convention is an agreement for the protection and management of the marine and coastal areas that highlights sources of pollution, including pollution from ships, dumping, land-based sources, exploration and exploitation of the sea-bed, and pollution from or through the atmosphere. The Abidjan Convention also identifies where co-operative environmental management efforts are needed. These areas of concern include coastal erosion, especially protected areas, combating pollution in cases of emergency, and environmental impact assessment. Additionally, the Abidjan Convention promotes scientific and technological collaboration (including exchanges of information and expertise) as a means of identifying and managing environmental issues. The action plan and the Abidjan Convention were adopted by the participating governments in March, 1981; the Abidjan Convention entered into force on August 5th, 1984 (Austin 2023). The contracting parties that have ratified the Abidjan Convention are: Benin, Cameroon, Republic of the Congo, Côte d'Ivoire, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mauritania, Nigeria, Senegal, Sierra Leone, South Africa and Togo, which includes 15 out of the 19 range countries of *S. teuszii* (Austin 2023). The remaining 4 range countries including Angola, Democratic Republic of the Congo, and Equatorial Guinea are located in the Abidjan Convention area but have not yet ratified the convention; and Western Sahara is not a signatory of the Abidjan Convention (Austin 2023). While the Abidjan Convention provides a framework within which broad conservation and environmental protection objectives may be pursued collaboratively among African countries on a regional scale, it does not specifically address Atlantic humpback

dolphin conservation. Furthermore, relevant government agencies in many range countries lack the resources to effectively implement conservation measures resulting from the Abidjan Convention (Doumbouya *et al.* 2017; CMS 2022; Minton *et al.* 2022).

In 1998, the environmental ministers of Côte d'Ivoire, Ghana, Togo, Benin, Nigeria, and Cameroon signed the Accra Declaration to strengthen regional capacity to prevent and correct pollution in the Gulf of Guinea Large Marine Ecosystem (GOG-LME) and prevent and correct degradation of critical habitats. The ministers identified the living resources and management problems in the area. The countries decided to undertake a detailed survey of industries, defined regional effluent standards, instituted community based mangrove restoration activities, and created a campaign for the reduction, recovery, recycling, and re-use of industrial wastes (Austin 2023). In 2006, the Guinea Current LME Project expanded the project scope to 10 neighboring countries (Guinea-Bissau, Guinea, Sierra Leone, Liberia, Sao Tome and Principe, Equatorial Guinea, Gabon, Republic of the Congo, Democratic Republic of the Congo, and Angola) (Austin 2023). The Guinea Current LME Project includes 15 out of the 19 countries within the Atlantic humpback dolphin's range and is a regional effort to assess, monitor, and restore the ecosystem and enhance its sustainability, with the aim of conserving and preventing the degradation of the nearshore habitats along portions of the Atlantic Coast of Africa. However, government agencies in many range countries lack the resources to effectively implement conservation measures resulting from this declaration (Doumbouya *et al.* 2017; CMS 2022; Minton *et al.* 2022).

The Revised African Convention on the Conservation of Nature and Natural Resources (Revised African Convention) was adopted by the Assembly of the African Union on July 11, 2003 in Maputo, Mozambique and entered into force on July 23rd, 2016 (Austin 2023). The Revised African Convention is the result of a thorough revision of the original Algiers Convention (adopted in 1968) (Austin 2023). The Revised African Convention is a comprehensive regional treaty on environment and natural resources conservation, and the first to deal with an array of sustainable development matters, including quantitative and qualitative management of natural resources such as soil and land, air and water, and biological resources (Austin 2023). The contracting parties that are signatories to

the Revised African Convention are: Angola, Mauritania, Senegal, Guinea-Bissau, Nigeria, Equatorial Guinea, Democratic Republic of the Congo, The Gambia, Guinea, Togo, Benin, Gabon, Republic of the Congo, Sierra Leone, Liberia, Côte d'Ivoire, and Ghana; this includes 17 out of the 19 range countries of *S. teuszii* (Austin 2023). As of February, 2022, 7 of these range countries (Angola, The Gambia, Benin, Republic of the Congo, Liberia, Côte d'Ivoire, and Ghana) have officially ratified the Revised African Convention (Austin 2023). While the Revised African Convention provides a framework within which broad conservation and sustainable development objectives may be pursued to provide environmental regulation at the regional level, it does not specifically address Atlantic humpback dolphin conservation. Furthermore, financing the Revised African Convention has been a challenge and is crucial to implementation of its provisions as well as management of compliance of its parties. The provisions of the 2003 Revised African Convention emphasize the need for its member states to mobilize financial resources individually or jointly from bilateral or multilateral funding sources (Erinosho 2013). While the financial provisions of the 2003 Revised African Convention are an improvement over the 1968 African Convention (which was silent on issues of funding), the funding provisions are largely generic (Erinosho 2013). The successful implementation of the Revised African Convention is dependent on its procedures for implementation and compliance which are only made possible with adequate financial backing from its parties. This remains a challenge for a number of African countries that are signatories to the Revised African Convention, as resources to fully implement the treaty are currently lacking (Erinosho 2013).

Domestic Regulatory Mechanisms

Information on the existence of domestic laws or regulations of range countries that specifically apply to the Atlantic humpback dolphin is limited. However, two countries within the species' range, Senegal and Gabon, have laws and measures in place that are intended to reduce cetacean bycatch (CMS 2022; Austin 2023).

In Senegal, monofilament nets are officially banned in coastal waters (Belhabib *et al.* 2014). However, this prohibition is not well enforced and gillnets are still widely used in Senegalese waters in nearshore areas (Belhabib *et al.* 2014; Thiao *et al.* 2017).

This is largely because Senegal has neither the resources nor the capacity to enforce fishing regulations (Diedhiou and Yang 2018).

In Gabon, there is a ban for setting gillnets in estuaries under Law No. 042/2018 of July 5, 2019, in the Penal Code in the Gabonese Republic and under the Gabonese Decree 0579/PR/MPE of November 30, 2015 (CMS 2022; Austin 2023). However, this law and decree are not well enforced (Austin 2023). Additionally, although a local agreement on beach seine practices is intended to reduce bycatch in Gabon, limited progress is being made regarding bycatch mitigation (Austin 2023).

While a majority of Atlantic humpback dolphin range countries are members or signatories to a diverse array of international and regional conventions and agreements that would require them to take concrete measures to protect the Atlantic humpback dolphin and mitigate threats (Austin 2023), such as protections afforded to CMS Appendix I species, few such countries have adopted specific protections for the species, and effective bycatch mitigation has not been documented in most *S. teuszii* range countries (CMS 2022; Austin 2023). This is a serious concern, given that bycatch is considered linked to the species' population decline and poses an immediate range-wide threat (Brashares *et al.* 2004; Van Waerebeek and Perrin 2007; Ayissi *et al.* 2014; Belhabib *et al.* 2014; Collins 2015; Collins *et al.* 2017). Additionally, domestic, regional, and international regulatory mechanisms that currently exist are not adequately enforced or do not address the species' primary threats. Furthermore, government agencies in many range countries lack the resources to effectively monitor and mitigate threats and design and implement research and conservation measures specific to the Atlantic humpback dolphin (Doumbouya *et al.* 2017; CMS 2022; Austin 2023). Thus, we determined that inadequacy of existing regulatory mechanisms to address the risks posed by bycatch and coastal development, due to lack of enforcement, resources, implementation, and/or effectiveness within each range country, contributes to a high risk of extinction (Austin 2023).

Other Natural or Manmade Factors Affecting the Species' Continued Existence

Under this category, we assessed the potential threat posed by anthropogenic underwater noise on the Atlantic humpback dolphin. We determined that

anthropogenic underwater noise poses a moderate risk (Austin 2023). We discuss this threat in detail below.

Knowledge about this species indicates that sound is important to Atlantic humpback dolphin functioning and survival. Small odontocete cetaceans, which have a similar hearing range as that of the Atlantic humpback dolphin, rely upon a highly developed acoustic sensory system and rely on echolocation to navigate, feed, and communicate with conspecifics in the marine environment (Weilgart 2017; Stevens *et al.* 2021). It is also widely recognized that anthropogenic sound sources and the resulting anthropogenic underwater noise can have potential impacts on cetaceans' welfare including stress/physiological effects (such as hearing loss, tissue damage, and respiration rates) as well as behavioral impacts (such as shifts in migration, reduced group cohesion, reduced foraging, changing dive patterns, masking of communication sounds, displacement from important habitats, and even cognition when the added noise exceeds the threshold levels of the species) (Wartzok and Ketten 1999; Whittaker and Young 2018; Erbe *et al.* 2019; Stevens *et al.* 2021). Additionally, anthropogenic underwater noise has been shown to elicit a variety of stress responses from other cetacean species, such as the bottlenose dolphin and beluga whale (Ketten 1995; Gordon and Moscrop 1996; Richardson and Wursig 1997; Nowacek *et al.* 2007; Whittaker and Young 2018).

Underwater noise from coastal development activities such as drilling, pile-driving, explosions, and dredging are likely to affect many of the coastal habitats relied upon by Atlantic humpback dolphins (Weir *et al.* 2021). Additionally, engine noise and sonar from different vessel types (e.g. pirogues, dredgers, trawlers and tankers) may reach sufficient amplitude and duration such that the health and/or behavior of coastal marine mammals in the area (including Atlantic humpback dolphins) are negatively affected (Whittaker 2018; Erbe *et al.* 2019; Weir *et al.* 2021). Additionally, there is a possible link between anthropogenic underwater noise and higher likelihood in occurrence of strandings of cetaceans (Ketten 1995; Gordon and Moscrop 1996; Richardson and Wursig 1997; Nowacek *et al.* 2007; Whittaker and Young 2018). Hydrocarbon exploration using high-amplitude impulsive sounds may also affect Atlantic humpback dolphins, as has been noted in other cetaceans (Cerchio *et al.* 2014; Weir *et al.* 2021).

Small odontocete cetaceans use clicks and whistles to communicate with other individuals, and are strongly dependent on echolocation for navigation, foraging, and predator avoidance (Reeves *et al.* 2003; Stevens *et al.* 2021). Although studies in this species have been scarce, there are acoustic recordings of the species made in Namibe province, Angola (Weir 2010). The whistles of the Atlantic humpback dolphin were found to be comparable to *S. chinensis*, and are composed of generally low frequencies with a 92 percent occurrence of harmonics (Weir 2010). Given the increasing development activities within the dolphin's habitat along the west coast of Africa, particularly related to coastal construction activities (especially port construction and expansion) and the oil and gas industry (e.g. development of platforms, ports, pipelines, liquefied natural gas plants), anthropogenic underwater noise levels are likely to increase. Thus, potentially negative effects from noise to the Atlantic humpback dolphin are likely to increase in the future as well.

Overall, anthropogenic underwater noise is a serious concern for the Atlantic humpback dolphin, because (like other odontocete species) it is strongly dependent on sound for critical life functions, such as maintaining social bonds, communicating, navigating, finding food, and avoiding predators (Reeves *et al.* 2003; Stevens *et al.* 2021). While there are no studies analyzing the impacts of anthropogenic underwater noise on Atlantic humpback dolphins, anthropogenic underwater noise has been found to disrupt the behavior and affect the functioning and survival of other dolphin species (Ketten 1995; Gordon and Moscrop 1996; Richardson and Wursig 1997; Nowacek *et al.* 2007; Weilgart 2017; Whittaker and Young 2018; Erbe *et al.* 2019). This threat is likely to increase in the foreseeable future due to the projected increase of activities within the Atlantic humpback dolphin's habitat that contribute to underwater noise, such as port construction, vessel traffic, and other coastal development. Thus, we determined that anthropogenic underwater noise contributes a moderate risk of extinction (Austin 2023).

Overall Extinction Risk Summary

We identified several threats that are likely affect the continued survival of the Atlantic humpback dolphin, including destruction, modification, and curtailment of its habitat (e.g., coastal development projects), overutilization of the species via fisheries bycatch

(particularly in artisanal gillnets), depletion of prey resources, human use, anthropogenic underwater noise, and the inadequacy of existing regulatory mechanisms (the lack of enforcement, resources, and implementation, and the lack of effectiveness of such mechanisms to address the other identified threats). Of these threats, overutilization of the species in the form of fisheries bycatch and human use, as well as destruction, modification, and curtailment of habitat resulting from coastal development, and the inadequacy of existing regulatory mechanisms to address the threat of overutilization and threats to the species' habitat, all contribute significantly to the Atlantic humpback dolphin's risk of extinction. These threats are immediate and range-wide, and their intensity is likely to increase in the future throughout the species' range. Few countries within the species' range have specific protections for the Atlantic humpback dolphin, and effective bycatch mitigation has not been documented in most range countries.

Analysis of demographic factors identified several characteristics that elevate the population's vulnerability to these threats. For example, observed or suspected population declines of already small, likely fragmented stocks throughout the species' range drastically elevates the impact of single mortality events. In addition, continued declines are highly likely given the projected increase of identified threats that affect most of the species' known range (e.g., coastal development and fisheries bycatch). Furthermore, the species' restricted geographic range along the Atlantic coast of Africa and reliance on nearshore habitat make it highly vulnerable to human activities. The limited, available evidence also suggests that there is limited connectivity between stocks within the species' range, which would reduce the recovery potential for resident stocks that have experienced severe declines (*i.e.* Dakhla Bay). Finally, it is likely that the Atlantic humpback dolphin exhibits a naturally low reproductive rate and thus a low intrinsic potential for population increase. Given the immediacy and prevalence of threats range-wide, and demographic characteristics increasing the species' vulnerability, we conclude that the Atlantic humpback dolphin currently faces an overall high risk of extinction throughout its range.

Conservation Efforts

Section 4(b)(1)(A) of the ESA requires the Secretary, when making a listing determination for a species, to take into

account those efforts, if any, being made by any State or foreign nation to protect the species. In addition to the regulatory measures discussed in the *Inadequacy of Existing Regulatory Mechanisms* section of this proposed rule, we considered whether such protective efforts, as summarized below, alter the extinction risk for the Atlantic humpback dolphin.

Early recognition of the vulnerability of the *Sousa* species was indicated by their inclusion on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)² in 1979, as a species threatened with extinction for which trade is permitted only in exceptional circumstances (Austin 2023). Additionally, CMS has been closely involved with efforts to conserve Atlantic humpback dolphins since the 1990s. The species was also listed on CMS Appendix II in 1991 and on Appendix I in 2007, thus obligating parties to work regionally to promote Atlantic humpback dolphin conservation (which includes 17 out of 19 countries within the species range) (Austin 2023). The CMS funded two WAF CET projects during the late 1990s to collect information on this species and stimulate regional involvement in conservation efforts (Weir *et al.* 2021). This culminated in the signing of a Memorandum of Understanding Concerning the Conservation of the Manatee and Small Cetaceans of Western Africa and Macaronesia in 2008 (Weir *et al.* 2021). In 2017, a CMS Concerted Action was adopted specifically for the Atlantic humpback dolphin and required a meeting of delegates from countries within the species range and the formulation of an action plan for 2018–2023. However, progress on its implementation was substantially delayed, and a Concerted Action was adopted in 2020 to change the action plan's timeline to 2021–2025 (Weir *et al.* 2021).

The IUCN's Cetacean Specialist Group (IUCN-CSG) has also expressed concern regarding the status of the Atlantic humpback dolphin, highlighting the species as a priority for research (Reeves *et al.* 2003; Taylor *et al.* 2020). The IUCN's Red List of Threatened Species (the "Red List") global conservation assessments carried out for this species by the IUCN-CSG reveal a steady deterioration in status over time, from early assessments that underlined the

² 18 out of the 19 Atlantic humpback dolphin range countries are a party to CITES. However, since there is a lack of documented trade for this species, NMFS has no information to conclude that the CITES listing has lead to efforts to protect the species.

paucity of information (1994: Insufficiently Known; 1996: Data Deficient), to those reflecting growing concern about potential decline (2008 and 2012: Vulnerable), and culminating in the most recent assessment which classified this species into the Red List category of “Critically Endangered” in 2017 (Collins *et al.* 2017; Weir *et al.* 2021).

The Atlantic humpback dolphin’s concerning conservation status has been discussed and described in several reviews over the past two decades (Reeves *et al.* 2003; Van Waerebeek *et al.* 2004; Weir *et al.* 2011; Collins 2015; Collins *et al.* 2017). However, very little progress has been made in applied conservation of the Atlantic humpback dolphin. Recognition of this lack of progress led to a meeting in December 2019 at the World Marine Mammal Conference in Barcelona, Spain, to discuss how research and conservation efforts for the species could be reinvigorated (Weir *et al.* 2021). Outputs from this meeting evolved into the formation of a new organization, the Consortium for the Conservation of the Atlantic Humpback Dolphin (CCAHD), in 2020. The CCAHD brings together national partner organizations and individuals from countries within the species range, and a number of international conservation management bodies and species experts, to work collaboratively towards the long-term sustainability of Atlantic humpback dolphin populations and their habitats (Weir *et al.* 2021). The CCAHD aims to work alongside the CMS to optimize the implementation of the draft Concerted Action plan for the Atlantic humpback dolphin. It also works alongside the IWC’s bycatch and stranding initiatives following IWC meetings that identified the Atlantic humpback dolphin as a priority for research, and worked with the IUCN–CSG, which highlighted the species as a priority in their “Integrated Conservation Planning for Cetaceans” initiative (Weir *et al.* 2021).

On August 15, 2016, NMFS published the final rule on fish and fish product import provisions of the Marine Mammal Protection Act (MMPA import rule) (81 FR 54389), which establishes criteria and a formal process for evaluating foreign fisheries and their frequency of incidental mortality and serious injury to marine mammals. Specifically, the MMPA import rule requires that the United States ban imports of commercial fish or fish products caught in commercial fisheries resulting in the incidental killing or serious injury (bycatch) of marine mammals in excess of U.S. standards. The rule also establishes criteria for

evaluating a harvesting nation’s regulatory program for reducing marine mammal bycatch. A number of Atlantic humpback dolphin range countries are included on the List of Foreign Fisheries as having fisheries that export to the United States, with particular fisheries that are associated with marine mammal bycatch (CMS 2022; Austin 2023). The Atlantic humpback dolphin is listed as a possible bycatch species for some of these fisheries in relation to their overlap with the dolphin’s habitat (CMS 2022; Austin 2023). Thus, the MMPA import rule may help to provide external motivation for Atlantic humpback dolphin range countries with fisheries exports to the United States to invest more in the accurate assessment of marine mammal populations in their waters and the possible impacts of fisheries on these populations, including the Atlantic humpback dolphin (CMS 2022; Austin 2023).

Significant conservation concerns for the Atlantic humpback dolphin have been raised for decades, and since 2020 international and regional collaboration to increase awareness and promote conservation efforts has intensified. However, there is no indication that these conservation efforts are ameliorating threats, particularly the threats of fisheries bycatch and coastal development, such that the extinction risk of the species is reduced. Therefore, we conclude that these conservation efforts do not alter the extinction risk for the Atlantic humpback dolphin. We are not aware of any other conservation measures for this species, and we are soliciting additional information on any relevant conservation efforts through the public comment process on this proposed rule (see *Public Comments Solicited on Listing* below).

Proposed Listing Determination

Section 4(b)(1) of the ESA requires that we make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and taking into account those efforts, if any, being made by any state or foreign nation, or political subdivisions thereof, to protect and conserve the species. We have independently reviewed the best available scientific and commercial information, including the petition, public comments submitted on the 90-day finding (86 FR 68452; December 2, 2021), the draft status review report (Austin 2023), and other published and unpublished information, and we have consulted with species experts and individuals familiar with the Atlantic humpback dolphin. We considered each

of the section 4(a)(1) factors to determine whether it contributed significantly to the extinction risk of the species on its own. We also considered the combination of those factors to determine whether they collectively contributed significantly to the extinction risk of the species. Therefore, our determination set forth below is based on a synthesis and integration of the foregoing information, factors and considerations, and their effects on the status of the species throughout its range.

We conclude that the Atlantic humpback dolphin is presently in danger of extinction throughout its range. We summarize the factors supporting this conclusion as follows: (1) the best available information indicates that the species has a low abundance, with fewer than 3,000 dolphins likely remaining, with observed or suspected population declines increasing the risk of local extirpation for extremely small stocks (*e.g.* Dakhla Bay and Angola) in the near future; (2) continued declines in abundance are expected given the ongoing and projected increase of identified range-wide threats (specifically fisheries bycatch and coastal development), suggesting that the species will continue to decline in the absence of interventions; (3) the Atlantic humpback dolphin has a fragmented distribution with limited connectivity between stocks; (4) the Atlantic humpback dolphin has a restricted geographic range, being endemic to the tropical and subtropical waters along the Atlantic African coast where ongoing habitat destruction (including coastal development) contributes to a high risk of extinction; (5) the species’ preference for nearshore habitat increases its vulnerability to incidental capture (*i.e.* fisheries bycatch) which also contributes to a high risk of extinction; and (6) existing regulatory mechanisms are inadequate for addressing the most important threats of fisheries bycatch and coastal development.

As a result of the foregoing findings, which are based on the best scientific and commercial data available, we conclude that the Atlantic humpback dolphin is presently in danger of extinction throughout its range. Accordingly, the Atlantic humpback dolphin meets the definition of an endangered species, and thus we are proposing to list it as an endangered species.

Effects of Listing

Conservation measures provided for species listed as endangered or

threatened under the ESA include the development and implementation of recovery plans (16 U.S.C. 1533(f)); designation of critical habitat, if prudent and determinable (16 U.S.C. 1533(a)(3)(A)); a requirement that Federal agencies consult with NMFS under section 7 of the ESA to ensure their actions do not jeopardize the species or result in adverse modification or destruction of designated critical habitat (16 U.S.C. 1536); and, for endangered species, prohibitions on the import and export of any endangered species; the sale and offering for sale of such species in interstate or foreign commerce; the delivery, receipt, carriage, shipment, or transport of such species in interstate or foreign commerce and in the course of a commercial activity; and the “take” of such species within the United States, within the U.S. territorial sea, or on the high seas (16 U.S.C. 1538). Recognition of the species’ imperiled status through listing may also promote conservation actions by Federal and state agencies, foreign entities, private groups, and individuals.

Section 7 Conference and Consultation Requirements

Section 7(a)(4) (16 U.S.C. 1536(a)(4)) of the ESA and NMFS/USFWS regulations (50 CFR 402.10) require Federal agencies to confer with NMFS on actions likely to jeopardize the continued existence of species proposed for listing, or that are likely to result in the destruction or adverse modification of proposed critical habitat of those species. If a proposed species is ultimately listed, under section 7(a)(2) (16 U.S.C. 1536(a)(2)) of the ESA and the NMFS/USFWS regulations (50 CFR part 402), Federal agencies must consult on any action they authorize, fund, or carry out if those actions may affect the listed species or its critical habitat to ensure that such actions are not likely to jeopardize the continued existence of the species or result in adverse modification or destruction of critical habitat should it be designated. It is unlikely that the listing of this species under the ESA will increase the number of section 7 consultations, because this species occurs outside of the United States and is unlikely to be affected by Federal actions.

Critical Habitat

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(5)) as: (1) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (a) essential to the

conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination that such areas are essential for the conservation of the species. “Conservation” means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary. Section 4(a)(3)(A) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. However, critical habitat cannot be designated in foreign countries or other areas outside U.S. jurisdiction (50 CFR 424.12(g)). The Atlantic humpback dolphin is endemic to coastal Atlantic waters of western Africa and does not occur within areas under U.S. jurisdiction, which are in different biogeographic regions and well outside the natural range of this species. Therefore, we do not intend to propose any critical habitat designations for this species.

Public Comments Solicited on Listing

To ensure that the final action resulting from this proposed rule will be accurate and based on the best available data, we solicit comments from the public, other governmental agencies, the scientific community, industry, environmental groups, and any other interested parties on the draft status review report and this proposed rule. See **DATES** and **ADDRESSES** for information on how to submit comments.

Promulgation of any final regulation to list this species will take into consideration the comments and any additional data we receive during the comment period, and this process may lead to a final regulation that differs from this proposal. Specifically, we are interested in new or updated information regarding: (1) the range, distribution, and abundance of the Atlantic humpback dolphin; (2) the genetics and population structure of the Atlantic humpback dolphin; (3) habitat within the range of the Atlantic humpback dolphin that was present in the past, but may have been lost over time; (4) any threats to the Atlantic humpback dolphin (*e.g.*, fisheries bycatch, coastal development, etc.); (5) current or planned activities within the range of the Atlantic humpback dolphin and their possible impact on the species; (6) recent observations or sampling of the Atlantic humpback dolphin; and (7) conservation efforts

that are addressing threats to the Atlantic humpback dolphin.

We request that all data and information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. Please send any comments in accordance with the instructions provided in the **ADDRESSES** section above.

Role of Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Pub. L. 106–554), is intended to enhance the quality and credibility of the Federal Government’s scientific information, and applies to influential scientific information or highly influential scientific assessments disseminated on or after June 16, 2005. To satisfy our requirements under the OMB Bulletin, we solicited peer review comments on the draft status review report (Austin 2023) from four independent scientists selected from the academic and scientific community. We received and reviewed comments from these scientists. All peer reviewer comments, which are publically available (see **ADDRESSES**) were addressed prior to dissemination of the draft status review report and publication of this proposed rule.

References

A complete list of all references cited herein is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

Classification

National Environmental Policy Act

Section 4(b)(1)(A) of the ESA restricts the information that may be considered when assessing species for listing and sets the basis upon which listing determinations must be made. Based on the requirements in section 4(b)(1)(A) of the ESA and the opinion in *Pacific Legal Foundation v. Andrus*, 675 F. 2d 825 (6th Cir. 1981), we have concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA).

Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA,

economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13132, Federalism

In accordance with E.O. 13132, we determined that this proposed rule does not have significant federalism effects and that a federalism assessment is not

required. Given that this species occurs entirely outside of U.S. waters, there will be no federalism impacts because listing the species will not affect any state programs.

List of Subjects in 50 CFR Part 224

Endangered and threatened species, Exports, Imports, Transportation.

Dated: April 3, 2023.

Kelly Denit,

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

For the reasons set out in the preamble, NOAA proposes to amend 50 CFR part 224 as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 2. In § 224.101, in the table in paragraph (h), add the entry, “Dolphin, Atlantic humpback”, in alphabetical order by common name under “Marine Mammals” to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(h) * * *

Species ¹			Citation(s) for listing determination(s)	Critical habitat	ESA rules			
Common name	Scientific name	Description of listed entity						
*	*	*				*	*	*
Marine mammals:								
*	*	*	*	*	*			
Dolphin, Atlantic humpback.	<i>Sousa teuszii</i>	Entire species	[Insert FEDERAL REGISTER page NA NA. where the document begins], [date of publication when published as a final rule].					
*	*	*	*	*	*			

¹ Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722; February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612; November 20, 1991).

[FR Doc. 2023–07286 Filed 4–6–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC760]

50 CFR Part 224

Endangered and Threatened Species; Petition To Establish a Vessel Speed Restriction and Other Vessel-Related Measures To Protect Rice's Whales

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

ACTION: Notice of receipt of petition; request for comments.

SUMMARY: The Natural Resources Defense Council, Healthy Gulf, Center for Biological Diversity, Defenders of Wildlife, Earthjustice, and New England Aquarium submitted a petition to the National Marine Fisheries Service (NMFS) for rulemaking to establish a year-round 10-knot (kn) (5.1 meters/

second) vessel speed limit and other vessel-related mitigation measures in the Rice's whale “core” habitat area. NMFS is requesting comments on the petition and will consider all comments and available information when determining whether to accept the petition and proceed with the suggested rulemaking.

DATES: Submit written comments on or before July 6, 2023.

ADDRESSES: You may submit data, information, or comments on this document, identified by NOAA–NMFS–2023–0027, and the petition by either of the following methods:

- **Electronic Submission:** Submit all electronic comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2023–0027. Click on the “Comment” icon and complete the required fields. Enter or attach your comments.

- **Mail:** Submit written comments to Assistant Regional Administrator, Protected Resources Division, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: NMFS may not consider comments sent by any other method, to

any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), 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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe portable electronic file (PDF) formats only. The petition can be obtained electronically on our website at: <https://www.fisheries.noaa.gov/species/rices-whale#conservation-management>.

FOR FURTHER INFORMATION CONTACT: Laura Engleby, NMFS Southeast Region, laura.ingleby@noaa.gov, 727–824–5312.

SUPPLEMENTARY INFORMATION: On May 11, 2021, NMFS received a petition pursuant to the Administrative Procedure Act from the Natural Resources Defense Council, Healthy Gulf, Center for Biological Diversity,

Defenders of Wildlife, Earthjustice, and New England Aquarium requesting that we utilize our authorities under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) to establish a “Vessel Slowdown Zone” to protect Rice’s whales from collisions with vessels and noise pollution. The petition proposes a year-round 10-knot vessel speed restriction within waters between 100 meters (m) and 400 m deep from approximately Pensacola, FL, to just south of Tampa, FL (*i.e.*, from 87.5° W longitude to 27.5° N latitude) plus an additional 10 kilometers (km) around that area (referred to in the petition as the “Vessel Slowdown Zone”). The petition proposes the following additional restrictions within this “Vessel Slowdown Zone”: (a) no vessel transits at night; (b) vessels transiting through the zone must report their plans to NMFS, utilize visual observers, and maintain a separation distance of 500 m from Rice’s whales; (c) use and operate an Automatic Identification System, or notify NMFS of transits through the zone; and (d) report deviations from these requirements to NMFS. The petitioners discuss the vulnerability of the species, identify vessel strikes and

vessel noise as risks to the whales, and describe NMFS’ authority under the ESA and MMPA to establish a “Vessel Slowdown Zone” with regulations. The petition describes the features of a “Vessel Slowdown Zone” and asserts that the petitioned vessel-related mitigation measures are necessary for the conservation and recovery of Rice’s whales.

We are soliciting information from the public, governmental agencies, tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the petitioned action. In particular, we request information and comments on: (1) the advisability of and need for regulations to establish a “Vessel Slowdown Zone;” (2) the geographic scope of any such regulations; (3) alternative management options for regulating vessel interactions with Rice’s whales, including but not limited to the options in the petition; (4) scientific and commercial information regarding the effects of vessels on Rice’s whales, or other similar species, and their habitat; (5) information regarding potential economic effects of regulating vessel interactions; and (6) any additional, relevant information that

NMFS should consider. The petition is available at: <https://www.fisheries.noaa.gov/species/rices-whale#conservation-management>.

You may submit your information and materials electronically or via mail (see **ADDRESSES** section). We request that all information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. We also would appreciate the submitter’s name, address, and any association, institution, or business that the person represents; however, anonymous submissions will also be accepted.

If NMFS decides to initiate rulemaking, we will notify the petitioners and publish a notice of our decision in the **Federal Register**. If NMFS decides not to proceed with the petitioned action, we will notify the petitioners and provide a brief statement of the grounds for the decision.

Dated: March 29, 2023.

Samuel D. Rauch, III,
*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

[FR Doc. 2023–06978 Filed 4–6–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 88, No. 67

Friday, April 7, 2023

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Privacy Act of 1974; System of Records

AGENCY: Agency for International Development (USAID).

ACTION: Notice of Modified Privacy Act System of Records.

SUMMARY: The United States Agency for International Development proposes to modify various sections of the existing System of Records Notice titled USAID–28, USAID Personnel Locator System consistent with the requirements detailed in OMB Circular A–108: Federal Agency Responsibilities for Review, Reporting and Publication Under the Privacy Act. USAID is providing notice of its intent to change the name of the system to USAID–28, Emergency Notification System, and to update various sections of the existing System of Records Notice in accordance with OMB guidance. The system will collect Personally Identifiable Information (PII) necessary to provide rapid communications regarding emergencies and urgent situations, such as office dismissal, and closure situations that impact access to USAID facilities. USAID is issuing this Notice to clarify the purpose for which the information is collected, update the authorities, and to expand upon the routine uses for the information maintained in this system. All other changes to the Notice are administrative in nature.

DATES: Submit comments on or before 15 May 2023. This modified system of records will be effective 15 May 2023 upon publication. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments:

Electronic

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the

instructions on the website for submitting comments.

- *Email:* Privacy@usaid.gov.

Paper

- *Fax:* 202–916–4946.
- *Mail:* Chief Privacy Officer, United States Agency for International Development, 1300 Pennsylvania Avenue NW, Washington, DC 20523.

FOR FURTHER INFORMATION CONTACT: Ms. Celida A. Malone, USAID Privacy Program at United States Agency for International Development, Bureau for Management, Office of the Chief Information Officer, Information Assurance Division: ATTN: USAID Privacy Program, 1300 Pennsylvania Avenue NW, Washington, DC 20523, or by phone number at 202–916–4605.

SUPPLEMENTARY INFORMATION: USAID is modifying the SORN to change the name from USAID–28—Personnel Locator System to USAID–28: Emergency Notification System (ENS) and update elements of the SORN contents to increase transparency into the Agency's enhanced capacity to transform and modernize the rapid delivery of emergency communications. The Categories of Records in the System was significantly modified to reduce the amount of Personally Identifiable Information (PII) that is collected. This information is used to enable the system owner to target emergency notifications to employees, contractors and others who may be affected by emergency situations at or near an USAID facility.

Dated: May 25, 2022.

Mark Joseph Johnson.

Chief Privacy Officer, United States Agency for International Development.

SYSTEM NAME AND NUMBER:

USAID–28: Emergency Notification System (ENS).

SECURITY CLASSIFICATION:

Sensitive But Unclassified.

SYSTEM LOCATION:

Records are maintained at the United States Agency for International Development, Bureau for Management, Office of Management Services, Headquarters Management Division, 1300 Pennsylvania Ave. NW, Washington, DC 20523. The cloud-based servers are managed at data operations centers located in Santa Clara, CA and Ashburn, VA.

SYSTEM MANAGER:

Continuity Program Manager, United States Agency for International Development, Bureau for Management, Office of Management Services, Headquarters Management Division, 1300 Pennsylvania Avenue NW, Washington, DC 20523. Email: efristoe@usaid.gov.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Homeland Security Act of 2002, Public Law 107–296, § 501–521, National Continuity Policy Implementation Plan, Federal Continuity Directive, Federal Executive Branch National Continuity Program and Requirements, National Security Presidential Directive-51/Homeland Security Presidential Directive-20; and 5 U.S.C. 301.

PURPOSE OF THE SYSTEM:

The purpose of the Emergency Notification System (ENS) is to maintain current, up-to-date emergency contact information for USAID employees and contractors. Using multiple communication pathways, such as email, text-to-voice phone calls, short message service (SMS) text messages, computer desktop pop-up messages and/or public social media postings, ENS provides high-speed message delivery to all workforce members in response to threat alerts issued by the Department of Homeland Security, USAID's Critical Coordination Unit and Facilities Management staff, and local emergency officials regarding weather-related emergencies, or other urgent situations that may disrupt the operations and accessibility of a USAID facility/worksites. It also enables USAID, emergency responders, and others to account for workforce members during an emergency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include, but are not limited to: current and former USAID employees; personal services contractors; institutional support contractors; consultants; detailees; fellows; interns; and volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system contain contact information necessary to ensure the timely emergency notification to USAID workforce

members. The types of personal information include

- Employee Contact Information includes: Name; home phone number; personal cell phone number; personal email address; official or work phone number; official or work email address; assigned office; work location; emergency contact name; emergency contact phone number; and emergency contact alternate number.

RECORD SOURCE CATEGORIES:

The information maintained in this system is obtained from employees, contractors, consultants, detailees, fellows, interns, and volunteers who voluntarily register for ENS alerts. In addition, information is obtained from the Personal Identity Verification (PIV) Card Management System, USAID Human Capital and Talent Management (HCTM) Operational Databases, as well as organizations that employ/sponsor contractors, interns, fellows, and volunteers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed as a routine use as follows:

(1) To Federal, state, tribal, local, international, or foreign governmental agencies or executive offices, relief agencies, and non-governmental organizations, when disclosure is appropriate for performance of the official duties required in response to all-hazards and declared emergencies, including technical, manmade, or natural disasters.

(2) To current and former Federal employees and contractors when the records are relevant and necessary to carry out emergency response activities.

(3) To designated or identified emergency contacts of USAID workforce members, including current and former employees and contractors, when disclosure is necessary to protect public and personal health and safety during an emergency.

(4) To Federal, state, local, foreign, tribal, or self-regulatory agencies or organizations responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, or policy whenever the information is relevant and necessary to respond to a potential violation of civil or criminal law, regulation, order, or policy.

(5) To another Federal agency, to a court, magistrate, or other

administrative tribunal in the course of an administrative or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings, subject to USAID's determination that the disclosure of the records is a use of the information that is compatible with the purpose for which the records were collected.

(6) To any component of the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear, when: (a) the Agency or any component thereof; or (b) any employee of the Agency in her or his official capacity; or (c) any employee of the Agency in his or her individual capacity where the Department of Justice or the Agency has agreed to represent the employee; or (d) the United States, when the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is deemed by the Agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

(7) To the Department of Justice for the purpose of obtaining legal counsel, including whether the records or information in this system of records should be disclosed outside USAID.

(8) To a Federal government agency or department that assists USAID for the purpose of vetting, and for the purposes of ensuring accuracy of existing records and updating government records when a match between an applicant and another database is identified.

(9) To disclose information to contractors (personal service contractors or institutional support contractors) in furtherance of the contractor's work performance on behalf of the Federal government under a contract, including contracts that support the vetting program.

(10) To the National Archives and Records Administration for the purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906 and in its role as Archivist.

(11) To the Office of Management and Budget in connection with review of private relief legislation, as set forth in

OMB Circular No. A-19, at any stage of the legislative coordination and clearance process as set forth in that Circular.

(12) To appropriate agencies, entities, and persons when: (a) USAID suspects or has confirmed that there has been a breach of the system of records; (b) USAID has determined that, as a result of the suspected or confirmed breach, there is a risk of harm to individuals, USAID (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USAID's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(13) To another Federal agency or Federal entity when USAID determines information from this system of records is reasonably necessary to assist the recipient agency or entity in: (a) responding to a suspected or confirmed breach; or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(14) To Congressional offices in response to an inquiry from that office made at the request of the individual to whom the record pertains.

(15) To the Office of the President in response to an inquiry from that Office made on behalf of, and at the request of, the subject of the record or third party acting on the subject's behalf.

(16) To disclose information to officials of labor organizations when relevant and necessary to fulfill their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records in this system are maintained in user-authenticated, password-protected systems. All records are accessed only by authorized personnel who have a need to access the records in the performance of their official duties.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

USAID records are retrievable by name, location, or any other identifier listed in the Categories of Records cited above.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records are maintained in accordance with the National Archives and Records Administration (NARA), General Records Schedule No-1-Item 18(a). Records are reviewed and updated annually. The records relating to a former employee may be retained for a period of three years after separation or transfer, if required to meet the business needs of the Agency.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

USAID safeguards records in this system according to applicable rules and policies, including all applicable USAID Automated Directive System operational policies. USAID has implemented controls to minimize the risk of compromising the information that is being stored. Access to the records in this system is limited to those individuals who have a need to know the information for performance of their official duties and who have appropriate clearances and permissions. USAID ensures the practices stated in the Emergency Notification System (ENS) Privacy Impact Assessment are followed by leveraging standard operating procedures (SOP), training, policies, rules of behavior, and auditing and accountability.

RECORD ACCESS PROCEDURES:

Under the Privacy Act, individuals may request access to records about themselves. These individuals must be limited to citizens of the United States or aliens lawfully admitted for permanent residence. If a Federal Department or Agency or a person who is not the individual who is the subject of the records, requests access to records about an individual, the written consent of the individual who is the subject of the records is required.

Individuals seeking access to information about themselves contained in this system of records should address inquiries to the Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD), USAID Annex—Room 2.4.0C, 1300 Pennsylvania Avenue NW, Washington, DC 20523. The requester may complete and sign a USAID Form 507–1, Certification of Identity Form or submit signed, written requests that should include the individual's full name, current address and telephone number, and this System of Records Notice number. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

CONTESTING RECORD PROCEDURES:

The USAID rules for accessing records, contesting contents, and appealing initial Agency determinations are contained in 22 CFR 212 or may be obtained from the program manager or system owner.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this system of records should address inquiries to the Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD), USAID Annex—Room 2.4.0C, 1300 Pennsylvania Avenue NW, Washington, DC 20523. Individuals may complete and sign a USAID Form 507–1, Certification of Identity Form, or submit signed, written requests that should include the individual's full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

77 FR 64095, October 18, 2012.

Celida Ann Malone,

Government Privacy Task Lead.

[FR Doc. 2023–07395 Filed 4–6–23; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE**Submission for OMB Review; Comment Request**

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by May 8, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Application for Payment of Amounts Due Persons Who Have Died, Disappeared or Declared Incompetent.

OMB Control Number: 0560–0226.

Summary of Collection:

Representatives or survivors of persons who die, disappear, or are declared incompetent must be afforded a method of obtaining any payment intended for the person. The information about the payments due persons who have died, disappeared, or have been declared incompetent is in the regulation under the 7 CFR part 707. The form of FSA–

325 is used for a person desiring to claim such payments. It is necessary to collect information to determine whether representatives or survivors of a person are entitled to receive payments earned by a person who dies, disappears, or is declared incompetent before receiving the payments due.

Need and Use of the Information: FSA will collect information using the FSA-325 form to determine if the survivors have rights to the existing payments or to the unpaid portions of the person's payments. Survivors must show proof of death, disappearance, or incompetency.

Description of Respondents:

Individuals or households.

Number of Respondents: 2,000.

Frequency of Responses: Reporting:

Other (when necessary).

Total Burden Hours: 1,000.

Ruth Brown,

Departmental Information Collection
Clearance Officer.

[FR Doc. 2023-07341 Filed 4-6-23; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Forest Service

Media Outlets for Publication of Legal and Action Notices in the Southern Region

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: This notice lists all newspapers that will be used by the Ranger Districts, Grasslands, Forests, and the Regional Office of the Southern Region to publish notices. The intended effect of this action is to inform members of the public which newspapers will be used by the Forest Service to publish legal notices regarding proposed actions, notices of decisions, and notices indicating opportunities to file objections.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions and notices of the opportunity to object shall begin the first day after the date of this publication.

ADDRESSES: Stephanie Medlin, Regional Environmental Coordinator, Southern Region, Planning, 1720 Peachtree Road NW, Atlanta, Georgia 30309.

FOR FURTHER INFORMATION CONTACT:

Stephanie Medlin, Regional Environmental Coordinator, by telephone at (423) 790-2817 or by email stephanie.medlin@usda.gov.

SUPPLEMENTARY INFORMATION:

Responsible Officials in the Southern

Region will give notice of the opportunity to object to a proposed project under 36 CFR part 218, or developing, amending or revising land management plans under 36 CFR 219 in the following newspapers which are listed by Forest Service administrative units. The timeframe for filing a comment, appeal, or an objection shall be based on the date of publication of the notice of the proposed action in the newspaper of record for projects subject to 36 CFR 218 or 36 CFR 219. Where more than one newspaper is listed for any unit, the first newspaper listed is the newspaper of record that will be utilized for publishing the legal notice of decisions and calculating timeframes. Secondary newspapers listed for a particular unit are those newspapers the Deciding Officer/Responsible Official expects to use for purposes of providing additional notice. The following newspapers will be used to provide notice:

Southern Region

Regional Forester Decisions

Affecting National Forest System lands in more than one administrative unit of the 15 in the Southern Region: “*Atlanta Journal—Constitution*”, published daily in Atlanta, Georgia.

Affecting National Forest System lands in only one administrative unit or only one Ranger District will appear in the newspaper of record elected by the National Forest, National Grassland, National Recreation Area, or Ranger District as listed below.

National Forests in Alabama, Alabama

Forest Supervisor Decisions

Affecting National Forest System lands in more than one Ranger District of the 6 in the National Forests in Alabama: “*Montgomery Advertiser*”, published daily (except Saturday) in Montgomery, Alabama.

Affecting National Forest System lands in only one Ranger District will appear in the newspaper of record elected by the Ranger District as listed below.

District Ranger Decisions

Bankhead Ranger District: “*Northwest Alabamian*”, published weekly (Wednesday) in Haleyville, Alabama.

Conecuh Ranger District: “*The Andalusia Star News*”, published bi-weekly (Wednesday and Saturday) in Andalusia, Alabama.

Oakmulgee Ranger District: “*The Tuscaloosa News*”, published daily in Tuscaloosa, Alabama.

Shoal Creek Ranger District: “*The Anniston Star*” published daily

(Sunday, Wednesday, Friday and Saturday) in Anniston, Alabama.

Talladega Division: “*The Anniston Star*”, published daily (Sunday, Wednesday, Friday and Saturday) in Anniston, Alabama.

Talladega Ranger District: “*The Daily Home*”, published daily (Sunday, Wednesday, Friday and Saturday) in Talladega, Alabama.

Tuskegee Ranger District: “*Tuskegee News*”, published weekly (Thursday) in Tuskegee, Alabama.

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions

“*The Times*”, published daily in Gainesville, Georgia.

District Ranger Decisions

Blue Ridge Ranger District: “*The News Observer*”, published bi-weekly (Tuesday and Friday) in Blue Ridge, Georgia; “*North Georgia News*”, published weekly (Wednesday) in Blairsville, Georgia; “*The Dahlonega Nugget*”, published weekly (Wednesday) in Dahlonega, Georgia; “*Towns County Herald*”, published weekly (Thursday) in Hiwassee, Georgia.

Conasauga Ranger District: “*Daily Citizen*”, published daily in Dalton, Georgia.

Chattooga River Ranger District: “*The Northeast Georgian*”, published bi-weekly (Tuesday and Friday) in Cornelia, Georgia; “*Clayton Tribune*”, published weekly (Thursday) in Clayton, Georgia; “*The Toccoa Record*”, published weekly (Thursday) in Toccoa, Georgia; “*White County News*”, published weekly (Thursday) in Cleveland, Georgia.

Oconee Ranger District: “*Eatonton Messenger*”, published weekly (Thursday) in Eatonton, Georgia.

Cherokee National Forest, Tennessee

Forest Supervisor Decisions

“*Cleveland Daily Banner*”, published Sunday, Wednesday, and Friday in Cleveland, Tennessee.

District Ranger Decisions

Unaka Ranger District: “*Greeneville Sun*”, published daily (except Sunday) in Greeneville, Tennessee.

Ocoee-Hiwassee Ranger District: “*Polk County News*”, published weekly (Thursday) in Benton, Tennessee.

Tellico Ranger District: “*Monroe County Advocate & Democrat*”, published bi-weekly (Wednesday and Sunday) in Sweetwater, Tennessee.

Watauga Ranger District: “*Johnson City Press*”, published daily in Johnson City, Tennessee.

Daniel Boone National Forest, Kentucky*Forest Supervisor Decisions*

“*Lexington Herald-Leader*”, published daily in Lexington, Kentucky.

District Ranger Decisions

Cumberland Ranger District: “*The Daily Independent*”, published Monday, Wednesday, Thursday, Friday, and Saturday in Ashland, Kentucky; “*Lexington Herald-Leader*”, published daily in Lexington, Kentucky.

London Ranger District: “*The Sentinel-Echo*”, published weekly (Wednesday) in London, Kentucky; “*Lexington Herald-Leader*”, published daily in Lexington, Kentucky.

Redbird Ranger District: “*Manchester Enterprise*”, published weekly (Wednesday) in Manchester, Kentucky; “*Lexington Herald-Leader*”, published daily in Lexington, Kentucky.

Stearns Ranger District: “*McCreary County Voice*”, published weekly (Thursday) in Whitley City, Kentucky; “*Lexington Herald-Leader*”, published daily in Lexington, Kentucky.

El Yunque National Forest, Puerto Rico*Forest Supervisor Decisions*

“*El Nuevo Dia*”, published daily in Spanish in San Juan, Puerto Rico. “*San Juan Daily Star*”, published daily in English in San Juan, Puerto Rico.

National Forests in Florida, Florida*Forest Supervisor Decisions*

Affecting National Forest System lands in more than one Ranger District in the National Forests in Florida or Florida National Scenic Trail land outside Ranger Districts: “*The Tallahassee Democrat*”, published daily in Tallahassee, FL.

Affecting National Forest System lands in only one Ranger District will appear in the newspaper of record elected by the Ranger District as listed below.

District Ranger Decisions

Apalachicola Ranger District: “*Calhoun-Liberty Journal*”, published weekly (Wednesday) in Bristol, Florida.

Lake George Ranger District: “*The Ocala Star Banner*”, published daily in Ocala, Florida.

Osceola Ranger District: “*The Lake City Reporter*”, published daily (except Sunday) in Lake City, Florida.

Seminole Ranger District: “*The Daily Commercial*”, published daily in Leesburg, Florida.

Wakulla Ranger District: “*The Tallahassee Democrat*”, published daily in Tallahassee, Florida.

Francis Marion & Sumter National Forests, South Carolina*Forest Supervisor Decisions*

“*The State*”, published Sunday, Monday, Tuesday, Wednesday, Thursday, and Friday in Columbia, South Carolina.

District Ranger Decisions

Andrew Pickens Ranger District: “*The Daily Journal*”, published daily (Tuesday through Saturday) in Seneca, South Carolina.

Enoree Ranger District: “*Newberry Observer*”, published weekly (Wednesday) in Newberry, South Carolina.

Long Cane Ranger District: “*Index-Journal*”, published daily in Greenwood, South Carolina.

Francis Marion Ranger District: “*Post and Courier*”, published daily in Charleston, South Carolina.

George Washington and Jefferson National Forests, Virginia and West Virginia*Forest Supervisor Decisions*

“*Roanoke Times*”, published daily in Roanoke, Virginia.

District Ranger Decisions

Clinch Ranger District: “*Coalfield Progress*”, published bi-weekly (Tuesday and Fridays) in Norton, Virginia.

North River Ranger District: “*Daily News Record*”, published daily (except Sunday) in Harrisonburg, Virginia.

Glenwood-Pedlar Ranger District: “*Roanoke Times*”, published daily in Roanoke, Virginia.

James River Ranger District: “*Virginian Review*”, published daily (except Sunday) in Covington, Virginia.

Lee Ranger District: “*Shenandoah Valley Herald*”, published weekly (Wednesday) in Woodstock, Virginia.

Mount Rogers National Recreation Area: “*Bristol Herald Courier*”, published daily in Bristol, Virginia.

Eastern Divide Ranger District: “*Roanoke Times*”, published daily in Roanoke, Virginia.

Warm Springs Ranger District: “*The Recorder*”, published weekly (Thursday) in Monterey, Virginia.

Kisatchie National Forest, Louisiana*Forest Supervisor Decisions*

“*The Town Talk*”, published tri-weekly (Sunday, Wednesday, and Friday) in Alexandria, Louisiana.

District Ranger Decisions

Calcasieu Ranger District: “*The Town Talk*”, published tri-weekly (Sunday,

Wednesday, and Friday) in Alexandria, Louisiana.

Caney Ranger District: “*Minden Press Herald*”, published twice (Tuesday and Friday) in Minden, Louisiana.

Catahoula Ranger District: “*The Town Talk*”, published tri-weekly (Sunday, Wednesday, and Friday) in Alexandria, Louisiana.

Kisatchie Ranger District: “*Natchitoches Times*”, published on Thursday and Sunday in Natchitoches, Louisiana.

Winn Ranger District: “*Winn Parish Enterprise*”, published Wednesday in Winnfield, Louisiana.

Land Between the Lakes National Recreation Area, Kentucky and Tennessee*Area Supervisor Decisions*

“*The Paducah Sun*”, published daily in Paducah, Kentucky.

National Forests in Mississippi, Mississippi*Forest Supervisor Decisions*

“*Clarion-Ledger*”, published daily (Sunday, Monday, Tuesday, Wednesday, Thursday, and Friday) in Jackson, Mississippi.

District Ranger Decisions

Bienville Ranger District: “*Clarion-Ledger*”, published daily (Sunday, Monday, Tuesday, Wednesday, Thursday, and Friday) in Jackson, Mississippi.

Chickasawhay Ranger District: “*Clarion-Ledger*”, published daily (Sunday, Monday, Tuesday, Wednesday, Thursday, and Friday) in Jackson, Mississippi.

Delta Ranger District: “*Clarion-Ledger*”, published daily (Sunday, Monday, Tuesday, Wednesday, Thursday, and Friday) in Jackson, Mississippi.

De Soto Ranger District: “*Clarion-Ledger*”, published daily (Sunday, Monday, Tuesday, Wednesday, Thursday, and Friday) in Jackson, Mississippi.

Holly Springs Ranger District: “*Clarion-Ledger*”, published daily (Sunday, Monday, Tuesday, Wednesday, Thursday, and Friday) in Jackson, Mississippi.

Homochitto Ranger District: “*Clarion-Ledger*”, published daily (Sunday, Monday, Tuesday, Wednesday, Thursday, and Friday) in Jackson, Mississippi.

Tombigbee Ranger District: “*Clarion-Ledger*”, published daily (Sunday, Monday, Tuesday, Wednesday, Thursday, and Friday) in Jackson, Mississippi.

National Forests in North Carolina, North Carolina*Forest Supervisor Decisions*

“*The Asheville Citizen-Times*”, published daily, Wednesday thru Sunday (except Monday and Tuesday) in Asheville, North Carolina.

District Ranger Decisions

Appalachian Ranger District: “*The Asheville Citizen-Times*”, published daily (Wednesday through Sunday, except Monday and Tuesday) in Asheville, North Carolina.

Cheoah Ranger District: “*Graham Star*”, published weekly (Thursdays) in Robbinsville, North Carolina.

Croatan Ranger District: “*The Sun Journal*”, published daily in New Bern, North Carolina.

Grandfather Ranger District: “*McDowell News*”, published daily in Marion, North Carolina.

Nantahala Ranger District: “*The Franklin Press*”, published weekly (Wednesday) in Franklin, North Carolina.

Pisgah Ranger District: “*The Asheville Citizen-Times*”, published daily (Wednesday through Sunday, except Monday and Tuesday) in Asheville, North Carolina.

Tusquitee Ranger District: “*Cherokee Scout*”, published weekly (Wednesdays) in Murphy, North Carolina.

Uwharrie Ranger District: “*Montgomery Herald*”, published weekly (Wednesdays) in Troy, North Carolina.

Ouachita National Forest, Arkansas and Oklahoma*Forest Supervisor Decisions*

“*Arkansas Democrat-Gazette*”, published weekly (Sunday) in Little Rock, Arkansas.

District Ranger Decisions

Caddo-Womble Ranger District: “*Arkansas Democrat-Gazette*”, published weekly (Sunday) in Little Rock, Arkansas.

Jessieville-Winona-Fourche Ranger District: “*Arkansas Democrat-Gazette*”, published weekly (Sunday) in Little Rock, Arkansas.

Mena-Oden Ranger District: “*Arkansas Democrat-Gazette*”, published weekly (Sunday) in Little Rock, Arkansas.

Oklahoma Ranger District (Choctaw, Kiamichi, and Tiak): “*McCurtain Daily Gazette*”, published tri-weekly (Tuesday, Thursday, and Saturday) in Idabel, Oklahoma.

Poteau-Cold Springs Ranger District: “*Arkansas Democrat-Gazette*”,

published weekly (Sunday) in Little Rock, Arkansas.

Ozark-St. Francis National Forests, Arkansas*Forest Supervisor Decisions*

“*The Courier*”, published daily (Tuesday through Sunday) in Russellville, Arkansas.

District Ranger Decisions

Bayou Ranger District: “*The Courier*”, published daily (Tuesday through Sunday) in Russellville, Arkansas.

Boston Mountain Ranger District: “*Southwest Times Record*”, published daily in Fort Smith, Arkansas.

Buffalo Ranger District: “*The Courier*”, published daily (Tuesday through Sunday) in Russellville, Arkansas.

Magazine Ranger District: “*Southwest Times Record*”, published daily in Fort Smith, Arkansas.

Pleasant Hill Ranger District: “*Johnson County Graphic*”, published weekly (Wednesday) in Clarksville, Arkansas.

St. Francis National Forest: “*The Daily World*”, published bi-weekly (Tuesday and Friday) in Helena, Arkansas.

Sylamore Ranger District: “*Stone County Leader*”, published weekly (Wednesday) in Mountain View, Arkansas.

National Forests and Grasslands in Texas, Texas*Forest Supervisor Decisions*

“*The Lufkin Daily News*”, published daily in Lufkin, Texas.

District Ranger Decisions

Angelina National Forest: “*The Lufkin Daily News*”, published daily in Lufkin, Texas.

Caddo & LBJ National Grasslands: “*Denton Record-Chronicle*”, published daily in Denton, Texas.

Davy Crockett National Forest: “*The Lufkin Daily News*”, published daily in Lufkin, Texas.

Sabine National Forest: “*The Lufkin Daily News*”, published daily in Lufkin, Texas.

Sam Houston National Forest: “*The Courier*”, published daily in Conroe, Texas.

Gregory Smith,

Associate Deputy Chief, National Forest System.

[FR Doc. 2023-07377 Filed 4-6-23; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board**

[B-24-2023]

Foreign-Trade Zone (FTZ) 1, Notification of Proposed Production Activity; Jos. H Lowenstein & Sons, Inc.; (Dyestuff Chemicals for Hair, Fur and, Leather); Brooklyn, New York

The City of New York, grantee of FTZ 1, submitted a notification of proposed production activity to the FTZ Board (the Board) on behalf of Jos. H Lowenstein & Sons, Inc., located in Brooklyn, New York within Subzone 1E. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on March 29, 2023.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/ component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via www.trade.gov/ftz.

The proposed finished products include: dye preparations for hair, fur and, leather (various colors); preparations used for leather tanning; preparations used to soak, pickle, bait, finish and, lubricate leather; auxiliary preparations used to process leather; preparations used for leather tanning in the fur tanning and dyeing process; preparations used to lubricate the leather of the fur in the fur tanning and dyeing process; chelating preparations used in the fur tanning and dyeing process; bleach preparations used in the fur tanning and dyeing process; preparations used to finish leather in the fur tanning and dyeing process; auxiliary preparations used to process furs in the fur tanning and dyeing process; stabilizing preparations used to manufacture hair dye products; preparations used to thicken hair dye products; bleach preparations used to manufacture hair dye products; chelating preparations used to manufacture hair dye products; and, preparations based on anionic, cationic and, non-ionic surfactants (duty rate ranges from duty-free to 6.5%).

The proposed foreign-status materials and components include: coal tar dyes (benzene, naphthalene, anthracene, furan, pyrrole, pyridine, indole, indoline, benzofuran, quinoline, imidazole, pyrazole and, pyridazine);

disperse dyes (various colors); acid dyes (various colors); basic dyes (various colors); direct dyes (various colors); vat dyes (various colors); reactive dyes (various colors); pigment dyes (various colors); hemi-cyanine dyes (various colors); food, drug and, cosmetic certified dyes (various colors); sulfur dyes (various colors); fluorescent brightening agents; color lakes (various colors); aquamarine coloring matter pigments; pigments based on iron oxide (various colors); thermochromic dyes (various colors); titanium oxides; titanium dioxide based pigments >80%; titanium dioxide based pigments <80%; vegetable based dyes (sumac, tara, henna, cassia, myrabalan and, caramel); carbon black; activated carbon; surfactants based on ethoxylated fatty acids, ethoxylated fatty alcohol and their ethers; surfactants based on ethoxylated alkylphenols; surfactants based on fatty acids of coconut oil; surfactants based on fatty acids of soybean oil; surfactants based on N-acyl sarcosinates; surfactants based on ethoxylated tallow amines; surfactants based on quaternary ammonium compounds; surfactants based on sorbitan; surfactants based on ethoxylated alkyl alcohols (branched or unbranched); surfactants based on ethoxylated fatty amines; surfactants based on sulfated fatty acid; surfactants based on alkylsulfonic acids; surfactants based on alkylaryl and μ -olefin sulfonates; acrylic acid (polymers, copolymers and, modified acrylic polymers); silicones, siloxanes, methicones and, their derivatives; chelating agents based on edetic acid, hydroxyethylethylenediaminetriacetic acid, diethylenetriaminopentaacetic acid, nitrilotriacetic acid, glycine, N,N-BIS(2-hydroxyethyl)-, sodium and, trimethylenediaminetetraacetic acid; 1,3-BIS(hydromethyl)-5,5-dimethylhydantoin; 2-(2-ethoxyethoxy)ethanol; 3-amino-4-ethoxy-acetanilide; 3-aminobenzoic acid; 4-methyl-7-diethylaminocoumarin; 4-nonylphenol polyethylene glycol ether in phenethyl alcohol; 8-hydroxyquinoline; acetic acid; adipic acid; alkyl(c10-16)benzenesulfonic acid; aluminum sulfate; aluminum triformate; amino ethyl ethanolamine; amino methyl propanol; ammonium acetate; ammonium alum; ammonium bicarbonate; ammonium bifluoride; ammonium persulfate; ammonium phosphate; ammonium sulfate; ammonium sulfite; ammonium thioglycolate; anthranilic acid; aqua ammonia; barium chloride; behenic acid; behenyl alcohol; bentonite; benzaledhyde synthetic; benzyl alcohol;

bismuth citrate; blend of 2,4,7,9-tetramethyl-5-decyne-4,7-diol; blend of acid protease and pepsin; blend of benzyl alcohol and sodium benzoate and potassium sorbate in water; blend of BIS-lauryl cocaminopropylamine/hexamethylene diisocyanate/polyethylene glycol-100 copolymer and butylene glycol; blend of cetearyl alcohol, dicetyl phosphate and, ceteth-10 phosphate; blend of coco amides and caprylate amides; blend of cottonseed oil, castor oil and, paraffin waxes; blend of D-glucose, decyl octyl ethers and, (C10-16)alkyl D-glycopyranoside; blend of hydroxypropyltrimonium honey and water; blend of lecithins and paraffin waxes; blend of polyethylene glycol-6 and polyethylene glycol-32; blend of polyglyceryl-10 oleate and polyglyceryl-3 oleate; blend of polyglyceryl-4 laurate/succinate; blend of sodium naphthalenesulfonic acid-formaldehyde and phenolsulfonic acid-formaldehyde-urea polymer; blend of sulfurous acid, monosodium salt, reaction products with formaldehyde and 4,4'-sulfonfylbis[phenol] and benzenesulfonic acid, hydroxy-, reaction products with formaldehyde and urea, ammonium salts; blend of tetrakis(hydroxymethyl)-phosphonium sulfate; blend of whey protein concentrate and soy lecithin; blend of cetyl-stearyl alcohol; blends containing polyquaternium-37 and propylene glycol dicaprylate-1 trideceth-6; boric acid; bromamine acid; C12-C15 alkyl benzoate; calcined kaolin; calcium carbonate; calcium hypochlorite; calcium silicate; ceatearyl alcohol; cetyl alcohol; cetyl trimethyl ammonium bromide; chalk; cherry fragrance; chloramine black; chrome potassium alum; chromium (III) sulfate; citric acid; cobalt acetate; cocamide diisopropanolamide; cocamide monoethanolamide; cochon coconut oil; copper acetate; copper sulfate; cuprous chloride; cyclohexanol; degreas; dextrin; dialdehyde starch; diatomaceous earth, kieselguhr; dibutyl adipate; diethanolamine; diethylene glycol; diethylene glycol monoethyl ether; diisodecyl adipate; dimethylol urea; dipropylene glycol monoethyl ether; disodium phosphate; distillates (petroleum), hydrotreated light; D-mannitol; dolomite; ethylene chlorhydrin; ethylene glycol; ethylene glycol monohexyl ether; ethylene glycol monostearate; formaldehyde; formic acid; fumaric acid; gallic acid; gluconic acid; glutaraldehyde; glycerine; glyceryl monooleate; glycine; glycol distearate; glyoxal; glyoxalic acid; guanidine carbonate; gum arabic; gum ghatti; gum karaya; gum tragacanth; haematine;

hexamethylene tetramine; hexylene glycol; hydroabietyl alcohol; hydrogenated castor oil-sebacic acid copolymer; hydrolyzed collagen; hydrolyzed wheat protein; hydrotreated light distillate; hydroxyacetic acid; hydroxyethyl cellulose; hydroxylamine sulfate; hydroxylpropyl methylcellulose; hydroxypropyltrimonium hydrolyzed collagen; iron (II) sulfate; iron (III) sulfate; iron oxide red; iron oxide yellow; isoascorbic acid; kaolinite; lactic acid; lanolin; lard; lard oil; lauryl alcohol; l-cysteine; lead acetate; lipase; logwood powder; magnesium oxide; magnesium stearate; M-aminophenyl urea HCL; manganese sulfate; methacrylamide; methyl ester, soybean oil; methyl isobutyl ketone; methyl papaben; mineral spirits odorless; monoethanolamine; monoisopropanolamine; muriatic acid; N-alkyldimethyl benzyl ammonium chloride; naphtha(petroleum), hydrotreated heavy; naphthenic oil; neatsfoot monoglyceride; neatsfoot oil; N-ethyl-2-pyrrolidinone; nickel sulfate; nitric acid; nutgalls; oleamidopropyl dimethylamine; oleic acid; oleic acid monoisopropanolamide; oleyl alcohol; oxalic acid; P-amino acetanilide; pancreatin; polyethylene glycol 100 stearate; polyethylene glycol copolymer; polyethylene glycol-100 stearyl ether dimer; polyethylene glycol-12 oleate; polyethylene glycol-150 distearate; polyethylene glycol-18 glyceryl oleate/cocotate; polyethylene glycol-400 monostearate; polyethylene glycol-50 tallow amide; polyethylene glycol-75; pepsin; perchloroethylene; petroleum, hydrotreated heavy naphthenic; phenacetin; phosphoric acid; pine oil; polyphosphoric acid; polyquaternium-10; polyquaternium-11; polyquaternium-6; polyvinyl pyrrolidone; potassium bitartrate; potassium persulfate; potassium alum; potassium carbonate; potassium dichromate; potassium ferricyanide; potassium hydroxide; potassium permanganate; propyl paraben; propylene glycol; protease; pyrogallol acid; quebracho extract; quebracho solid; reaction products of hydrolyzed wheat protein and lauryl chloride; sal ammoniac; silicone dioxide; silk amino acids; sodium 2,2'-([1,1'-biphenyl]-4,4'-diyl-di-2,1-ethenediyl)bis-benzenesulfonic acid; sodium acetate; sodium alkyl benzenesulfonic acid; sodium ascorbate; sodium benzenesulfonic acid, mono-c10-16-alkyl derivatives; sodium bicarbonate; sodium bisulfate; sodium carbonate; sodium carbonate peroxide; sodium carboxymethylcellulose <90%; sodium

carboxymethylcellulose >90%; sodium chloride; sodium citrate; sodium coco hydrolyzed animal protein; sodium dichromate; sodium diocetyl sulfosuccinate; sodium dodecylbenzene sulphonate; sodium formaldehyde sulfoxylate; sodium formate; sodium gluconate; sodium hexametaphosphate; sodium hydrosulfite; sodium hydroxide; sodium hydroxymethanesulphinate; sodium hypophosphite; sodium isoascorbate; sodium lauryl sulfate; sodium lauryl sulfoacetate; sodium lignosulfonate; sodium l-pyrrolidonecarboxylate; sodium metabisulfite; sodium metasilicate; sodium methyl oleoyl taurate; sodium naphthalenesulfonic acid; sodium naphthalenesulfonic acid-formaldehyde copolymer; sodium naphthionate; sodium O-phenylphenate; sodium perborate; sodium percarbonate; sodium persulfate; sodium phosphate; sodium silicate; sodium stannate; sodium stearate; sodium sulfate; sodium sulfide; sodium sulfite; sodium tetraborate; sodium thiosulfate; sodium triphosphate; solvent naphtha(petroleum), light aromatic; sorbitan monooleate; soy lecithin; stannous chloride; starch (corn and wheat); steardimonium hydroxypropyl hydrolyzed wheat protein; stearic acid; stearyl alcohol; sulfamic acid; sulfonated castor oil; sulfonated neatsfoot oil; sulfur; sulfuric acid; tall oil fatty acids; tallow; tannic acid; tartar emetic; tartaric acid; tetrakis(hydroxymethyl)phosphonium sulfate; tetrasodium pyrophosphate; thioglycolic acid; thiourea dioxide; toluene sulfonic acid; tributyl phosphate; triethanolamine; tripropylene glycol methyl ether; trisodium citrate; trisodium phosphate; urea; vinylpyrrolidone/vinyl acetate copolymer; vinylpyrrolidone/dimethylamino propylacrylamide copolymer; wattle extract powder; wattle solid; white mineral oil; white petrolatum; wool grease; xanthan gum; zinc formaldehyde sulfoxylate; zinc hydrosulfite; zinc oxide; zinc sulfate; and, zirconium sulfate (duty rate ranges from duty-free to 6.5%). The request indicates that certain materials/components are subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: ftz@trade.gov. The

closing period for their receipt is May 17, 2023.

A copy of the notification will be available for public inspection in the "Online FTZ Information System" section of the Board's website.

For further information, contact Christopher Wedderburn at Chris.Wedderburn@trade.gov.

Dated: April 4, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023-07351 Filed 4-6-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 230309-0069]

RIN 0694-XC097

Reporting for Calendar Year 2022 on Offsets Agreements Related to Sales of Defense Articles or Defense Services to Foreign Countries or Foreign Firms

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

ACTION: Notice; annual reporting requirements.

SUMMARY: This notice is to remind the public that U.S. firms are required to report annually to the Department of Commerce (Commerce) information on contracts for the sale of defense articles or defense services to foreign countries or foreign firms that are subject to offsets agreements exceeding \$5,000,000 in value. U.S. firms are also required to report annually to Commerce information on offsets transactions completed in performance of existing offsets commitments for which offsets credit of \$250,000 or more has been claimed from the foreign representative. This year, such reports must include relevant information from calendar year 2022 and must be submitted to Commerce no later than June 15, 2023.

ADDRESSES: Submit reports in both hard copy and electronically. Address the hard copy to "Offsets Program Manager, U.S. Department of Commerce, Office of Strategic Industries and Economic Security, Bureau of Industry and Security (BIS), Room 3876, Washington, DC 20230". Submit electronic copies to OffsetReport@bis.doc.gov.

FOR FURTHER INFORMATION CONTACT:

Katie Reid, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, telephone: 202-482-4506; email: OffsetReport@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 723(a)(1) of the Defense Production Act of 1950, as amended (DPA) (50 U.S.C. 4568 (2023)) requires the President to submit an annual report to Congress on the impact of offsets on the U.S. defense industrial base. Section 723(a)(2) directs the Secretary of Commerce (Secretary) to prepare the President's report and to develop and administer the regulations necessary to collect offsets data from U.S. defense exporters.

The authorities of the Secretary regarding offsets have been delegated to the Under Secretary of Commerce for Industry and Security. The regulations associated with offsets reporting are set forth in part 701 of title 15 of the Code of Federal Regulations (Offsets Regulations). Offsets are compensation practices required as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services, as defined by the Arms Export Control Act (22 U.S.C. 2778) and the International Traffic in Arms Regulations (22 CFR 120-130). Offsets are also applicable to certain items controlled on the Commerce Control list (CCL) and with an Export Control Classification Number (ECCN) including the numeral "6" as its third character. The CCL is found in supplement no. 1 to part 774 of the Export Administration Regulations.

An example of an offset is as follows: a company that is selling a fleet of military aircraft to a foreign government may agree to offset the cost of the aircraft by providing training assistance to plant managers in the purchasing country. Although this distorts the true price of the aircraft, the foreign government may require this sort of extra compensation as a condition of awarding the contract to purchase the aircraft. As described in the Offsets Regulations, U.S. firms are required to report information on contracts for the sale of defense articles or defense services to foreign countries or foreign firms that are subject to offsets agreements exceeding \$5,000,000 in value. U.S. firms are also required to report annually information on offsets transactions completed in performance of existing offsets commitments for which offsets credit of \$250,000 or more has been claimed from the foreign representative.

Commerce's annual report to Congress includes an aggregated summary of the data reported by industry in accordance with the offsets regulation and the DPA (50 U.S.C. 4568 (2023)). As provided by

section 723(c) of the DPA, BIS will not publicly disclose individual firm information it receives through offsets reporting unless the firm furnishing the information specifically authorizes public disclosure. The information collected is sorted and organized into an aggregate report of national offsets data, and therefore does not identify company-specific information.

To enable BIS to prepare the next annual offset report reflecting calendar year 2022 data, affected U.S. firms must submit required information on offsets agreements and offsets transactions from calendar year 2022 to BIS no later than June 15, 2023.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2023-07291 Filed 4-6-23; 8:45 am]

BILLING CODE 3510-JT-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-833]

Citric Acid and Certain Citrate Salts From Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2021-2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that Sunshine Biotech International Co., Ltd. made sales of subject merchandise at less than normal value (NV) during the July 1, 2021, through June 30, 2022, period of review (POR) and that COFCO Biochemical (Thailand) Co., Ltd. did not. Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable April 7, 2023.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or Alex Cipolla, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1168 or (202) 482-4956, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 6, 2022, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping duty order on citric acid

and certain citrate salts (citric acid) from Thailand.¹ The period of review is July 1, 2021, through June 30, 2022. For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.²

Scope of the Order³

The merchandise covered by this Order is citric acid and sodium citrate. For a full description of the scope of the Order, see the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Preliminary Results of the Review

As a result of this review, we preliminarily determine the following weighted-average dumping margins for the period July 1, 2021, through June 30, 2022:

Producer or exporter	Weighted-average dumping margin (percent)
COFCO Biochemical (Thailand) Co., Ltd. (COFCO)	0.00
Sunshine Biotech International Co., Ltd.	0.78
Xitrical Group Co., Ltd.	0.78

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 54463 (September 6, 2022) (*Initiation Notice*).

² See Memorandum, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Citric Acid and Certain Citrate Salts from Thailand; 2021-2022," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

³ See *Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand: Antidumping Duty Orders*, 83 FR 35214 (July 25, 2018) (*Order*).

Rate for Company Not Individually Examined

The statute and Commerce's regulations do not identify the dumping margin to apply to respondents not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, when calculating margins for non-selected respondents, Commerce looks to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act provides that when calculating the all-others rate, Commerce will exclude any zero and *de minimis* weighted-average dumping margins, as well as any weighted-average dumping margins based on total facts available. Where the dumping margins for individually examined respondents are all zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use "any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated." We are preliminarily applying to Xitrical Group Co. Ltd. (the sole company not selected for individual examination) the weighted-average dumping margin of Sunshine Biotech International Co., Ltd., which is not zero, *de minimis*, or determined entirely on the basis of facts available.

Disclosure

We intend to disclose the calculations performed for these preliminary results to interested parties within five days after publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to the Assistant Secretary for Enforcement and Compliance not later than 30 days after the date of publication of this notice, unless Commerce alters the time limit. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.⁴ Parties who submit case briefs or rebuttal briefs in this administrative review are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the

⁴ See 19 CFR 351.309(d); see also 19 CFR 351.303 (for general filing requirements).

argument; and (3) a table of authorities.⁵ Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.⁶

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.⁷ Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act, unless extended.

Assessment Rates

Upon issuance of the final results, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.⁸ If a respondent's weighted-average dumping margin for companies listed above is above *de minimis* in the final results of this review, we will calculate importer-specific assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).⁹ If a respondent's weighted-average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate

entries without regard to antidumping duties in accordance with the *Final Modification for Reviews*.¹⁰ The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future deposits of estimated duties, where applicable.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated or reviewed companies not covered in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.25 percent, the all-others rate established in the LTFV investigation.¹¹ These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate

regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of review. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(4).

Dated: April 3, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Recommendation

[FR Doc. 2023-07347 Filed 4-6-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Approved International Trade Administration Trade Mission

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: The United States Department of Commerce (DOC), International Trade Administration (ITA), is announcing one upcoming trade mission that will be recruited, organized, and implemented by ITA. This mission is: U.S. Industry Program (USIP) at the International Atomic Energy Agency (IAEA) General Conference in Vienna, Austria, September 24–27, 2023. A summary of the mission is found below. Application information and more detailed mission information, including the commercial setting and sector information, can be found at the trade mission website: <https://www.trade.gov/trade-missions>. For each mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (<https://www.trade.gov/trade-missions-schedule>) and other internet websites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations

⁵ See 19 CFR 351.309(c)(2) and (d)(2).

⁶ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19: Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

⁷ See 19 CFR 351.310(c).

⁸ See 19 CFR 351.212(b).

⁹ In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

¹⁰ See *Final Modification for Reviews*, 77 FR at 8103; see also 19 CFR 351.106(c)(2).

¹¹ See *Order*.

and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

FOR FURTHER INFORMATION CONTACT:

Jonathan Chesebro, Senior Nuclear Trade Specialist, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 603-4968 or email jonathan.chesebro@trade.gov.

SUPPLEMENTARY INFORMATION:

The Following Conditions for Participation Will Be Used for the Mission

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on their products and/or services, primary market objectives, and goals for participation that is adequate to allow the U.S. Department of Commerce (DOC) to evaluate their application. If the DOC receives an incomplete application, the Department may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the application. If the requisite minimum number of participants is not selected for a particular mission by the recruitment deadline, the mission may be cancelled.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content by value. In the case of a trade association or organization, the applicant must certify that, for each firm or service provider to be represented by the association/organization, the products and/or services the represented firm or service provider seeks to export are either produced in the United States or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content. Each applicant must certify that one's organization is not majority owned or controlled by a foreign government entity (or foreign government entities).

A trade association/organization applicant must certify to the above for all of the companies it seeks to represent on the mission. In addition, each applicant must:

- Certify that the products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified any matter pending before any bureau or office in the DOC;

- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the DOC; and

- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a trade association/organization, the applicant must certify that each firm or service provider to be represented by the association/organization can make the above certifications.

The Following Selection Criteria Will Be Used for the Mission

Targeted mission participants are U.S. firms, services providers and trade associations/organizations providing or promoting U.S. products and services that have an interest in entering or expanding their business in the mission's destination country. The following criteria will be evaluated in selecting participants:

- Suitability of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) products or services to these markets;
- The applicant's (or in the case of a trade association/organization, represented firm's or service provider's) potential for business in the markets, including likelihood of exports resulting from the mission; and
- Consistency of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) goals and objectives with the stated scope of the mission.

Balance of company size and location may also be considered during the review process.

Referrals from a political party or partisan political group or any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The sender will be notified of these exclusions.

Trade Mission Participation Fees

If and when an applicant is selected to participate on a particular mission, a payment to the DOC in the amount of the designated participation fee below is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government (USG) rates for hotel rooms. In the event that a mission is canceled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a canceled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the DOC will provide instructions to each participant on the procedures required to obtain business visas.

Trade mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government (USG) does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues USG international travel alerts and warnings for U.S. citizens available at <https://travel.state.gov/content/passports/en/alertswarnings.html>. Any question regarding insurance coverage must be resolved by the participant and its insurer of choice. Participants are responsible for determining any travel requirements or restrictions that are in place due to COVID-19.

Definition of Small- and Medium-Sized Enterprise

For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies as a "small business" under the Small Business Administration's (SBA) size standards (<https://www.sba.gov/document/support-table-size-standards>), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool [<https://www.sba.gov/size-standards/>] can help you determine the qualifications that apply to your company.

Important Note About the Covid-19 Pandemic

Travel and in-person activities are contingent upon the safety and health conditions in the United States and the mission countries. Should safety or health conditions not be appropriate for travel and/or in-person activities, the Department will consider postponing the event or offering a virtual program in lieu of an in-person agenda. In the event of a postponement, the Department will notify the public and applicants previously selected to participate in this mission will need to confirm their availability but need not reapply. Should the decision be made to organize a virtual program, the Department will adjust fees, accordingly, prepare an agenda for virtual activities, and notify the previous selected applicants with the option to opt-in to the new virtual program.

Mission List: (additional information about trade missions can be found at <https://www.trade.gov/trade-missions>).

U.S. Industry Program (USIP) at the International Atomic Energy Agency (IAEA) General Conference in Vienna, Austria, September 24–27, 2023

Summary

The U.S. Department of Commerce's (DOC) International Trade Administration (ITA), with participation from the U.S. Departments of Energy and State, is organizing its annual U.S. Industry Program at the International Atomic Energy Agency (IAEA) General Conference, to be held September 24–27, 2023, in Vienna, Austria. The IAEA General Conference is the premier global meeting of civil nuclear policymakers and typically attracts senior officials and industry representatives from all 175 Member States. The U.S. Industry Program is part of the DOC's Civil Nuclear Trade Initiative, a U.S. Government (USG) effort to help U.S. civil nuclear companies identify and capitalize on commercial civil nuclear opportunities around the world. The purpose of the program is to demonstrate high level USG support for the U.S. nuclear industry to promote its services and technologies to an international audience, including senior energy policymakers from current and emerging markets as well as IAEA staff.

Representatives of U.S. companies from across the U.S. civil nuclear supply chain are eligible to participate. In addition, organizations providing related services to the industry, such as universities, research institutions, and U.S. civil nuclear trade associations, are

eligible for participation. The mission will help U.S. participants gain market insights, make industry contacts, solidify business strategies, and identify or advance specific projects with the goal of increasing U.S. civil nuclear exports to a wide variety of countries interested in nuclear energy. A senior DOC official will lead the U.S. industry delegation.

The schedule includes meetings with foreign delegations and discussions with senior USG officials on important civil nuclear topics including regulatory, technology and standards, liability, public acceptance, export controls, financing, infrastructure development, and R&D cooperation. Past U.S. Industry Programs have included participation by the U.S. Secretary of Energy, the Chairman of the U.S. Nuclear Regulatory Commission (NRC) and senior USG officials from the Departments of Commerce, Energy, State, the Export-Import Bank of the United States and the National Security Council.

There are significant opportunities for U.S. businesses in the global civil nuclear energy market. With 56 reactors currently under construction in 15 countries and 160 nuclear plant projects planned in 27 countries over the next 8–10 years, this translates to a market demand for equipment and services totaling \$500–740 billion over the next ten years.

Proposed Timetable

****Note that specific events and meeting times have yet to be confirmed****

Sunday, September 24

2:00 p.m.–5:00 p.m. 1–1 Showtime Meetings with visiting ITA Staff
6:00 p.m.–8:00 p.m. U.S. Industry Welcome Reception

Monday, September 25

7:00a.m. Industry Program Breakfast Begins
8:00 a.m.–9:45 a.m. U.S. Policymakers Roundtable
9:45 a.m.–10:00 a.m. Break
10:00 a.m.–11:00 a.m. USG Dialogue with Industry
11:00 a.m.–6:00 p.m. IAEA Side Events
11:00 a.m.–12:30 p.m. Break
12:30 p.m.–6:00 p.m. Country Briefings for Industry Delegation (presented by foreign delegates)
7:30p.m.–9:30p.m. U.S. Mission to the IAEA Reception

Tuesday, September 26

9:00 a.m.–6:00 p.m. Country Briefings for Industry (presented by foreign delegates)

10:00 a.m.–6:00 p.m. IAEA Side Event Meetings

Wednesday, September 27

9:00 a.m.–6:00 p.m. Country Briefings for Industry (presented by foreign delegates)

10:00 a.m.–6:00 p.m. IAEA Side Event Meetings

Participation Requirements

All parties interested in participating in the trade mission must complete and submit an application package for consideration by the DOC. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 15 and maximum of 30 companies and/or trade associations and/or U.S. academic and research institutions will be selected to participate in the mission from the applicant pool. The first ten accepted applicants will be permitted to send two representatives per organization (if desired). After the first ten accepted applicants, additional representatives will be permitted only if space is available. Participating companies may send more than two participants if space permits. The DOC will evaluate applications and inform applicants of selection decisions three weeks after publication in the **Federal Register** and on a rolling basis thereafter until the maximum number of participants has been selected.

Fees and Expenses

After a company or organization has been selected to participate on the mission, a payment to the DOC in the form of a participation fee is required. The fee covers ITA support to register U.S. industry participants for the IAEA General Conference. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged for additional cost. Participants will be able to take advantage of discounted rates for hotel rooms.

- The fee to participate in the event is \$5,472 for a large company and \$5,141 for a small or medium-sized company (SME),¹ a trade association, or a U.S. university or research institution. The fee for each additional

¹ For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies under the Small Business Administration's (SBA) size standards (<https://www.sba.gov/document/support-table-size-standards>), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool [<https://www.sba.gov/size-standards/>] can help you determine the qualifications that apply to your company.

representative (large company, trade association, university/research institution, or SME) is \$2,000.

If and when an applicant is selected to participate on a particular mission, a payment to the DOC in the amount of the designated participation fee below is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of USG rates for hotel rooms. In the event that a mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the DOC will provide instructions to each participant on the procedures required to obtain business visas.

Trade mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at <https://travel.state.gov/content/passports/en/alertswarnings.html>. Any questions regarding insurance coverage must be resolved by the participant and its insurer of choice.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the DOC trade mission calendar (<http://export.gov/trademissions>), and notices by industry trade associations and other multiplier groups. Recruitment for the mission will begin immediately and conclude no later than July 21, 2023. The DOC will evaluate applications and

inform applicants of selection decisions on a rolling basis until the maximum number of participants has been selected. Applications received after July 21, 2023, will be considered only if space and scheduling constraints permit.

Contacts

Jonathan Chesebro, Industry & Analysis, Office of Energy and Environmental Industries, Washington, DC, Tel: (202) 603-4968, Email: jonathan.chesebro@trade.gov.

Gemal Brangman,

Director, ITA Events Management Task Force.

[FR Doc. 2023-07270 Filed 4-6-23; 8:45 a.m.]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NIST MEP Client Impact Survey

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites 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. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before June 6, 2023.

ADDRESSES: Interested persons are invited to submit written comments by mail to Maureen O'Reilly, Management Analyst, NIST at PRAComments@doc.gov. Please reference OMB Control Number 0693-0021 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Megean

Blum, NIST MEP, 301-975-3160, Megean.blum@nist.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Sponsored by NIST, the Manufacturing Extension Partnership (MEP) is a national network of locally-based manufacturing extension centers working with small manufacturers to assist them improve their productivity, improve profitability and enhance their economic competitiveness. The information collected will provide the MEP with information regarding MEP Center performance regarding the delivery of technology and business solutions to U.S.-based manufacturers. The collected information will assist in determining the performance of the MEP Centers at both local and national levels, provide information critical to monitoring and reporting on MEP programmatic performance, and assist management in policy decisions. Responses to the collection of information are mandatory per the regulations governing the operation of the MEP Program (15 CFR parts 290, 291, 292, and H.R. 1274—section 2). The information collected will include MEP Customer inputs regarding their sales, costs, investments, and employment. Customers will take the survey online. Customers will only be surveyed once per year under this collection. Data collected in this survey is confidential.

II. Method of Collection

Information will be collected electronically.

III. Data

OMB Control Number: 0693-0021.

Form Number(s): None.

Type of Review: Revision of a current information collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 14,500.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 3,625.

Estimated Total Annual Cost to Public: 0.

Respondent's Obligation: Voluntary.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and

cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

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 may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023-07363 Filed 4-6-23; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Construction Safety Team Advisory Committee Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Construction Safety Team (NCST) Advisory Committee (Committee) will hold an open meeting in-person and via web conference on Wednesday, June 14, 2023, from 9:00 a.m. to 5:00 p.m. Eastern Time, and on Thursday, June 15, 2023, from 9:00 a.m. to 3:30 p.m. Eastern Time. The primary purposes of this meeting are to update the Committee on the progress of the NCST investigation focused on the impacts of Hurricane Maria in Puerto Rico, progress of the NCST investigation focused on the Champlain Towers South partial building collapse that occurred in Surfside, Florida, and the implementation of recommendations from previous investigations. The final agenda will be posted on the NIST website at [https://www.nist.gov/topics/](https://www.nist.gov/topics/disaster-failure-studies/national-construction-safety-team-ncst/advisory-committee-meetings)

disaster-failure-studies/national-construction-safety-team-ncst/advisory-committee-meetings.

DATES: The NCST Advisory Committee will meet on Wednesday, June 14, 2023, from 9:00 a.m. to 5:00 p.m. Eastern Time, and on Thursday, June 15, 2023, from 9:00 a.m. to 3:30 p.m. Eastern Time. The meeting will be open to the public.

ADDRESSES: The meeting will be held in person in Lecture Room D of the Administration Building, NIST, 100 Bureau Drive, Gaithersburg, Maryland 20899 and via web conference. For instructions on how to attend and/or participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT:

Tanya Brown-Giammanco, Disaster and Failure Studies Program, Engineering Laboratory, NIST. Tanya Brown-Giammanco's email address is Tanya.Brown-Giammanco@nist.gov and her phone number is (301) 975-2822.

SUPPLEMENTARY INFORMATION: The Committee was established pursuant to section 11 of the NCST Act (Pub. L. 107-231, codified at 15 U.S.C. 7301 *et seq.*). The Committee is currently composed of nine members, appointed by the Director of NIST, who were selected on the basis of established records of distinguished service in their professional community and their knowledge of issues affecting the National Construction Safety Teams. The Committee advises the Director of NIST on carrying out the NCST Act; reviews the procedures developed for conducting investigations; and reviews the reports issued documenting investigations. Background information on the NCST Act and information on the NCST Advisory Committee is available at <https://www.nist.gov/topics/disaster-failure-studies/national-construction-safety-team-ncst/advisory-committee>.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. app., notice is hereby given that the NCST Advisory Committee will meet on Wednesday, June 14, 2023, from 9:00 a.m. to 5:00 p.m. Eastern Time, and on Thursday, June 15, 2023, from 9:00 a.m. to 3:30 p.m. Eastern Time. The meeting will be open to the public and will be held in-person and via web conference. Interested members of the public will be able to participate in the meeting from remote locations. The primary purposes of this meeting are to update the Committee on the progress of the NCST investigation focused on the impacts of Hurricane Maria in Puerto Rico, progress of the NCST investigation focused on the Champlain Towers

South partial building collapse that occurred in Surfside, Florida, and the implementation of recommendations from previous investigations. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST website at <https://www.nist.gov/topics/disaster-failure-studies/national-construction-safety-team-ncst/advisory-committee-meetings>.

Individuals and representatives of organizations who would like to offer comments and suggestions related to items on the Committee's agenda for this meeting are invited to request a place on the agenda. Approximately twenty minutes will be reserved for public comments and speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received. Questions from the public will not be considered during this period. All those wishing to speak must submit their request by email to the attention of Tina Faecke at tina.faecke@nist.gov by 5:00 p.m. Eastern Time, Friday, June 2, 2023. Any member of the public is also permitted to file a written statement with the advisory committee; speakers who wish to expand upon their oral statements, those who wish to speak but cannot be accommodated on the agenda, and those who are unable to attend are invited to submit written statements electronically by email to disaster@nist.gov.

All visitors to the NIST site are required to pre-register to be admitted. Anyone wishing to attend this meeting in-person or via web conference must register by 5:00 p.m. Eastern Time, Friday, June 2, 2023, to attend. Please submit your full name, the organization you represent (if applicable), email address, and phone number to Tina Faecke at tina.faecke@nist.gov. Non-U.S. citizens must submit additional information; please contact Tina Faecke at tina.faecke@nist.gov. For participants attending in person, please note that federal agencies, including NIST, can only accept a state issued driver's license or identification card for access to federal facilities if such license or identification card is issued by a state that is compliant with the REAL ID Act of 2005 (Pub. L. 109-13), or by a state that has an extension for REAL ID compliance. NIST currently accepts other forms of federal-issued identification in lieu of a state-issued driver's license. For detailed information please contact Tina Faecke

or visit: http://www.nist.gov/public_affairs/visitor/.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023-07329 Filed 4-6-23; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC891]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of final determination and discussion of underlying biological and environmental analyses; notice of availability of Finding of No Significant Impact.

SUMMARY: NMFS has evaluated the joint resource management plan (RMP) submitted to NMFS by the Sauk-Suiattle Indian Tribe, Swinomish Indian Tribal Community, Upper Skagit Indian Tribe, and the Washington Department of Fish and Wildlife, pursuant to the limitation on take prohibitions for actions conducted under Limit 6 of the 4(d) Rule for salmon and steelhead promulgated under the Endangered Species Act (ESA). The Skagit River steelhead fishery RMP manages harvest of ESA-listed, Skagit River steelhead in Treaty Indian fisheries and non-Treaty recreational fisheries in the Skagit River terminal area of Washington State. This document serves to notify the public that NMFS, by delegated authority from the Secretary of Commerce, had determined pursuant to Limit 6 of the 4(d) Rule for salmon and steelhead that implementing and enforcing this RMP will not appreciably reduce the likelihood of survival and recovery of Puget Sound steelhead. In compliance with the National Environmental Policy Act (NEPA), NMFS also announces the availability of its Finding of No Significant Impact for the Skagit River steelhead fisheries, under the RMP.

DATES: The final determination of take prohibition limitation under the ESA was made on March 22, 2023. The Finding of No Significant Impact was signed on March 22, 2023.

ADDRESSES: Written responses to the determination should be addressed to the NMFS Sustainable Fisheries Division, 1009 College St. Southeast, Suite 210, Lacey, WA 98503.

FOR FURTHER INFORMATION CONTACT: James Dixon at (360) 522-3673 or by email at james.dixon@noaa.gov.

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

Steelhead (*Oncorhynchus mykiss*): threatened, naturally produced and artificially propagated Puget Sound.

Background

The Sauk-Suiattle Indian Tribe, Swinomish Indian Tribal Community, Upper Skagit Indian Tribe, and Washington Department of Fish and Wildlife have jointly submitted a steelhead fishery RMP to NMFS pursuant to the limitation on take prohibitions for actions conducted under Limit 6 of the 4(d) Rule for salmon and steelhead promulgated under the Endangered Species Act (ESA). The plan was submitted on December 6, 2021, pursuant to limit 6 of the 4(d) Rule for ESA-listed salmon and steelhead. The RMP would manage the harvest of Skagit River natural-origin steelhead in the Skagit River terminal marine area. As required, NMFS took public comments on its recommended determination for how the plans address the criteria in § 223.203(b)(5) prior to making its final determination.

Discussion of the Biological Analysis Underlying the Determination

The goal of the Skagit RMP is to provide steelhead fishing opportunities for the Skagit River Treaty Indian Tribes and for recreational fishers, in a manner that is conservative at higher run sizes and increasingly so at lower run sizes. For a period of 10 years (through April 30, 2032), the Skagit RMP will allow implementation of annual steelhead fisheries in the Skagit terminal management area consistent with the impact limits, management framework, enforcement and monitoring requirements, as described in the RMP. The Skagit RMP utilizes an abundance-based, stepped harvest regime to determine annual harvest rates, based on the annual estimated run size. These stepped harvest rates range from a 4 percent total allowable harvest rate at low run sizes (<4,001 adults) to 25 percent for runs greater than 8,001 adults.

The Sustainable Fisheries Division (SFD) has analyzed the Skagit RMP's proposed abundance-based, stepped harvest regime, along with the conservation measures proposed in the plan. We have concluded that the Skagit RMP would provide effective protection to the Skagit River steelhead populations and would not jeopardize

the Puget Sound Steelhead Distinct Population Segment (DPS) based on parameters defining a viable salmonid population in terms of overall abundance and productivity, as well as the diversity and spatial structure of the steelhead within the Skagit River basin and the role of the Skagit steelhead to the larger DPS. The Skagit RMP will provide for the proposed harvest opportunities while not appreciably slowing the population's achievement of viable function or appreciably reducing the survival and recovery of the Puget Sound Steelhead DPS.

NMFS' determination on the Skagit RMP depends upon implementation of all of the monitoring, evaluation, reporting tasks or assignments, and enforcement activities included in the RMP. Reporting and inclusion of new information derived from research, monitoring, and evaluation activities described in the plan provide assurance that performance standards will be achieved in future seasons. NMFS' evaluation is available on the West Coast Region website at: <https://www.fisheries.noaa.gov/action/skagit-basin-steelhead-fishery>.

Summary of Comments Received in the Response to the Proposed Evaluation and Pending Determination

NMFS published notice of its Proposed Evaluation and Pending Determination (PEPD) on the plan for public review and comment on December 23, 2022 (87 FR 78944). The PEPD was available for public review and comment for 30 days.

During the public comment period, 28 comments were received, all by email. These came in the form of: individual, unique comments, and letters from fishing and conservation organizations. NMFS thoroughly reviewed and considered all of the substantive comments received from the public and the additional literature cited. This review of new information and data informed NMFS' subsequent analysis, in its biological opinion, but did not lead to any changes to the Skagit RMP, as submitted, or to SFD's determination that the plan adequately addresses the 4(d), Limit 6 criteria. A section summarizing and responding to the substantive comments received during the public comment period on the PEPD is included as part of the final evaluation document, available on the West Coast Region website. Based on its evaluation and recommended determination, and considering the public comments, NMFS issued its final determination on the joint state-tribal plan on March 22, 2023.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) Rule (50 CFR 223.203(b)) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to actions undertaken in compliance with a plan developed jointly by a state and a tribe and determined by NMFS to be in accordance with the salmon and steelhead 4(d) Rule (65 FR 42422, July 10, 2000).

Dated: April 4, 2023.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023-07330 Filed 4-6-23; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC888]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. The Exempted Fishing Permit would allow commercial fishing vessels to fish outside fishery regulations in support of research conducted by the applicant. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Coastal Fisheries Cooperative Management Act require publication of this notification to provide interested parties the opportunity to comment on

applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before April 24, 2023.

ADDRESSES: You may submit written comments by the following method:

- *Email: nmfs.gar.efp@noaa.gov.*

Include in the subject line “Blue Planet Strategies 2023 On-Demand Gear EFP.”

FOR FURTHER INFORMATION CONTACT:

Laura Deighan, Fishery Management Specialist, *Laura.Deighan@noaa.gov*, (978) 281-9184.

SUPPLEMENTARY INFORMATION: Blue Planet Strategies submitted a complete application for an Exempted Fishing Permit (EFP) to conduct commercial fishing activities that the regulations would otherwise restrict to expand trials of on-demand fishing gear that uses one or no surface buoys. This EFP would exempt the participating vessels from the gear marking requirements at 50 CFR 697.21(b)(2) to allow the use of trawls of more than three traps with no more than one surface marking and § 648.84(b) to allow the use of gillnet gear with no more than one surface marking.

This project would be a continuation and expansion of Blue Planet Strategies trials of on-demand fishing systems aimed at reducing the entanglement risk to protected species, mainly the North Atlantic right whale, in the American lobster and Jonah crab and sink gillnet fisheries. Under the previous EFP, 6 lobster vessels made 136 trips and 175 deployments in Statistical Areas 513, 467, and 512. Four gillnet vessels made 83 trips and 60 deployments in Statistical Areas 521 and 513. Blue Planet Strategies states that they have not experienced gear conflicts as a result of their on-demand research to date. In addition to gear trials, Blue Planet Strategies has been involved in outreach efforts, including meetings and demonstrations with fishermen, fishing organizations, conservation organizations, fishery management agency staff and leadership, and other interested parties and presentations to the Ropeless Consortium and Society for Marine Mammalogy.

The objectives of this EFP include testing the efficacy of acoustic release devices and other alternatives to static vertical lines in both trap/pot and sink gillnet fisheries; testing the efficacy of sub-surface gear marking technology to relocate gear and notify other fishermen to the presence of gear in the absence of surface markings; testing smart buoy technology that signals gear location and movement; testing and comparing two sub-surface gear marking systems (including hull-mounted transducers);

and testing the viability of integrating SmartRafts, which monitor whale presence and changing ocean conditions, into on-demand gear.

If granted, this permit would allow up to 16 trap/pot vessels and 4 sink gillnet vessels to replace up to 4 of their existing trawls or strings with modified gear that replace one or both vertical lines with acoustic on-demand systems or other alternatives to static buoy lines (including, but not limited to, spooled systems, buoy and stowed rope systems, lift bag systems, and grappling). Initially, the researchers would work with 10 lobster vessels and 2 gillnet vessels, and would expand to the full number of vessels (16 and 4, respectively) in mid-to-late 2023, as additional funding and gear become available. While effort would occur year-round, the researchers anticipate the majority of effort would occur from May to October and fewer than 20 vessels would use on-demand gear at any given time.

For trap/pot gear trials, participants fish between 3 and 25 traps per trawl, in depths ranging from 50 to 400 ft (15.24 to 121.92 m), and with soak times of 2 to 4 days. The researchers expect 780 trips, with 2 pieces of modified gear set per trip, resulting in a total of 1,560 deployments. Participants would deploy on-demand trap/pot gear in Lobster Management Area 1 and, to a lesser extent, Lobster Management Area 3, and would target areas that are not as heavily fished by mobile fleets to reduce the risk of gear conflicts. This project would include the opportunity for up to 12 of the participating lobster vessels to trial gear without static vertical lines in Atlantic Large Whale Take Reduction Plan (ALWTRP) Restricted Areas.

For gillnet trials, participants fish a maximum of 21 nets of 300 ft (91.44 m) or less for 6 to 8 hours. The researchers expect 104 trips, with 2 pieces of modified gear set per trip, resulting in a total of 208 deployments. Gillnet participants would deploy gear in Statistical Area 521 (approximately 50 deployments), Area 538 (approximately 10 deployments), and in the Georges Bank Regulated Mesh Area (148 deployments).

Some units would be outfitted with EdgeTech acoustic marking technology, acoustic triggers, and software. Other units would be outfitted with Teledyne undersea modem marking technology, acoustic triggers, and software. All units would include smart buoys on each anchoring unit, outfitted with GPS for data collection and lost gear retrieval.

Other than gear markings, all trap trawls and gillnet strings would be consistent with the regulations of the

management area where the vessel is fishing. This permit would exempt participating vessels from the specified Federal regulations in Federal waters only. The applicant would be responsible for obtaining any necessary state authorizations. This EFP would not exempt the vessels from any requirements imposed by any state, the Endangered Species Act, the Marine Mammal Protection Act, or any other applicable laws.

Blue Planet Strategies and engineering teams representing the respective prototype would oversee initial deployments of on-demand gear. If necessary, participants would use a GoPro System, or other recording device, on deck to record the success and/or failures of some or all of the retrievals for review. Participants would record data on standardized data collection sheets (specific to the relevant sub-project). Blue Planet Strategies has proposed permit conditions and requirements similar to those included in other on-demand EFPs to minimize the chance of causing injury to right whales and mitigate the risk of gear conflicts, including:

- All vessels would report all right whale sightings to NMFS via ne.rw.survey@noaa.gov or NOAA (866-755-6622) or the U.S. Coast Guard (Channel 16);

- All vessels would provide mandatory, weekly gear loss reports;

- All vessels would retrieve on-demand vertical lines as quickly as possible to minimize time in the water column;

- All vessels would adhere to current approach regulations—a 500-yard (457.2-meter or 1,500-foot) buffer zone created by a surfacing right whale—and must depart immediately at a safe and slow speed, in accordance with current regulations. Hauling any lobster gear would immediately cease, by either removal or resetting, to accommodate the regulation and be reinitiated only after it is reasonable to assume the whale has left the area;

- All vessels would use smart buoy technology to provide alerts to the fishermen and the researcher staff within 2 hours of an unplanned release of a stowed line;

- All vessels would use the Trap Tracker or an equivalent application to record positioning details, which would be available to Federal, state, and corresponding enforcement personnel, as well as other fishermen;

- Vessels would operate within a 10-knot speed limit when transiting Restricted Areas or when whales are observed;

- When fishing in ALWTRP Restricted Areas, on-demand vertical lines would be marked with unique markings in addition to ALWTRP regulations. The specific markings/color combinations would be agreed upon by the NMFS Atlantic Large Whale Take Reduction Team Coordinator and provided to the Office of Law Enforcement;

- When fishing in ALWTRP Restricted Areas, vessels would check real-time right whale sightings information (such as Right Whale Sightings Advisories and Whale ALERT) before setting any gear and avoid areas of high right whale abundance;

- When fishing in ALWTRP Restricted Areas, all vessels would avoid operation between dusk and dawn;

- The principal investigators would update the appropriate regional and state management partners on a regular basis to the level necessary to avoid miscommunication and maintain effective working relationships;

- The principal investigators would regularly provide the approximate location and intensity of fishing in Restricted Areas where trawls will not have any surface markers and would proactively communicate within local ports with mobile and fixed gear fleets on fishing effort and location under the EFP, with particular focus on the Restricted Areas. Communications would be tailored to each region and port, and may include methods such as in-person meetings with fishermen in ports in advance of research activities to discuss gear locations, email or text contact with fishing vessels identified by the Vessel Monitoring System as fishing in the research area, Coast Guard notices to mariners, and any other methods that will assure local fishermen are informed about research activities in order to avoid any potential gear conflicts;

- Participants would document and researchers would summarize all instances of gear conflicts/gear loss in the final report; and

- A copy of the final report would be provided to NMFS within 6 months of the expiration of the EFP.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the

scope of the exempted fishing activity would be prohibited.

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

Dated: April 3, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023-07262 Filed 4-6-23; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO-P-2022-0045]

USPTO AI Inventorship: Notice of Public AI Inventorship Listening Session—East Coast

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of public listening session.

SUMMARY: The United States Patent and Trademark Office (USPTO) plays an important role in incentivizing and protecting innovation, including innovation enabled by artificial intelligence (AI), to ensure continued U.S. leadership in AI and other emerging technologies (ET). On February 14, 2023, the USPTO published a **Federal Register** Notice requesting comments regarding AI and Inventorship. The USPTO is announcing a public listening session on April 25, 2023, titled “AI Inventorship Listening Session.” The purpose of the listening session is to seek stakeholder input on the current state of AI technologies and inventorship issues that may arise in view of the advancement of such technologies, as set forth in the questions posed in the **Federal Register** Notice of February 14, 2023.

DATES: The AI Inventorship Listening Session will be held on April 25, 2023, from 10:30 a.m. to 2:45 p.m. ET. Anyone seeking to speak at the listening session must register by 5 p.m. ET on April 20, 2023. Anyone seeking to attend, either virtually or in person, but not speak at the event must register by April 24, 2023. Seating is limited for in-person attendance.

ADDRESSES: The public AI Inventorship Listening Session will take place virtually and in-person at the USPTO Headquarters, National Inventors Hall of Fame Museum, 600 Dulany Street, Alexandria, VA 22314. All major entrances to the building are accessible to people with disabilities. Registration is required for both virtual and in-

person attendance. Information on registration is available at <https://www.uspto.gov/initiatives/artificial-intelligence/ai-and-emerging-technology-partnership-engagement-and-events>. Registrants must indicate whether they are registering as a listen-only attendee or as a speaker participant. More information about requests to participate as a speaker is provided below.

FOR FURTHER INFORMATION CONTACT:

Aleksandr Kerzhner, Supervisory Patent Examiner, 571-270-1760 or Srilakshmi Kumar, Supervisory Patent Examiner, 571-272-7769. You can also send inquiries to AIPartnership@uspto.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In June 2022, the USPTO announced the formation of the AI/ET Partnership, which provides an opportunity to bring stakeholders together through a series of engagements to share ideas, feedback, experiences, and insights on the intersection of intellectual property and AI/ET. To build on the AI/ET Partnership efforts, in February 2023, the USPTO issued a **Federal Register** Notice titled “Request for Comments Regarding Artificial Intelligence and Inventorship,” 88 FR 9492 (February 14, 2023) (available at <https://www.federalregister.gov/documents/2023/02/14/2023-03066/request-for-comments-regarding-artificial-intelligence-and-inventorship>). The AI Inventorship Request for Comments (RFC) posed 11 questions for public comment on the current state of AI technologies and inventorship issues that may arise in view of the advancement of such technologies, especially as AI plays a greater role in the innovation process. As indicated by the AI Inventorship RFC, the USPTO will hold stakeholder engagement sessions that will be announced in the **Federal Register** and posted on the AI/ET Partnership web page at <https://www.uspto.gov/aipartnership>. The USPTO is announcing the first of these stakeholder engagement sessions through this notice.

II. Public Listening Session

The USPTO will hold a public listening session on April 25, 2023 at the USPTO Headquarters, National Inventors Hall of Fame Museum, 600 Dulany Street, Alexandria, VA 22314. The listening session will be held virtually and in person from 10:30 a.m. to 2:45 p.m. ET. For registration, please visit [https://www.uspto.gov/initiatives/artificial-intelligence/ai-and-emerging-technology-partnership-engagement-](https://www.uspto.gov/initiatives/artificial-intelligence/ai-and-emerging-technology-partnership-engagement-and-events)

and-events. Registrants must indicate whether they are registering as a listen-only attendee or as a speaker participant.

Requests to participate as a speaker must include:

1. The name of the person desiring to participate;
2. The organization(s) that person represents, if any;
3. Contact information (zip code, telephone number, and email address);
4. Information on the specific topic(s) or question(s) from the RFC of interest to the speaker (or their organization); and
5. Full text of comments to be articulated during the listening session (discussed further below).

Speaking slots are limited, preference will be given to speakers based on the specific topic or question(s) provided in the request to participate. Selected speakers may be grouped by topic. Topics and speakers will be announced a few days prior to the event and listening session. Speakers may attend virtually or in person and are required to submit their remarks for the listening session in advance through the Federal eRulemaking Portal at <https://www.regulations.gov>. We will inform each speaker in advance of their assigned time slot. Time slots will be at least three minutes but may be longer, depending on the number of speakers registered. USPTO personnel may reserve time to ask questions of particular speakers after the delivery of a speaker's remarks.

The listening session will be physically accessible to people with disabilities. Individuals requiring accommodation, such as sign language interpretation or other ancillary aids, should communicate their needs to the individuals listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the listening session.

III. Questions From the AI Inventorship RFC for Discussion at Listening Session

The purpose of the listening session is to obtain public input from a broad group of stakeholders on the current state of AI technologies and inventorship issues that may arise in view of the advancement of such technologies, as set forth in the questions presented in the **Federal Register** Notice titled “Request for Comments Regarding Artificial Intelligence and Inventorship,” 88 FR 9492 (February 14, 2023) (available at <https://www.federalregister.gov/documents/2023/02/14/2023-03066/request-for-comments-regarding-artificial-intelligence-and-inventorship>).

We encourage interested speakers to address the questions posed in the AI Inventorship RFC and to submit research and data that explain their comments on these questions. Official written comments to the questions raised in the AI Inventorship RFC should be submitted as outlined in the AI Inventorship RFC. For convenience, a list of the AI Inventorship RFC questions is provided below in their entirety.

1. How is AI, including machine learning, currently being used in the invention creation process? Please provide specific examples. Are any of these contributions significant enough to rise to the level of a joint inventor if they were contributed by a human?

2. How does the use of an AI system in the invention creation process differ from the use of other technical tools?

3. If an AI system contributes to an invention at the same level as a human who would be considered a joint inventor, is the invention patentable under current patent laws? For example:

a. Could 35 U.S.C. 101 and 115 be interpreted such that the Patent Act only requires the listing of the natural person(s) who invent(s), such that inventions with additional inventive contributions from an AI system can be patented as long as the AI system is not listed as an inventor?

b. Does the current jurisprudence on inventorship and joint inventorship, including the requirement of conception, support the position that only the listing of the natural person(s) who invent(s) is required, such that inventions with additional inventive contributions from an AI system can be patented as long as the AI system is not listed as an inventor?

c. Does the number of human inventors impact the answer to the questions above?

4. Do inventions in which an AI system contributed at the same level as a joint inventor raise any significant ownership issues? For example:

a. Do ownership rights vest solely in the natural person(s) who invented or do those who create, train, maintain, or own the AI system have ownership rights as well? What about those whose information was used to train the AI system?

b. Are there situations in which AI-generated contributions are not owned by any entity and therefore part of the public domain?

5. Is there a need for the USPTO to expand its current guidance on inventorship to address situations in which AI significantly contributes to an invention? How should the significance of a contribution be assessed?

6. Should the USPTO require applicants to provide an explanation of contributions AI systems made to inventions claimed in patent applications? If so, how should that be implemented, and what level of contributions should be disclosed? Should contributions to inventions made by AI systems be treated differently from contributions made by other (*i.e.*, non-AI) computer systems?

7. What additional steps, if any, should the USPTO take to further incentivize AI-enabled innovation (*i.e.*, innovation in which machine learning or other computational techniques play a significant role in the invention creation process)?

8. What additional steps, if any, should the USPTO take to mitigate harms and risks from AI-enabled innovation? In what ways could the USPTO promote the best practices outlined in the Blueprint for an AI Bill of Rights¹ and the AI Risk Management Framework² within the innovation ecosystem?

9. What statutory changes, if any, should be considered as to U.S. inventorship law, and what consequences do you foresee for those statutory changes? For example:

a. Should AI systems be made eligible to be listed as an inventor? Does allowing AI systems to be listed as an inventor promote and incentivize innovation?

b. Should listing an inventor remain a requirement for a U.S. patent?

10. Are there any laws or practices in other countries that effectively address inventorship for inventions with significant contributions from AI systems?

11. The USPTO plans to continue engaging with stakeholders on the intersection of AI and intellectual property. What areas of focus (*e.g.*, obviousness, disclosure, data protection) should the USPTO prioritize in future engagements?

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2023-07289 Filed 4-6-23; 8:45 am]

BILLING CODE 3510-16-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Dispute; Change

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Notice of dispute and possible change.

SUMMARY: This action provides public notice of a dispute over a Procurement List product that is furnished by a nonprofit agency employing persons who are blind or have significant disabilities.

DATES: Comments must be received on or before: May 8, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785-6404, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Notice

If the Committee determines during the adjudication process that appropriate resolution to this dispute is an amendment to this Procurement List product, the Committee will publish a Final Notice in the **Federal Register** reflecting the change.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on any small entities. The major factors considered for this certification were:

1. The action did not result in any additional reporting, recordkeeping, or other compliance requirements for small entities other than the nonprofit agencies furnishing the services to the Government.

2. The action did result in authorizing nonprofit agencies to furnish the products to the Government.

3. There were no known regulatory alternatives which would have accomplished the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the products added to the Procurement List.

End of Certification

The following Procurement List product(s) have been referred to the Commission for dispute resolution.

Product(s)

ACU Patrol Cap, OCP 2015, NSN 8415-01-630-8905 (+13 additional sizes)
NPA: Southeastern Kentucky Rehabilitation

Industries, Corbin, KY
Contracting Activity: Defense Logistics Agency (DLA)

The Committee for Purchase From People Who Are Blind or Severely Disabled (operating as the U.S. AbilityOne Commission) advises that on March 8, 2023, a dispute over the ACU Patrol Cap, OCP 2015 was remanded to the Commission by the U.S. Court of Federal Claims. After an initial review of relevant information, this dispute was referred to the Deciding Official for adjudication in accordance with the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506), the Commission's regulations at 41 CFR chapter 51, and Commission policies and procedures. Because adjudication could require an amendment to the Procurement List, this notice provides interested parties the opportunity to provide comments to the Commission about the dispute generally and serves as the Commission's public notice on potential Procurement List changes. The Commission requests all comments be sent no later than May 8, 2023, to Cassandra Assefa, Regulatory and Policy Attorney, Office of General Counsel, U.S. AbilityOne Commission; email: disputes@abilityone.gov.

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023-07340 Filed 4-6-23; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and deletes product(s) and service(s) previously furnished by such agencies.

DATES: Comments must be received on or before: May 7, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785-6404, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

¹ See <https://www.whitehouse.gov/ostp/ai-bill-of-rights/>.

² See <https://www.nist.gov/itl/ai-risk-management-framework>.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service(s)

Service Type: Custodial Service

Mandatory for: US Navy, Naval Surface Warfare Center, NSA Crane (Except B-3291, B-3324, & B-3334), Crane & Glendora Test Facility, Sullivan, IN

Designated Source of Supply: GW Commercial Services, Inc., Indianapolis, IN

Contracting Activity: DEPT OF THE NAVY, NAVAL FAC ENGINEERING CMD MID LANT

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

7045-01-357-9939—Tape, Electronic Data

7045-01-240-4951—Mini-Cartridge, Data, 40 MB, 3 1/2'

Designated Source of Supply: North Central Sight Services, Inc., Williamsport, PA

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):

8455-01-113-2631—Qualification Badge, Air Assault, U.S. Army

Designated Source of Supply: Fontana Resources at Work, Fontana, CA

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):

MR 11300—Water Bottle, Travel, Addison, 24 oz.

Designated Source of Supply: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY

Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s):

MR 13082—Water Bottle, Contigo, 24 oz

MR 13085—Tumbler, Kids, Contigo, 14 oz

MR 13089—Mug, Travel, Plastic, West Loop 2.0, 16 oz

Designated Source of Supply: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY

Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s):

MR 13127—Colander, Plastic

Designated Source of Supply: CINCINNATI ASSOCIATION FOR THE BLIND AND VISUALLY IMPAIRED, Cincinnati, OH

Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s):

8415-01-575-4514—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Large/Long

8415-01-575-4427—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Large/Regular

8415-01-575-4246—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Large/Short

8415-01-575-4510—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Medium/Long

8415-01-575-4445—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Medium/Regular

8415-01-575-4051—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Medium/Short

8415-01-575-4508—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Small/Long

8415-01-575-4394—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Small/Regular

8415-01-575-4046—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Small/Short

8415-01-575-4515—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, X-Large/Long

8415-01-575-4457—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, X-Large/Regular

8415-01-575-4254—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, X-Large/Short

8415-01-575-4502—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, XX-Large/Long

8415-01-575-4031—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, X-Small/Short

8415-01-575-4518—Jacket, Physical Fitness Uniform, Army, LongS, Universal Camouflage, XX-Large/Long

8415-01-575-4434—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, XX-Large/Regular

8415-01-575-4275—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, XX-Large/Short

8415-01-575-4521—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, XXX-Large/Long

8415-01-575-4466—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, XXX-Large/Regular

8415-01-575-4288—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, XXX-Large/Short

8415-01-575-4295—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, X-Small/Regular

Designated Source of Supply: Blind

Industries & Services of Maryland, Baltimore, MD

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):

8415-01-575-4514—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Large/Long

8415-01-575-4427—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Large/Regular

8415-01-575-4246—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Large/Short

8415-01-575-4510—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Medium/Long

8415-01-575-4445—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Medium/Regular

8415-01-575-4051—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Medium/Short

8415-01-575-4508—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Small/Long

8415-01-575-4394—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Small/Regular

8415-01-575-4046—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, Small/Short

8415-01-575-4515—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, X-Large/Long

8415-01-575-4457—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, X-Large/Regular

8415-01-575-4254—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, X-Large/Short

8415-01-575-4502—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, X-Small/Long

8415-01-575-4031—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, X-Small/Short

8415-01-575-4518—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, XX-Large/Long

8415-01-575-4434—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, XX-Large/Regular

8415-01-575-4275—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, XX-Large/Short

8415-01-575-4521—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, XXX-Large/Long

8415-01-575-4466—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, XXX-Large/Regular

8415-01-575-4288—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, XXX-Large/Short

8415-01-575-4295—Jacket, Physical Fitness Uniform, Army, Long Sleeve, Universal Camouflage, X-Small/Regular

Designated Source of Supply: Winston-Salem Industries for the Blind, Inc, Winston-Salem, NC

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):

7520-01-680-7012—Pencil Sharpener, Electric, Horizontal, 6 Hole Adjustable, Grey and Green

7520-01-680-7013—Pencil Sharpener, Electric, Horizontal, 1 Hole, Heavy Duty, Grey

Designated Source of Supply: Blind Center of Nevada, Inc., Las Vegas, NV

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

NSN(s)—Product Name(s):

8920-01-E62-5585—Rice, Brown, Whole Grain, Parboiled, Long Grain, CS/Four (4) Five (5) Pound Bags
Designated Source of Supply: VisionCorps, Lancaster, PA

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):

7520-01-619-0303—Portable Desktop Clipboard, 9½" W × 1½" D × 13½" H, Blue

7520-01-653-5888—Clipboard, Desktop, Reflective Orange, 9½" W × 1½" D × 13½" H

7520-01-653-5890—Clipboard, Desktop, Reflective Red/Green, 9½" W × 1½" D × 13½" H

Designated Source of Supply: LC Industries, Inc., Durham, NC

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

NSN(s)—Product Name(s):

7510-01-020-2806—Correction Fluid, Water-Based, Type I, White

7510-01-333-6242—Correction Fluid, Solvent-Based, Type III, White

Designated Source of Supply: The Lighthouse for the Blind, St. Louis, MO

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

Service(s)

Service Type: Janitorial/Custodial

Mandatory for: US Army Reserve, PFC Anthony F. Eafrazi USARC, 100 Front Street, Weirton, WV

Designated Source of Supply: Hancock County Sheltered Workshop, Inc., Weirton, WV

Contracting Activity: DEPT OF THE ARMY, W6QK ACC-PICA

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023-07342 Filed 4-6-23; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) from the Procurement List previously furnished by such agencies.

DATES: Date added to and deleted from the Procurement List: May 7, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785-6404, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Additions

On 12/9/2022, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51-2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) and service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service(s) to the Government.
2. The action will result in authorizing small entities to furnish the service(s) to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service(s) are added to the Procurement List:

Service(s)

Service Type: Base Supply Center
Mandatory for: United States Naval Academy, Annapolis, MD

Designated Source of Supply: Winston-Salem Industries for the Blind, Inc, Winston-Salem, NC

Contracting Activity: DEPT OF THE NAVY, NAVSUP FLT LOG CTR NORFOLK

Deletions

On 2/3/2023 and 2/10/2023, the Committee for Purchase From People Who Are Blind or Severely Disabled

published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51-2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the product(s) to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the product(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

7510-01-600-7579—Wall Calendar, Dated 2022, Wire Bound w/Hanger, 15½" × 22"

7510-01-600-7585—Monthly Wall Calendar, Dated 2022, Jan-Dec, 8½" × 11"

7510-01-600-7633—Wall Calendar, Dated 2022, Wire Bound w/Hanger, 12" × 17"

7510-01-682-8097—Wall Calendar, Recycled, Dated 2022, Vertical, 3 Months, 12¼" × 26"

7510-01-682-8092—Monthly Planner, Recycled, Dated 2022, 14-Month, 6⅞" × 8¾"

7510-01-682-8111—Professional Planner, Dated 2022, Recycled, Weekly, Black, 8½" × 11"

7530-01-600-7576—Daily Desk Planner, Dated 2022, Wire Bound, Non-refillable, Black Cover

7530-01-600-7602—Monthly Desk Planner, Dated 2022, Wire Bound, Non-refillable, Black Cover

7530-01-600-7608—Weekly Desk Planner, Dated 2022, Wire Bound, Non-refillable, Black Cover

7530-01-600-7619—Weekly Planner Book, Dated 2022, 5" × 8", Black

Designated Source of Supply: Chicago Lighthouse Industries, Chicago, IL

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

NSN(s)—Product Name(s):

MR 1021—Holder, Pot, Deluxe, Black

Designated Source of Supply: Alphapointe, Kansas City, MO
Contracting Activity: Military Resale-Defense Commissary Agency
 NSN(s)—Product Name(s):
 MR 11041—Gift Bag Set, Cellophane, Christmas
Designated Source of Supply: Winston-Salem Industries for the Blind, Inc, Winston-Salem, NC
Contracting Activity: Military Resale-Defense Commissary Agency
 NSN(s)—Product Name(s):
 MR 876—Ergo Ice Cream Scoop
Designated Source of Supply: CINCINNATI ASSOCIATION FOR THE BLIND AND VISUALLY IMPAIRED, Cincinnati, OH
Contracting Activity: Military Resale-Defense Commissary Agency
 NSN(s)—Product Name(s):
 4730-01-112-3240—Cabinet, Fitting Kit
Designated Source of Supply: The Opportunity Center Easter Seal Facility—The Ala ES Soc, Inc., Anniston, AL
Contracting Activity: DLA LAND AND MARITIME, COLUMBUS, OH

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023-07343 Filed 4-6-23; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF DEFENSE

Department of the Air Force

[23-RI-L-03]

Notice of Intent To Grant an Exclusive License With a Joint Ownership Agreement

AGENCY: Department of The Air Force, Department of Defense.

ACTION: Notice of intent.

SUMMARY: Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of its intent to grant an exclusive license with a joint ownership agreement to Raider Technology, an LLC duly organized, validly existing, and in good standing in the State of Ohio having a place of business at 529 Garden Road, Oakwood, Ohio 45419.

DATES: Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this Notice.

ADDRESSES: Submit written objections to Stephen Colenzo, AFRL/RI, 525 Brooks Road, Rome, New York 13441; or Email: stephen.colenzo@us.af.mil. Include Docket No. 23-RI-L-02 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Stephen Colenzo, AFRL/RI, 525 Brooks Road, Rome, New York 13441; (315)

330-7665 or Email: stephen.colenzo@us.af.mil.

Abstract of Patent Application(s)

Method and apparatus for a frequency diverse array. Radio frequency signals are generated and applied to a power divider network. A progressive frequency shift is applied to all radio frequency signals across all spatial channels. Amplitude weighting signals are applied for sidelobe control. Phase control is included for channel compensation and to provide nominal beam steering. The progressive frequency offsets generate a new term which cause the antenna beam to focus in different directions as a function of range. Alternative embodiments generate different waveforms to be applied to each radiating element, permitting the transmission of multiple signals at the same time.

Intellectual Property

—WICKS ET AL, U.S. Patent No. 7,319,427, issued on 15 January 2008, and entitled “*Frequency Diverse Array with Independent Modulation of Frequency, Amplitude, and Phase.*”

The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

Authority: 35 U.S.C. 209; 37 CFR 404.

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2023-07359 Filed 4-6-23; 8:45 am]

BILLING CODE 5001-10-P

DEPARTMENT OF DEFENSE

Department of the Army

Final Legislative Environmental Impact Statement for Training and Public Land Withdrawal Extension, Fort Irwin, California

AGENCY: Department of the Army, Department of Defense.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the availability of the Final Environmental Impact Statement (EIS) for Training and Public Land

Withdrawal Extension, Fort Irwin, California. In accordance with the National Environmental Policy Act (NEPA), the EIS analyzes the potential environmental effects resulting from modernization of training activities and improvement of training facilities at the National Training Center (NTC) at Fort Irwin, California. The Army also is issuing this notice to inform the public that the EIS will serve as a Legislative Environmental Impact Statement (LEIS) to support the extension of the public land withdrawal for portions of Fort Irwin. The Army will execute a Record of Decision (ROD) for the modernization of training activities and improvement of training facilities portion of the proposed action no sooner than 30 calendar days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency’s (EPA’s) Notice of Availability of the Final LEIS.

ADDRESSES: The Final LEIS may be viewed at the following locations: (1) Barstow Public Library, 304 East Buena Vista Street, Barstow, CA 92311; (2) Fort Irwin NTC Post Library, 2nd Street Building 331, Fort Irwin, CA 92310; (3) Fort Irwin Environmental Division Directorate of Public Works, 5th Street Building 381, Fort Irwin, CA 92310. The Final LEIS also is available as an electronic file on the Fort Irwin EIS website: <https://aec.army.mil/index.php/irwin-nepa-meeting>.

FOR FURTHER INFORMATION CONTACT: Fort Irwin Public Affairs Office, Renita Wickes at 760-380-4511, Monday through Friday from 7:30 a.m. to 4:00 p.m., or via email at usarmy.irwin.ntc.mbx.ntc-eis-info-request@army.mil.

SUPPLEMENTARY INFORMATION: Fort Irwin comprises approximately 753,537 acres in the Mojave Desert in San Bernardino County in southern California. The NTC at Fort Irwin provides combined arms training for Brigade Combat Teams (BCTs), including the Army’s Stryker BCTs and Armored BCTs. Training also is provided for Marine Corps, Navy, Air Force, Army Reserve, National Guard units, and law enforcement organizations, as well as units stationed at Fort Irwin. Fort Irwin is one of the few places in the world where brigade-size units (5,000+ soldiers) can test their combat readiness due to Fort Irwin’s size, design, and terrain.

Fort Irwin’s mission is to train visiting Army units and joint, interagency, and multinational partners to fight and win in a complex world. Fort Irwin must also take care of soldiers, civilians, and family members. To achieve this mission, NTC designs and executes

training exercises that prepare brigade-level units for operational deployments. The capacity is needed at NTC to conduct up to 12 BCT training rotations per year.

The Final LEIS analyzes the potential effects from the modernization of training, the improvement of training infrastructure, and the extension of the existing public land withdrawal. Training changes are required to support new training doctrine that focuses on large Army formations operating against near-peer adversaries. Improvements need to be made to infrastructure in order to adjust training to reflect evolving weapon systems capabilities and new mission requirements.

Approximately 110,000 acres of Fort Irwin training land is public land that has been withdrawn from all types of appropriation and reserved for military purposes under Public Law 107–107 (2001). This public land withdrawal terminates on December 28, 2026. The Army has identified a continuing military need for the land beyond the termination date and intends to request that the U.S. Congress extend the withdrawal for at least 25 years, or in the alternative, for an indefinite period until there is no longer a military need for the land. The U.S. Army proposed action is to implement changes to training activities and training infrastructure at Fort Irwin. These actions would be undertaken to meet current doctrinal standards, including the National Defense Strategy, Army Regulation (AR) 350–1, *Army Training and Leader Development*; AR 350–52, *Training Support System*; AR 350–50, *Combat Training Center Program*; and AR 200–1, *Environmental Protection and Enhancement*. Actions proposed include the establishment of, and improvements to, training infrastructure such as trail networks, communications systems, radar systems, training areas, urban training sites, air operations infrastructure, and live-fire ranges.

The Final LEIS analyzes a range of Proposed Mission Change Alternatives, a No Mission Change Alternative, a Withdrawal Extension Alternative, and a No Withdrawal Extension Alternative.

- *Mission Change Alternatives*: The Mission Change Alternatives represent different magnitudes of change in training and training infrastructure. For Fort Irwin's Western Training Area, the Final LEIS considers a range of medium to heavy-intensity training alternatives.

- *No Mission Change Alternative*: The No Mission Change Alternative would continue military training at the current level and would result in no modernization of training or

improvement of training infrastructure at Fort Irwin. The Army is the decision maker regarding the mission change alternatives.

- *No Withdrawal Extension Alternative*: The No Withdrawal Extension Alternative would result in portions of the installation land returning to the public domain.

Upon an application by the Army, the Bureau of Land Management (BLM) will file in the **Federal Register** a separate notice of withdrawal extension application. The Final EIS will be submitted to the U.S. Congress as an LEIS to support the legislative request for extension of this withdrawal and reservation.

All military activities under consideration would be conducted within the existing boundaries of the installation, to include the withdrawn land. The Final LEIS evaluates the potential direct, indirect, and cumulative environmental and socioeconomic effects of the proposed action. Adverse effects would be minimized to the greatest extent possible through the implementation of specified avoidance, minimization, and mitigation measures.

The resource areas and effects analyzed in the Final LEIS include air quality, transportation, noise, water resources, geological resources, biological resources, cultural resources, utilities, land use, recreation, health and safety, hazardous materials, and waste. Resources may be affected by changing the scope or increasing the geographical area of military training activities within the current Fort Irwin boundaries. The analysis also considers the potential for cumulative environmental effects.

Both the Mission Change Alternatives and the No Mission Change Alternative would result in unavoidable environmental effects.

- *No Mission Change Alternative*: Under the No Mission Change Alternative, there would be less-than-significant effects on all evaluated resources. The mission change alternatives would result in minor to moderate adverse effects that would be in addition to the effects of the No Mission Change Alternative; however, none of the effects would be significant.

- *Withdrawal Extension Alternative*: The environmental effects from the Withdrawal Extension Alternative would be comparable to those discussed for the mission change alternatives.

- *No Withdrawal Extension Alternative*: While the effects of the No Withdrawal Extension Alternative are uncertain, because of the unknown future uses of these areas if Army training is not conducted on the land, it

is expected that the No Withdrawal Extension Alternative would result in negligible effects on resources compared to the effects of the Withdrawal Extension Alternative.

Fort Irwin met its obligations to consult under Section 106 of the National Historic Preservation Act concurrently with this NEPA process through the development of a Programmatic Agreement in consultation with the State Historic Preservation Office, the Advisory Council on Historic Preservation, other government agencies, Native American Tribes, and the public. The Programmatic Agreement was completed on December 15, 2022 and is provided as an appendix to the Draft LEIS.

Fort Irwin has completed consultation under section 7 of the Endangered Species Act (ESA) with the U.S. Fish and Wildlife Service regarding the proposed activities. The biological opinion (BO) that resulted from this consultation was issued by the U.S. Fish and Wildlife Service on December 13, 2021, and concludes that the proposed actions are not likely to jeopardize the continued existence of endangered or threatened species. Consultation identified appropriate measures that are specified in the BO and that will be implemented by Fort Irwin to avoid or minimize effects of the activities. Fort Irwin will comply with the ESA and implement the measures that are specified in the BO. The BO is provided as an appendix to the Draft LEIS.

The Department of the Army considered all comments received on the Draft LEIS when preparing the Final LEIS. Based on the analysis in the Final LEIS, the Army's preferred alternative consists of: the full Mission Change Alternative with Alternative 4 applied to the Western Training Area; and a request that Congress extend the land withdrawal for 25 years, or for an indefinite period until there is no longer a military need for the land.

Federal, State, and local agencies, Native Americans, Native American organizations, and the public were invited to be involved in the public comment process for the Draft LEIS by submitting written comments. The Draft LEIS was published on May 21, 2021, and the comment period closed on July 6, 2021. The NEPA Process included two public meetings conducted telephonically on June 9, 2021. Responses to comments on the Draft EIS are included in an appendix to the Final EIS.

The BLM will organize public participation following the publication

of its notice of application for extension of the public land withdrawal.

James W. Satterwhite Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2023-07321 Filed 4-6-23; 8:45 am]

BILLING CODE 3711-02-P

DEPARTMENT OF ENERGY

Activation Energy; DOE's National Laboratories as Catalysts of Regional Innovation; Extension of Comment Period

AGENCY: Office of Science, Office of Technology Transitions, Department of Energy.

ACTION: Request for information (RFI); extension of public comment period.

SUMMARY: The Department of Energy (DOE) Office of Science and the Office of Technology Transitions published a request for information (RFI) on January 27, 2023, inviting interested parties to provide input on place-based innovation opportunities that support the DOE mission. DOE received requests for an extension of the public comment period for an additional 30 days. DOE reviewed the requests and is granting a 30-day extension of the public comment period to allow comments to be submitted until April 28, 2023.

DATES: The comment period for the RFI published on January 27, 2023 (88 FR 5323), is extended. Responses to this RFI must be received by April 28, 2023.

ADDRESSES: DOE is using the www.regulations.gov system for the submission and posting of public comments in this proceeding. All comments in response to this RFI are therefore to be submitted electronically through www.regulations.gov, via the web form accessed by following the "Submit a Formal Comment" link near the top right of the **Federal Register** web page for this document.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information may be submitted to Charles.Russomanno@hq.doe.gov, (202) 378-7815, Susannah.Howieson@science.doe.gov, (202) 253-1997, Erik.Hadland@science.doe.gov, (240) 425, 8125, or Margaux.Murali@hq.doe.gov, (202) 586-3698.

SUPPLEMENTARY INFORMATION: The DOE's Office of Science and Office of Technology Transitions published an RFI in the **Federal Register** on January 27, 2023, (87 FR 5323), inviting interested parties to provide input on place-based innovation opportunities that support the DOE mission. DOE received requests from DOE National

Laboratories for an extension of the public comment. DOE grants an extension to the comment period from March 28, 2023, to April 28, 2023, to allow more time for the Labs to engage with regional stakeholders and for the Labs and stakeholders to submit full and comprehensive responses to the RFI.

Motivation

DOE is exploring opportunities to strengthen place-based innovation activities leveraging the DOE National Laboratories and Sites.¹

Background

Federally funded research and development (R&D) has catalyzed innovation that has driven economic growth in the form of new businesses, more jobs, increased wages, higher standards of living, and environmental sustainability. However, growth has been primarily localized in certain United States (U.S.) metropolitan regions that have become flourishing innovation ecosystems.² Elements of a thriving innovation ecosystem include, but are not limited to:³

¹ DOE Laboratories and sites are Ames Laboratory, Argonne National Laboratory, Bettis and Knolls Atomic Power Laboratories, Brookhaven National Laboratory, Fermi National Accelerator Laboratory, Kansas City National Security Campus, Lawrence Berkeley National Laboratory, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, National Energy Technology Laboratory and Albany Research Center, National Renewable Energy Laboratory, Nevada National Security Site, Oak Ridge National Laboratory, Pacific Northwest National Laboratory, Pantex Plant, Princeton Plasma Physics Laboratory, Savannah River National Laboratory, Sandia National Laboratory, SLAC National Accelerator Laboratory, Thomas Jefferson National Accelerator Facility, and Y-12 National Security Complex.

² Gruber, J., & Johnson, S. (2019). Jump-starting America: How breakthrough science can revive economic growth and the American dream; Atkinson, R., Muro, M., & Whiton, J. (2019). The Case for Growth Centers. The Brookings Institution & Information Technology and Innovation Foundation.

³ Kauffman F Bell-Masterson, Jordan and Stangler, Dane, Measuring an Entrepreneurial Ecosystem (March 2015). Available at SSRN: <https://ssrn.com/abstract=2580336> or <http://dx.doi.org/10.2139/ssrn.2580336>; Evolution of the Industrial Innovation Ecosystem of Resource-Based Cities (RBCs): A Case Study of Shanxi Province, China, Jun Yao, Huajing Li 1,*, Di Shang and Luyang Ding, 2021., <https://www.mdpi.com/2071-1050/13/20/11350/pdf>; MIT's Stakeholder Framework for Building and Accelerating Innovation Ecosystems, Budden, P, Murray, F., 2019, <https://innovation.mit.edu/assets/MIT-Stakeholder-Framework-Innovation-Ecosystems.pdf>; An MIT Framework for Innovation Ecosystem Policy, Budden, P, Murray, F, 2018, https://innovation.mit.edu/assets/Framework-Ecosystem-Policy_Oct18.pdf; Kauffman Foundation, Universities and Entrepreneurial Ecosystems, https://www.kauffmanfellows.org/journal_posts/universities-and-entrepreneurial-ecosystems-standford-silicon-valley-success; "What are the key components of an entrepreneurial ecosystem in a developing economy? A longitudinal empirical

• **Talent:** An educated and skilled workforce, as well as training programs to create and sustain this talent.

• **Infrastructure:** For research, commercial, industrial, and residential purposes—inclusive of physical spaces/facilities, utilities, transportation (including quality roadways and ready access to airports), and other features required for residential, industrial, and commercial purposes.

• **Technology:** Accessible scientific and technical knowledge throughout the research, development, demonstration, and deployment (RDD&D) continuum for commercialization and manufacturing.

• **Capital:** Access to financial resources (*i.e.*, venture capital, private equity, angel investors, etc.) and technical resources (*i.e.*, scientific and manufacturing equipment).

• **Social Capital:** Local networking to incentivize and support the existence, development, and growth of innovation programs and companies.

• **Policy:** Local and regional policies and incentives that support innovation-driven enterprises, economic development, and planning within a regional innovation center.

• **Collaboration with Industry:** Mutually beneficial partnerships between public and private sectors to facilitate the exchange of knowledge, accelerate the commercialization of technologies, promote workforce development, and increase awareness of promising research, as well as provide directions for new research needs.

• **Community:** Structure that supports the development, accessibility, inclusivity, environmental sustainability, and engagement with the local community in an equitable way.

Place-based innovation initiatives can be used to cultivate innovation ecosystems in regions that have yet to realize benefits from the innovation renaissance of the past few decades. Building on existing research institutions, industrial infrastructure, concentrations of workforce skills, and connections to regional philanthropic and other civil society institutions, DOE can contribute to supporting localized economic growth models which will promote new regional innovation ecosystems. DOE seeks to stimulate innovation in regions surrounding the National Laboratories and Sites by:

• Providing key RDD&D to accelerate commercialization of breakthrough technologies;

• Driving development in the industrial and technology sectors of the

study on technology business incubators in China", Xiangfei Yuana, Haijing Haob, Chenghua Guan, Alex Pentland, <https://arxiv.org/pdf/2103.08131>.

future, such as innovations in advanced manufacturing, and supply chains, among others;

- Fostering sustainable and equitable economic growth in underinvested regions of the U.S.;
- Creating long-term high paying jobs in existing and new industries;
- Facilitating engagement and partnership with local and regional communities adjacent to DOE Laboratories and Sites; and
- Training and educating both the current and future diverse, equitable, and inclusive workforce.

Innovation ecosystems anchored around DOE National Laboratories and Sites will directly support DOE's missions, including advancing new and emerging clean energy technologies, combatting the effects of climate change, developing technologies to support our nation's security, cleaning up of legacy nuclear waste, and developing a technically skilled workforce.

Purpose

DOE is seeking input from all stakeholders about opportunities for place-based innovation activities that leverage research institutions—particularly the National Laboratories and Sites—to catalyze innovation ecosystems, contribute to DOE's mission in energy, environment, and national security and ensure our nation's vibrant economic future. The information received in response to this RFI will inform, and be considered by, the DOE in program planning and development. This is solely a request for information and not a Funding Opportunity Announcement (FOA), prize, or other solicitation.

Request for Responses

The objective of this RFI is to identify both opportunities and challenges for developing place-based innovation ecosystems anchored by DOE National Laboratories and Sites. DOE is interested in hearing about potential new activities, as well as ongoing activities that would benefit from additional support. Information related, but not limited, to the following questions is requested:

Part A—Regional Characteristics

- What makes your region competitive or unique for innovation?
- What are your region's top three areas of technical expertise or attributes that are relevant to DOE's missions?
- What untapped potential exists in your region?
- What are the top three barriers to maximizing/growing your region's innovation ecosystem?

- What key areas of investment could be leveraged to realize untapped opportunities in your region?

Part B—Place-Based Innovation Activity

B.1: Existing Activities: Describe the Existing Place-Based Innovation Activity in Your Region

- How does the activity connect to the immediate region or other specific location?
- How does your activity engage with local/regional partners (e.g., Federal laboratories, industry, academia, financing/investment, community organizations, local and tribal governments, etc.)?
- Are there any DOE National Laboratories or Sites currently involved? If so, how?
- How does the activity contribute to one or more of the aforementioned key elements of an innovation ecosystem?
- How does the activity foster belonging, accessibility, justice, equity, diversity, and inclusion?
- What are the challenges for existing innovation activities in your region?
- How was this innovation activity initiated/funded?

B.2: Potential Activities: Describe Potential New or Expanded Place-Based Innovation Activities in Your Region

- How would the new or expanded activity connect to the immediate region or other specific location?
- How would your new or expanded activity engage with local/regional partners (e.g., Federal laboratories, industry, academia, funding/investment, community organizations, local and tribal governments, etc.)?
- How would the new or expanded activity contribute to one or more of the aforementioned key elements of an innovation ecosystem?
- How would the new or expanded activity foster belonging, accessibility, justice, equity, diversity, and inclusion?
- What are the potential benefits of the new or expanded activity for your region?
- What are the potential challenges for new innovation activities in your region?
- What level of support would be required to facilitate the new or expanded activity?
- What are potential sources of support for this expanded or new activity?

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should

submit via email two well-marked copies: one copy of the document marked “confidential” including all the information believed to be confidential, and one copy of the document marked “non-confidential” with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Signing Authority

This document of the Department of Energy was signed on April 3, 2023, by Dr. Geraldine L. Richmond, Under Secretary for Science and Innovation, pursuant to delegated authority from the Secretary of Energy. The 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 April 4, 2023.

Treena V. Garrett,
Federal Register Liaison Officer, U.S.
Department of Energy.

[FR Doc. 2023-07371 Filed 4-6-23; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice of request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995.

DATES: Comments regarding this proposed information collection must be received on or before May 8, 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, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 881-8585.

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:

Baldev Dhillon, EHSS-74, (301)-903-0990, Baldev.Dhillon@hq.doe.gov.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions 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.

This information collection request contains:

- (1) *OMB No.*: 1910-0300;
- (2) *Information Collection Request Titled*: Environment, Safety and Health;
- (3) *Type of Review*: Renewal;
- (4) *Purpose*: The collections are used by DOE to exercise management oversight and control over its contractors in the ways in which the DOE contractors provide goods and services for DOE organizations and activities in accordance with the terms of their contract(s); the applicable statutory, regulatory and mission support requirements of the Department.;

(5) *Annual Estimated Number of Respondents*: 775.

(6) *Annual Estimated Number of Total Responses*: 73,040.

(7) *Annual Estimated Number of Burden Hours*: 33,771.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden*: \$2,966,783.

Statutory Authority: Section 641 of the Department of Energy Organization Act, codified at 42 U.S.C. 7251, and the following additional authorities:

Computerized Accident/Incident Reporting System (CAIRS): DOE Order 231.1B (November 28, 2012).

Occurrence Reporting and Processing System (ORPS): DOE Order 232.2A (October 4, 2019).

Radiation Exposure Monitoring System (REMS): 10 CFR part 835; DOE Order 231.1B (November 28, 2012).

Annual Fire Protection Summary Application: DOE Order 231.1B (November 28, 2012).

Safety Basis Information System: 10 CFR part 830; DOE Order 231.1B (November 28, 2012).

DOE OPEXShare Lessons Learned System: DOE Order 210.2A (April 8, 2011).

Signing Authority

This document of the Department of Energy was signed on April 3, 2023, by Todd N. Lapointe, Director, Office of Environment, Health, Safety and Security, 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 April 4, 2023.

Treana V. Garrett,

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

[FR Doc. 2023-07370 Filed 4-6-23; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14634-006]

New England Hydropower Company, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing*: Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.*: 14634-006.

c. *Date Filed*: January 17, 2023.

d. *Submitted By*: New England Hydropower Company, LLC (NEHC).

e. *Name of Project*: Ashton Dam Hydroelectric Project (project).

f. *Location*: On the Blackstone River in Providence County, Rhode Island. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant To*: 18 CFR 5.3 and 5.5 of the Commission’s regulations.

h. *Potential Applicant Contact*: Ms. Carol Wasserman, New England Hydropower Company, LLC, 100 Cummings Center, Suite 451C, Beverly, MA 01915; Phone at (339) 293-3157, or email at carol@nehypower.com.

i. *FERC Contact*: Arash Barsari at (202) 502-6207; or email at Arash.JalaliBarsari@ferc.gov.

j. NEHC filed its request to use the Traditional Licensing Process on January 17, 2023, and provided public notice of its request on January 19, 2023 and January 26, 2023. In a letter dated March 2, 2023, the Director of the Division of Hydropower Licensing approved NEHC’s request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Rhode Island State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating NEHC as the Commission’s non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and consultation pursuant to section 106 of the National Historic Preservation Act.

m. On January 17, 2023, NEHC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission’s regulations.

n. A copy of the PAD may be viewed and/or printed on the Commission’s website (<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 at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). 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.

o. The applicant states its unequivocal intent to submit an application for an original license for Project No. 14634.

p. 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.

Dated: April 3, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-07386 Filed 4-6-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD23-4-000]

Review of Cost Submittals by Other Federal Agencies for Administering Part I of the Federal Power Act; Notice Requesting Questions and Comments on Fiscal Year 2022 Other Federal Agency Cost Submissions

In its *Order On Rehearing Consolidating Administrative Annual Charges Bill Appeals And Modifying Annual Charges Billing Procedures*, 109 FERC ¶ 61,040 (2004) (October 8 Order), the Commission set forth an annual process for Other Federal Agencies (OFAs) to submit their costs related to Administering Part I of the Federal Power Act. Pursuant to the established process, the Chief of Financial Operations, Financial Management Division, Office of the Executive Director, on October 27, 2022, issued a letter requesting the OFAs to submit their costs by January 31, 2023 using the OFA Cost Submission Form.

Upon receipt of the agency submissions, the Commission posted the information in eLibrary, and issued, on March 9, 2023, a notice announcing the date for a technical conference to review the submitted costs. On March 23, 2023, the Commission held the technical conference. Technical conference transcripts, submitted cost forms, and detailed supporting documents are all available for review under Docket No. AD23-4. These documents are accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and are available for review in the Commission's Public Reference Room in Washington, DC.

Interested parties may file specific questions and comments on the FY 2022 OFA cost submissions with the Commission under Docket No. AD23-4, no later than April 28, 2023. Once filed, the Commission will forward the questions and comments to the OFAs for response.

Anyone with questions pertaining to the technical conference or this notice should contact Raven A. Rodriguez at (202) 502-6276 (via email at raven.rodriguez@ferc.gov).

Dated: April 3, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-07392 Filed 4-6-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15300-000]

Heard County Pumped Storage Project; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On January 31, 2023, BOST1 Hydroelectric, LLC., filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a pumped storage hydropower project located near the City of Enon Grove, Heard County, Georgia. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Heard County Pumped Storage Project would consist of the following: (1) a 20-foot-long, 30-foot-deep reinforced concrete intake structure with trash racks, and a pumping station on Hilly Mill Creek; (2) a 24-inch-diameter fill pipeline to the upper reservoir; (3) a geotextile lined rock filled embankment forming an enclosed upper reservoir; (4) a 66-foot-deep enclosed upper reservoir with a storage capacity of 5,300 acre-feet; (5) a lower underground reservoir consisting of concentric circular tunnels reaching a depth of 2,100 feet below the surface, with the total length of the tunnels being 170,000 feet; (6) a reinforced morning glory type water intake situated within the upper reservoir with an outer diameter of 95 feet and an inside diameter of 38 feet; (7) a 23-foot-diameter, 2,300-foot-long granite bedrock vertical tunnel trifurcating into three 10-foot-diameter steel lined penstocks leading to three reversible Francis pump turbines; (8) a 460-foot-long, 80-foot-wide, 160-foot-high

powerhouse, 200 feet below the lower reservoir containing the three pump turbine units with a total installed capacity of 1,000 megawatts; (9) a separate 60-foot-wide, 410-foot-long, 160-foot-high underground transformer gallery near the powerhouse; and (10) a 1-mile-long, 500 kilovolt transmission line east of the proposed upper reservoir. The lower reservoir tunneling would be accomplished using two 42.5-foot-diameter tunnel boring machines with an access ramp of the same size from the surface. The powerhouse would be excavated using traditional drill and blast methods. The proposed project would have an estimated annual generation of 2,628,000 megawatt-hours.

Applicant Contact: Douglas Spaulding, Nelson Energy, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426; phone: (952) 544-8133.

FERC Contact: Michael Spencer; phone: (202) 502-6093, or by email at michael.spencer@ferc.gov.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at <https://ferconline.ferc.gov/eFiling.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCONlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P-15300-000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's website at

<https://elibrary.ferc.gov/eLibrary/search>. Enter the docket number (P-15300) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 3, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-07391 Filed 4-6-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR23-33-000.
Applicants: Bay Gas Storage Company, LLC.
Description: Report Filing: Bay Gas Storage Supplemental LAUF Filing to be effective N/A.

Filed Date: 3/31/23.

Accession Number: 20230331-5446.

Comment Date: 5 p.m. ET 4/21/23.

Docket Numbers: RP23-657-000.
Applicants: Hardy Storage Company, LLC.

Description: § 4(d) Rate Filing: RAM 2023 to be effective 5/1/2023.

Filed Date: 3/31/23.

Accession Number: 20230331-5273.

Comment Date: 5 p.m. ET 4/12/23.

Docket Numbers: RP23-658-000.
Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20230331 Negotiated Rate to be effective 4/1/2023.

Filed Date: 3/31/23.

Accession Number: 20230331-5276.

Comment Date: 5 p.m. ET 4/12/23.

Docket Numbers: RP23-659-000.
Applicants: Cheyenne Connector, LLC.

Description: Compliance filing: CC 2023-03-31 Annual L&U Report to be effective N/A.

Filed Date: 3/31/23.

Accession Number: 20230331-5289.

Comment Date: 5 p.m. ET 4/12/23.

Docket Numbers: RP23-660-000.
Applicants: Dauphin Island Gathering Partners.

Description: § 4(d) Rate Filing: Negotiated Rate Filing 3-31-2023 to be effective 4/1/2023.

Filed Date: 3/31/23.

Accession Number: 20230331-5293.

Comment Date: 5 p.m. ET 4/12/23.

Docket Numbers: RP23-661-000.
Applicants: Northern Border Pipeline Company.

Description: § 4(d) Rate Filing: Fuel Mechanism Implementation to be effective 5/1/2023.

Filed Date: 3/31/23.

Accession Number: 20230331-5297.

Comment Date: 5 p.m. ET 4/12/23.

Docket Numbers: RP23-662-000.
Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) Rate Filing: OTRA Summer 2023 to be effective 5/1/2023.

Filed Date: 3/31/23.

Accession Number: 20230331-5302.

Comment Date: 5 p.m. ET 4/12/23.

Docket Numbers: RP23-663-000.
Applicants: NEXUS Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 4-1-23 to be effective 4/1/2023.

Filed Date: 3/31/23.

Accession Number: 20230331-5308.

Comment Date: 5 p.m. ET 4/12/23.

Docket Numbers: RP23-664-000.
Applicants: Texas Eastern Transmission, LP.

Description: Compliance filing: TETLP March 2023 Penalty Disbursement Report to be effective N/A.

Filed Date: 3/31/23.

Accession Number: 20230331-5309.

Comment Date: 5 p.m. ET 4/12/23.

Docket Numbers: RP23-665-000.
Applicants: Algonquin Gas Transmission, LLC.

Description: Compliance filing: AGT March 2023 OFO Penalty Disbursement Report to be effective N/A.

Filed Date: 3/31/23.

Accession Number: 20230331-5331.

Comment Date: 5 p.m. ET 4/12/23.

Docket Numbers: RP23-666-000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: § 4(d) Rate Filing: Volume No. 2—Koch Energy Services, LLC SP385736 to be effective 4/1/2023.

Filed Date: 3/31/23.

Accession Number: 20230331-5438.

Comment Date: 5 p.m. ET 4/12/23.

Docket Numbers: RP23-667-000.
Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 4-1-23 to be effective 4/1/2023.

Filed Date: 4/3/23.

Accession Number: 20230403-5002.

Comment Date: 5 p.m. ET 4/17/23.

Docket Numbers: RP23-668-000.
Applicants: NEXUS Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Enbridge Gas to DTE

963130 eff 4-2-23 to be effective 4/2/2023.

Filed Date: 4/3/23.

Accession Number: 20230403-5009.

Comment Date: 5 p.m. ET 4/17/23.

Docket Numbers: RP23-669-000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Capacity Release Agreements—4/1/2023 to be effective 4/1/2023.

Filed Date: 4/3/23.

Accession Number: 20230403-5027.

Comment Date: 5 p.m. ET 4/17/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: April 3, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-07338 Filed 4-6-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1250-020; Project No. 14836-000]

City of Pasadena Water and Power Department; Notice of Teleconference for Section 106 of the National Historic Preservation Act Consultation Meeting

a. *Project Name and Numbers:* Azusa Project and Azusa Powerhouse Hydroelectric Project Nos. 1250 and 14836.

b. *Project licensee:* City of Pasadena Water and Power Department.

c. *Date and Time of Teleconference:* Tuesday, April 25, 2023, from 1:00 p.m. to 2:30 p.m. Eastern Daylight Time.

d. *FERC Contact:* Jennifer Polardino, (202) 502-6437 or jennifer.polardino@ferc.gov.

e. *Purpose of Meeting:* Commission staff will participate in a teleconference with the City of Pasadena Water and Power Department, the California State Historic Preservation Office (California SHPO), the City of Pasadena, and the U.S. Department of Agriculture's Forest Service (Forest Service) to discuss the draft Programmatic Agreement and draft Historic Properties Management Plan for the proposed surrender of license for the Azusa Project No. 1250 and the proposed exemption from licensing for the Azusa Powerhouse Hydroelectric Project No. 14836. The projects are located on the San Gabriel River in Los Angeles County, California. The Azusa Project occupies lands of the United States within Angeles National Forest administered by the Forest Service.

f. Members of the public and intervenors in the referenced proceedings may attend the teleconference; however, participation will be limited to representatives from the City of Pasadena, the California SHPO, the Forest Service, and the Commission. If during the call any party decides to disclose information about a specific location which could create a risk or harm to an archaeological site or Native American cultural resource, the public will be excused for that portion of the meeting and can return to the call after such information is disclosed. The teleconference meeting will be transcribed by a court reporter and the transcript will be placed in the public record.

g. Please call or email Jennifer Polardino at (202) 502-6437 or jennifer.polardino@ferc.gov by Monday, April 24, 2022, to RSVP and to receive the teleconference call-in information.

Dated: April 3, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023-07385 Filed 4-6-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02-2001-020, ER13-2230-001, ER16-722-000, ER21-2089-000, ER12-2402-000, ER12-2403-000, ER12-2400-000]

Electric Quarterly Reports, Premier Empire Energy, LLC, Current Power & Gas Inc., Elephant Energy, LLC, Liberty Power Maryland LLC, Liberty Power Holdings LLC, Liberty Power District of Columbia LLC; Notice of Revocation of Market-Based Rate Authority and Termination of Electric Market-Based Rate Tariff

On February 22, 2023, the Commission issued an order announcing its intent to revoke the market-based rate authority of several public utilities that had failed to file their required Electric Quarterly Reports.¹ The Commission directed those public utilities to file the required Electric Quarterly Reports within 15 days of the date of issuance of the order or face revocation of their authority to sell power at market-based rates and termination of their electric market-based rate tariffs.²

The time period for compliance with the February 22 Order has elapsed. The above-captioned companies failed to file their delinquent Electric Quarterly Reports. The Commission hereby revokes, effective as of the date of issuance of this notice, the market-based rate authority and terminates the electric market-based rate tariff of each of the companies who are named in the caption of this order.

Dated: April 3, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023-07394 Filed 4-6-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Change in Date for the July Commission Open Meeting

Take notice that the Commission has changed the date for its July 2023 open meeting. The meeting will now take place on Thursday, July 27, 2023. The open meeting had been initially scheduled for Thursday, July 20, 2023.¹

¹ *Electric Quarterly Reports*, 182 FERC ¶ 61,113 (2023) (February 22 Order).

² *Id.* at Ordering Paragraph A.

¹ The start time of the meeting remains 10:00 a.m. Eastern Time.

Dated: April 3, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023-07393 Filed 4-6-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23-1517-000]

IP Oberon II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of IP Oberon II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 24, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all

interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://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 the Federal Energy Regulatory Commission at FEROnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Dated: April 3, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-07337 Filed 4-6-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23-1519-000]

Atlas Solar, III, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Atlas Solar, III, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 24, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://>

www.ferc.gov. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://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 the Federal Energy Regulatory Commission at FEROnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Dated: April 3, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-07336 Filed 4-6-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23-3-000]

Tres Palacios Gas Storage LLC; Notice of Revised Schedule for Environmental Review of the Tres Palacios Cavern 4 Expansion Project

This notice identifies the Federal Energy Regulatory Commission staff's revised schedule for the completion of the environmental assessment (EA) for Tres Palacios Gas Storage LLC's (Tres Palacios) Cavern 4 Expansion Project. The first notice of schedule, issued on January 6, 2023, identified April 14, 2023, as the EA issuance date based

upon receiving timely information from Tres Palacios. Staff-requested information needed by January 31, 2023 was not provided by Tres Palacios until March 17, 2023. Due to the delay in providing the necessary requested information, staff has revised the schedule for issuance of the EA.

Schedule for Environmental Review

Issuance of the EA May 12, 2023

90-day Federal Authorization Decision

Deadline¹ August 10, 2023

If an additional schedule change becomes necessary, a notice will be issued so that the relevant agencies are kept informed of the project's progress.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

Additional information about the project is available from the Commission's Office of External Affairs at (866) 208-FERC or on the FERC website (www.ferc.gov). Using the "eLibrary" link, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number" excluding the last three digits (*i.e.*, CP23-3), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208-3676, TTY (202) 502-8659, or at FEROnlineSupport@ferc.gov. The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: April 3, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023-07387 Filed 4-6-23; 8:45 am]

BILLING CODE 6717-01-P

¹ The Commission's deadline applies to the decisions of other Federal agencies, and state agencies acting under federally delegated authority, that are responsible for Federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by Federal law.

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings #1**

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–53–000.

Applicants: Essential Power OPP, LLC, et al v. PJM Interconnection, L.L.C.
Description: Complaint of Essential Power OPP, LLC, et al. v. PJM Interconnection, L.L.C.

Filed Date: 3/31/23.

Accession Number: 20230331–5217.

Comment Date: 5 p.m. ET 4/20/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–629–001.

Applicants: Public Service Company of Colorado.

Description: Tariff Amendment: 2023–04–03 Att N Revisions—Response to Deficiency Ltr to be effective 6/3/2023.

Filed Date: 4/3/23.

Accession Number: 20230403–5146.

Comment Date: 5 p.m. ET 4/24/23.

Docket Numbers: ER23–920–000.

Applicants: Meadow Lake Solar Park LLC.

Description: Report Filing: Supplement to Notice of Non-Material Change in Status and MBR Tariff Revisions to be effective N/A.

Filed Date: 3/21/23.

Accession Number: 20230321–5007.

Comment Date: 5 p.m. ET 4/11/23.

Docket Numbers: ER23–944–001.

Applicants: Calpine Community Energy, LLC.

Description: Tariff Amendment: Amendment to Market-Based Rate Application to be effective 1/27/2023.

Filed Date: 4/3/23.

Accession Number: 20230403–5186.

Comment Date: 5 p.m. ET 4/24/23.

Docket Numbers: ER23–1219–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: ISA, SA No. 6816; Queue No. AF1–271A Supplement to Filing to be effective 2/1/2023.

Filed Date: 3/31/23.

Accession Number: 20230331–5474.

Comment Date: 5 p.m. ET 4/21/23.

Docket Numbers: ER23–1251–001.

Applicants: San Jacinto Grid, LLC.

Description: Tariff Amendment: Supplement to Market-Based Rate Application to be effective 5/6/2023.

Filed Date: 4/3/23.

Accession Number: 20230403–5252.

Comment Date: 5 p.m. ET 4/24/23.

Docket Numbers: ER23–1252–001.

Applicants: Ortega Grid, LLC.

Description: Tariff Amendment: Supplement to Market-Based Rate Application to be effective 5/6/2023.

Filed Date: 4/3/23.

Accession Number: 20230403–5238.

Comment Date: 5 p.m. ET 4/24/23.

Docket Numbers: ER23–1544–000.

Applicants: Otter Tail Power Company.

Description: Request for Approval of Transmission Rate Incentives of Otter Tail Power Company.

Filed Date: 3/31/23.

Accession Number: 20230331–5589.

Comment Date: 5 p.m. ET 4/21/23.

Docket Numbers: ER23–1545–000.

Applicants: Great Plains Windpark Legacy, LLC.

Description: Request for Limited Waiver, et al. of Great Plains Windpark Legacy, LLC.

Filed Date: 3/31/23.

Accession Number: 20230331–5591.

Comment Date: 5 p.m. ET 4/21/23.

Docket Numbers: ER23–1546–000.

Applicants: IP Oberon, LLC.

Description: Baseline eTariff Filing: Filing of LGIA Co-Tenancy Agreement to be effective 6/5/2023.

Filed Date: 4/3/23.

Accession Number: 20230403–5057.

Comment Date: 5 p.m. ET 4/24/23.

Docket Numbers: ER23–1547–000.

Applicants: IP Oberon, LLC.

Description: § 205(d) Rate Filing: Shared Facilities Agreement to be effective 6/5/2023.

Filed Date: 4/3/23.

Accession Number: 20230403–5061.

Comment Date: 5 p.m. ET 4/24/23.

Docket Numbers: ER23–1548–000.

Applicants: Southwest Power Pool, Inc.

Description: Notice of Cancellation of Network Integration Transmission Service Agreement and Network Operating Agreement of Southwest Power Pool, Inc.

Filed Date: 4/3/23.

Accession Number: 20230403–5134.

Comment Date: 5 p.m. ET 4/24/23.

Docket Numbers: ER23–1549–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): Timberland Solar 3 LGIA Filing to be effective 3/22/2023.

Filed Date: 4/3/23.

Accession Number: 20230403–5148.

Comment Date: 5 p.m. ET 4/24/23.

Docket Numbers: ER23–1550–000

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): Southwest Atlanta Energy Storage LGIA Filing to be effective 3/22/2023.

Filed Date: 4/3/23.

Accession Number: 20230403–5149.

Comment Date: 5 p.m. ET 4/24/23.

Docket Numbers: ER23–1551–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): Brooker Trail Solar LGIA Filing to be effective 3/22/2023.

Filed Date: 4/3/23.

Accession Number: 20230403–5150.

Comment Date: 5 p.m. ET 4/24/23.

Docket Numbers: ER23–1552–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 6278; Queue No. AD2–048 to be effective 6/2/2023.

Filed Date: 4/3/23.

Accession Number: 20230403–5185.

Comment Date: 5 p.m. ET 4/24/23.

Docket Numbers: ER23–1553–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 6555; Queue No. AC1–086 to be effective 6/3/2023.

Filed Date: 4/3/23.

Accession Number: 20230403–5193.

Comment Date: 5 p.m. ET 4/24/23.

Docket Numbers: ER23–1554–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 6842; Queue No. AF1–215 & Cancellation of IISA, SA No. 6216 to be effective 3/2/2023.

Filed Date: 4/3/23.

Accession Number: 20230403–5200.

Comment Date: 5 p.m. ET 4/24/23.

Docket Numbers: ER23–1555–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 6276; Queue No. AE2–060 (amend) to be effective 6/3/2023.

Filed Date: 4/3/23.

Accession Number: 20230403–5218.

Comment Date: 5 p.m. ET 4/24/23.

Docket Numbers: ER23–1556–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(i): Attachment S (GPCO) 2023 Updated Depreciation Rates Filing to be effective 1/1/2023.

Filed Date: 4/3/23.

Accession Number: 20230403–5241.

Comment Date: 5 p.m. ET 4/24/23.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH23–10–000.

Applicants: Alberta Investment Management Corporation.

Description: Alberta Investment Management Corporation submits FERC 65–B Notice of Change in Fact to Waiver Notification.

Filed Date: 3/31/23.

Accession Number: 20230331–5597.

Comment Date: 5 p.m. ET 4/21/23.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 3, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–07339 Filed 4–6–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Proposed Power Marketing Policy, Public Forum, and Opportunities for Public Review and Comment for the Jim Woodruff System Project

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of proposed power marketing policy.

SUMMARY: Southeastern Power Administration (Southeastern) proposes a Power Marketing Policy for the Jim

Woodruff System Project pursuant to Notice published in the **Federal Register** of August 5, 2022, and in accordance with Procedure for Public Participation in the Formulation of Marketing Policy published July 6, 1978. The proposed power marketing policy will be implemented through contracts for terms not to exceed 10 years. Additionally, opportunities will be available for interested persons to review the proposed Power Marketing Policy, to participate in a public forum and to submit additional written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before June 23, 2023. A public information and comment forum will be held via a virtual web based meeting to allow maximum participation June 8, 2023. Persons desiring to attend the forum should notify Southeastern by June 1, 2023, so a list of forum participants can be prepared. Persons desiring to speak at the forum should specify this in their notification to Southeastern; others may speak if time permits. Notifications should be submitted by email to Comments@sepa.doe.gov. If Southeastern has not been notified by close of business on June 1, 2023, that at least one person intends to be present at the forum, the forum may be canceled with no further notice.

ADDRESSES: Written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711; Email: Comments@sepa.doe.gov. The public information and comment forum for the Jim Woodruff System Project will take place via a virtual web based meeting.

FOR FURTHER INFORMATION CONTACT: Carter Edge, Assistant Administrator for Finance and Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635, (706) 213–3800; Email: carter.edge@sepa.doe.gov. **SUPPLEMENTARY INFORMATION:** Notice of intent to create a marketing policy for future disposition of power from the Jim Woodruff System was published in the **Federal Register** August 5, 2022 (87 FR 48016). The notice advised interested parties to provide comments and proposals in formulating the proposed marketing policy. Comments and proposals were accepted through October 4, 2022. Comments were received from two interested parties.

Written comments were received from Seminole Electric Cooperative, Inc. and Southeastern Federal Power Customers,

Inc. (SeFPC) are summarized below. Southeastern's responses are also provided.

Comment 1: Seminole Electric Cooperative, Inc. is interested in receiving allocation of power and energy generated at Jim Woodruff Lock and Dam, if such power were deemed available.

Response 1: Southeastern does not expect any additional power or energy to be available to be allocated. Southeastern has included a mechanism in the proposed policy to allow power and energy to be allocated should any become available in the future.

Comment 2: SeFPC encourages Southeastern to follow the statutory guidance in the Flood Control Act of 1944, 16 U.S.C. 825s, to market the output of the Jim Woodruff Project to eligible "preference customers."

Response 2: Southeastern will follow the guidance in the Flood Control Act of 1944.

Comment 3: SeFPC encourages the marketing plan include the following important components:

1. Limiting the marketing plan to the Jim Woodruff Project. SEPA has previously rejected calls to create an integrated marketing area for all power available from Corps multipurpose projects in the Southeast. This approach should be followed with the marketing plan for the Jim Woodruff Project.

2. Extend allocations to preference customers with existing contracts. In revising marketing plans for the Georgia-Alabama-South Carolina system of projects, SEPA offered allocations to existing customers.

3. Refrain from allocating the output of the Jim Woodruff project on a pro rata basis to all potential preference customers. Although the Flood Control Act of 1944 calls for allocations to promote "widespread use," SEPA has previously reconciled that responsibility with the obligation to allocate power consistent with sound business principles. In this context, SEPA must recognize that the limited output of the Jim Woodruff Project requires allocations that provide a meaningful rather than marginal benefit.

Response 3: Jim Woodruff could be integrated financially, hydraulically and electrically with the GA–AL–SC System of projects to provide back stand service to this single-project, run-of-the-river system. Preliminary discussions with the transmission provider indicate a 70% increase in the amount of purchased power costs passed through to the customer each month without integration under the Open Access Transmission Tariff. However, delivering federal hydropower at the

project busbar and providing a pro rata reduction in energy deliveries in lieu of replacement power is being proposed as a solution to maintain the Jim Woodruff system financially, electrically, and hydraulically independent of any other Southeastern system.

Southeastern does not expect any additional power or energy to be available to be allocated. Southeastern has included a mechanism in the proposed policy to allow power and energy to allocated should any become available in the future. Southeastern has historically determined a meaningful level to be 500kW.

Comment 4: SeFPC notes Southeastern may look to adopt marketing criteria used by the Western Area Power Administration (“WAPA”) in recent marketing plans to determine allocations of power from projects within the WAPA marketing area. In recent marketing plans, WAPA included criteria requiring an allottee to have

utility status and be “ready willing and able” to utilize the allocation of power. This approach has promoted widespread use of preference power and ensured that the benefits of an allocation of power are provided to entities that may need to address legal impediments prior to using an allocation.

Response 4: Southeastern defers to the opinion of US Attorney General, Herbert Brownell, Jr. at 41 Op. Att’y Gen.236 (1955) regarding the criteria for preference eligible customers.

Comment 5: SeFPC supports the development of a marketing policy that incorporates equitable considerations in the allocation of power. Here, the Administrator should give consideration to the financial contribution that existing customers have made in repaying the Federal debt associated with the Jim Woodruff Project.

Response 5: Southeastern values the long-standing relationship it has with its

customers and recognizes the \$42.183M Cumulative Repayment and \$1.45M allocated to Customer Funding provided through their payments for federal hydropower. The Total Remaining Investment of \$43.358M represents a commitment to continue providing clean, carbon-free, cost-based power to our customers.

Comment 6: SeFPC encourages Southeastern to adopt each proposed component outlined above in the marketing policy for the Jim Woodruff Project.

Response 6: Southeastern has duly considered each proposal and has either adopted or rejected and provided rationale for each in developing the draft marketing policy for the Jim Woodruff Project.

General: The project and power products subject to this policy are:

Project:

Name	Capacity (kw)	Average energy (MWh)	Energy attribute
Jim Woodruff Lock and Dam	36,000	193,530	Renewable Energy Certificate.

This Power Marketing Policy for electric power and energy not required in the operation of Jim Woodruff Lock and Dam will replace the arrangements in the contract between Duke Energy Florida and Southeastern Power Administration (Southeastern) dated July 19, 1957 (Rate Schedule No. 65), which provided for a fair and reasonable arrangement for the circumstances prevailing at the time the power was sold. Arrangements for the sale, purchase, wheeling and firming of power from the Jim Woodruff Lock and Dam will be implemented as soon as contract revisions pursuant to this policy can be negotiated.

The Final Marketing Policy will be implemented through contracts for terms not to exceed 10 years.

Deliveries will be made at the project bus bar. The project will be hydraulically, electrically, and financially integrated as a single project system and will be operated to make maximum contribution to the respective utility areas. Preference in the sale of the power will be given to public bodies and cooperatives.

Marketing Area: Southeastern’s marketing area shall be the entire state of Florida. The marketing area contains 52 eligible public bodies and cooperatives, as listed on Appendix A attached hereto.

Allocations of Power: It is Southeastern’s goal to allocate all available and usable system power (that power remaining after provision for reserves and losses) to preference customers.

As to the power sold to the existing preference customers prior to contracts executed to implement this policy, each existing preference customer within the Duke Energy Florida service area will continue with its allocated share of the marketed capacity and resulting pro-rata share of the associated energy. Current capacity allocations are summarized below:

Talquin Elec. Coop. 13,500 kW
City of Quincy 8,400 kW
Tri County Elec Coop 5,200 kW
Suwannee Valley Elec Coop 4,800 kW
Central Florida Elec Coop 2,300 kW
City of Chattahoochee 1,800 kW

Southeastern does not expect any additional capacity or energy to be marketable from the project in the foreseeable future. However, both existing and preference-eligible customers will be eligible to share equitably in any capacity remaining after reductions for reserves, losses or capacity and energy relinquished by existing customers. Allocations of any newly available power and energy to a particular preference customer will be based on the relationship of such customer’s maximum 2020 demand to

the sum of the 2020 maximum demands of all preference customers sharing such power so long as such customer demand is expected to be and will be treated hereunder in each month as not less than 500 kilowatts. Southeastern recognizes that West Florida Electric Cooperative Association Incorporated was previously included in Jim Woodruff allocations but is now served by Southeastern’s GA–AL–SC system. For allocation purposes, they will be treated as if they are a preference-eligible customer.

There will be times when hydraulic conditions reduce the operating head or the available streamflow of the project and not all the allocated capacity can be made available. The power available from the project shall be reduced, pro-rata based on project capability.

Renewable Energy Certificates (RECs): Southeastern has included a process for REC distribution in this marketing policy. The REC distribution process will not impact power allocation within the System marketing area.

The M–RETS Tracking System creates and tracks certificates reporting generation attributes, by generating unit, for each megawatt-hour (MWh) of energy produced by registered generators. The System project is registered within M–RETS. The RECs potentially satisfy Renewable Portfolio Standards, state policies, and other

regulatory or voluntary clean energy standards in a number of states. Southeastern has subscribed to M-RETS and has an account in which RECs are collected and tracked for each MWh of energy produced from the System. Within M-RETS, certificates can be transferred to other M-RETS subscribers or to a third-party tracking system. M-RETS creates a REC for every MWh of renewable energy produced, tracks the life cycle of each REC created, and ensures against any double counting or double-use of each REC.

REC Distribution: M-RETS (or a successor application) will be the transfer mechanism for all RECs related to the System. Southeastern shall maintain an account with M-RETS and collect RECs from the generation at the System project. Southeastern will verify the total amount of RECs each month. Preference Customers with an allocation of power from the System are eligible to receive RECs by transfer from Southeastern's M-RETS account to their M-RETS account or that of their agent. Transfers to each customer will be based on the customer's monthly invoices during the same three-month period (quarter). All RECs distributed by Southeastern shall be transferred within forty-five days of the end of a quarter. Each customer must submit to Southeastern, by the tenth business day after the quarter, any notice of change to M-RETS account or agent. Any REC transfers that were not claimed, or if a transfer account was not provided to Southeastern, will be forfeited if they become nontransferable as described in the M-RETS terms of service, procedures, policies, or definitions of reporting and trading periods, or any subsequent rules and procedures for transfers as established. The initial transfer process in M-RETS will be accomplished by the sixtieth day after the end of the first completed quarter subsequent to publication of the final policy.

Any balance of RECs that exist in Southeastern's M-RETS account, other than the first quarter after policy revision publication, may also be transferred to Preference Customers according to the customer's invoiced energy at the time of the REC creation.

Rates: No rates shall be established by Southeastern for RECs transferred to Preference Customers. Any cost to Southeastern, such as the M-RETS subscription, will be incorporated into marketing costs and included in recovery through the energy and capacity rates of the System.

Utilization at Utility Systems: In the absence of transmission facilities of its own, Southeastern may use area

generation and transmission systems as may be necessary to dispose of system power under reasonable and acceptable marketing arrangements. Utility systems providing such services shall be entitled to adequate compensation.

Wholesale Rates: Rate schedules shall be drawn to recover all costs associated with producing and transmitting the power in accordance with then current repayment criteria. Production costs will be determined on a system basis and rate schedules will be related to the integrated output of the project. Rates schedules may be revised periodically.

Resale Rates: Resale rate provisions requiring the benefits of Southeastern's power to be passed on to the ultimate consumer will be included in each customer contract with Southeastern which provides for Southeastern to supply more than 25 percent of the customers' total power requirements during the term of the contract.

Conservation Measures: Each customer purchasing Southeastern's power shall agree to take reasonable measures to encourage the conservation of energy by ultimate consumers.

Appendix A: Preference-eligible customers

Municipals	2020 Peak Load MW
Alachua	28
Bartow	60
Blountstown	8
Bushnell	6
Chattahoochee	6
Clewiston	22
Fort Meade	10
Fort Pierce	113
Gainesville	410
Green Cove Springs	24
Havana	7
Homestead Energy Services JEA formerly Jacksonville Electric Authority	115
Jacksonville Beach dba Beaches Energy Services	2,658
Keys Energy Services formerly Key West	168
Kissimmee	145
Lake Worth Beach	374
Lakeland Electric	96
Leesburg	667
Moore Haven	118
Mount Dora	4
New Smyrna Beach	23
Newberry	105
Ocala	9
Orlando	314
Quincy	1,294
Reedy Creek Utilities	28
St. Cloud	166
Starke	186
Tallahassee	16
Vero Beach	616
Wauchula	180
Williston	14
Winter Park	8
	94

Cooperatives	2020 Peak Load MW
Central Florida Electric Cooperative	131
Choctawhatchee Electric Cooperative (CHELCO)	219
Clay Electric Cooperative	788
Escambia River Electric Cooperative	43
Glades Electric Cooperative	60
Gulf Coast Electric Cooperative	86
Lee County Electric Cooperative	970
Okefenokee Electric Cooperative	178
Peace River Electric Cooperative	205
PowerSouth Energy Cooperative (G&T)	2,027
SECO Energy (Sumter Electric Coop)	865
Suwannee Valley Electric Cooperative	119
Talquin Electric Cooperative	213
Tri-County Electric Cooperative	60
West Florida Electric Cooperative	123
Withlacoochee Electric Cooperative	1,002
Florida Keys Electric Cooperative	156
Seminole Electric Cooperative (G&T)	3,409

Legal Authority

The policy is developed under authority of section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, and section 302(a) of the Department of Energy Organization Act of 1977, 42 U.S.C. 7152. This power marketing policy was developed in accordance with the Procedure for Public Participation in the Formulation of Marketing Policy published July 6, 1978, 43 FR 29186.

Environmental Impact

Southeastern has determined this action fits within the following categorical exclusions listed in appendix B to subpart D of 10 CFR part 1021: B4.1 (Contracts, policies, and marketing and allocation plans for electric power). Categorically excluded projects and activities do not require preparation of either an environmental impact statement or an environmental assessment.

Determination Under Executive Order 12866

Southeastern has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Signing Authority

This document of the Department of Energy was signed on March 31, 2023, by Virgil G. Hobbs III, Administrator for Southeastern Power Administration, pursuant to delegated authority from the Secretary of Energy. That document, with the original signature and date, is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of 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 April 4, 2023.

Treena V. Garrett,

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

[FR Doc. 2023-07379 Filed 4-6-23; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 10813-01-OAR]

Transfer of Information Claimed as Confidential Business Information to the United States Department of Energy/Argonne National Laboratory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that information submitted to EPA's Office of Air and Radiation (OAR) pursuant to the Clean Air Act (CAA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Argonne National Laboratory (ANL)/Department of Energy (DOE). ANL/DOE have been awarded a contract to perform work for OAR, and access to this information will enable ANL/DOE to fulfill the obligations of the contract.

DATES: Access by ANL/DOE to material, including CBI, discussed in this Notice, is ongoing and expected to continue beginning April 17, 2023.

FOR FURTHER INFORMATION CONTACT:

Aaron Sobel, Transportation and Climate Division, Office of Transportation and Air Quality (OTAQ), Office of Air and Radiation (OAR) (5512S); telephone number: 202-564-0543; fax number: 202-343-2801; email address: sobel.aaron@epa.gov.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency (EPA) is providing notice of disclosure pursuant to 40 CFR 2.209(c). Under Contract No. DW-089-92568801-0, ANL/DOE will perform lifecycle analysis modeling with the Greenhouse gases, Regulated Emissions, and Energy use in Technologies (GREET) Model.

OTAQ has determined that access by ANL/DOE to information is necessary for the performance of this contract. EPA conducts lifecycle greenhouse gas analysis of biofuel pathways in support of implementing the Renewable Fuel Standards (RFS) program under section 211(o) of the Clean Air Act. This includes reviewing petitions submitted pursuant to 40 CFR 80.1416, some of which include data claimed as confidential business information. To evaluate these pathway petitions, EPA intends to provide data critical to evaluating the lifecycle greenhouse gas emissions associated with these biofuel pathway petitions to ANL/DOE. Examples of the type of information to be shared include agricultural practice data such as crop yields and nutrient input data, anticipated biofuel facility operational data such as energy sources and amounts used for processing feedstocks into fuels, and detailed descriptions of these processes to help practitioners understand the overall biofuel pathways being proposed by stakeholders. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under section 211(o) of the Clean Air Act.

Records of information provided to ANL/DOE will be maintained by EPA Project Officers for this contract. All information supplied to ANL/DOE by EPA for use in connection with this contract will be returned to EPA when ANL/DOE have completed their work.

Dated: April 3, 2023.

Karl Simon,

Director, Transportation and Climate Division.

[FR Doc. 2023-07295 Filed 4-6-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2017-0751; FRL-10860-01-OCSPJ]

Pesticide Registration Review; Decisions and Case Closures for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's the closure of the registration review cases for irgarol, oregano oil, and tagetes oils (formerly flower oils case), because the last U.S. registrations for these pesticides have been canceled.

ADDRESSES: The docket for this action, identified under docket identification (ID) number EPA-HQ-OPP-2017-0751, is available online at <https://www.regulations.gov>. Additional instructions on visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information, contact: The Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; email address: biscoe.melanie@epa.gov; phone, (202) 566-0701.

SUPPLEMENTARY INFORMATION:

I. General Information

Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the pesticide specific contact person listed under **FOR FURTHER INFORMATION CONTACT:** *For pesticide specific information, contact:* The Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed case closures for

all pesticides listed in Table 1 in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in Table 1 in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the

Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable

adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of case closures for the pesticides shown in Table 1. The registration review decisions are supported by rationales included in the docket established for each chemical.

TABLE 1—REGISTRATION REVIEW CASE CLOSURES BEING ISSUED

Registration review case name and number	Docket ID No.	Chemical review manager and contact information
Irgarol, Case Number 5031	EPA-HQ-OPP-2010-0003	Megan Snyderman, snyderman.megan@epa.gov , (202) 566-0639.
Oregano Oil, Case Number 6342 ...	EPA-HQ-OPP-2022-0641	Hannah Dean, dean.hannah@epa.gov , (202) 566-2969.
Tagetes Oils (formerly Flower Oils Case), Case Number 8202.	EPA-HQ-OPP-2011-0628	Daniel Schoeff, schoeff.daniel@epa.gov , (202) 566-1540.

The decisions for the chemicals in the table above were posted to the docket and the public was invited to submit comments or new information. Pursuant to 40 CFR 155.58(c), the registration review case docket for the chemicals listed in Table 1 will remain open until all actions required in the decision have been completed.

Background on the registration review program is provided at: <https://www.epa.gov/pesticide-reevaluation>.

Authority: 7 U.S.C. 136 *et seq.*

Dated: March 31, 2023.

Mary Elissa Reaves,

Director, Pesticide Re-Evaluation Division,
Office of Pesticide Programs.

[FR Doc. 2023-07100 Filed 4-6-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP-OFA-064]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202-564-5632 or <https://www.epa.gov/nepa>.
Weekly receipt of Environmental Impact Statements (EIS)
Filed March 27, 2023 10 a.m. EST
Through April 3, 2023 10 a.m. EST
Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search>.

EIS No. 20230044, Final, USFS, OR,
Youngs Rock Rigdon, Review Period
Ends: 05/22/2023, Contact: Hilary
Henry 541-460-0754.

EIS No. 20230045, Draft, FERC, WA,
Goldendale Energy Storage Project,
Comment Period Ends: 06/06/2023,
Contact: Office of External Affairs
866-208-3372.

EIS No. 20230046, Final, USFS, CA,
North Yuba Landscape Resilience
Project, Review Period Ends: 05/23/
2023, Contact: John Brokaw 530-265-
4531.

EIS No. 20230047, Final, USA, CA,
Training and Public Land Withdrawal
Extension, Fort Irwin, California,
Review Period Ends: 05/08/2023,
Contact: Renita Wickes 760-380-
4511.

Dated: April 3, 2023.

Cindy S. Barger,

Director, NEPA Compliance Division, Office
of Federal Activities.

[FR Doc. 2023-07346 Filed 4-6-23; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1208; FR ID 134131]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

Correction

In notice document 2023-06813, appearing on pages 19643 through 19644, in the issue of April 3, 2023 make the following correction:

On page 19643, in the second column, in the **DATES** section, the section line, "April 3, 2023" should read, "June 2, 2023."

[FR Doc. C1-2023-06813 Filed 4-6-23; 8:45 am]

BILLING CODE 0099-10-D

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of Receiverships

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for each of the following insured depository institutions, was charged with the duty of winding up the affairs of the former institutions and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law.

NOTICE OF TERMINATION OF RECEIVERSHIPS

Fund	Receivership name	City	State	Termination date
10019	Freedom Bank	Bradenton	FL	04/01/2023
10020	Security Pacific Bank	Los Angeles	CA	04/01/2023
10022	The Community Bank	Loganville	GA	04/01/2023
10030	1st Centennial Bank	Redlands	CA	04/01/2023
10038	Riverside Bank Of The Gulf Coast	Cape Coral	FL	04/01/2023
10163	New South Federal Savings Bank	Irondale	AL	04/01/2023
10199	Appalachian Community Bank	Ellijay	GA	04/01/2023
10215	Lakeside Community Bank	Sterling Heights	MI	04/01/2023
10291	Maritime Savings Bank	West Allis	WI	04/01/2023

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective on the termination dates listed above, the Receiverships have been terminated, the Receiver has been discharged, and the Receiverships have ceased to exist as legal entities.

(Authority: 12 U.S.C. 1819)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on April 3, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023-07259 Filed 4-6-23; 8:45 am]

BILLING CODE 6714-01-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 April 21, 2023.

A. Federal Reserve Bank of St. Louis (Holly A. Rieser, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166-2034. Comments can also be sent electronically to Comments.applications@stls.frb.org:

1. Ralph M. Pratt, III, individually and as trustee of the Ralph M. Pratt, III Trust and the Minor Daughter Trust, and Jacqueline K. Pratt, all of Prospect, Kentucky; Ralph Martin Pratt, IV, Avon, Indiana; Jeffrey Paul Pratt, individually and as trustee of the Minor Son Trust, all of Jacksonville, Florida; Colburn Allen Pratt, individually and as trustee of the Minor Son Trust A and the Minor Son Trust B, all of Montrose, Colorado; Cynthia Marie P. Graft, individually and as trustee of the Cynthia Marie Graft Trust, the Matthew Madison Graft Trust, and the Harold Raymond Graft Trust, and Raymond M. Graft, all of Louisville, Kentucky; Benjamin A. Graft, Henryville, Indiana; Robert William Pratt, individually and as trustee of the Robert William Pratt Trust and the Erin Adele Ray Trust, all of Madison, Indiana; to become members of the Pratt Family Control Group, a group acting in concert, to retain voting shares of Farmers Financial Corporation, and thereby indirectly retain voting shares of The Farmers Bank of Milton, both of Milton, Kentucky.

Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2023-07263 Filed 4-6-23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than April 24, 2023.

A. Federal Reserve Bank of Dallas (Karen Smith, Director, Mergers & Acquisitions) 2200 North Pearl Street, Dallas, Texas 75201-2272. Comments can also be sent electronically to Comments.applications@dal.frb.org:

1. Gregory Scott Stubbs, Groesbeck, Texas; Jami Lynn Jones and Cynthia Lou Neal, both of Fairfield, Texas; and Erin Neal Harvey, Corpus Christi, Texas; to join the Stubbs Family Group, a group acting in concert to retain voting shares of Bi-Stone Bancshares, Inc., and thereby indirectly retain voting shares of

Incommons Bank, National Association, both of Mexia, Texas.

Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

[FR Doc. 2023-07357 Filed 4-6-23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Solicitation of Applications for Membership on the Community Advisory Council

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) established the Community Advisory Council (the “CAC”) as an advisory committee to the Board on issues affecting consumers and communities. This Notice advises individuals who wish to serve as CAC members of the opportunity to be considered for the CAC.

DATES: Applications received between Monday, April 10, 2023 and Friday, June 9, 2023 will be considered for selection to the CAC for terms beginning January 1, 2024.

ADDRESSES: Individuals who are interested in being considered for the CAC may submit an application via the Board’s website or email. The application can be accessed at <https://www.federalreserve.gov/secure/CAC/Application/>. Emailed submissions can be sent to CCA-CAC@frb.gov. The information required for consideration is described below.

If electronic submission is not feasible, submissions may be mailed to the Board of Governors of the Federal Reserve System, Attn: Community Advisory Council, Mail Stop I-305, 20th Street and Constitution Ave. NW, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT:

Jennifer Fernandez, Senior Community Development Analyst, Division of Consumer and Community Affairs, (202) 452-2412, or CCA-CAC@frb.gov. For users of telephone systems via text telephone (TTY) or any TTY-based Telecommunications Relay Services (TRS), please call 711 from any telephone, anywhere in the United States; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Board created the Community Advisory Council (CAC) as an advisory committee

to the Board on issues affecting consumers and communities. The CAC is composed of a diverse group of experts and representatives of consumer and community development organizations and interests, including from such fields as affordable housing, community and economic development, employment and labor, financial services and technology, small business, and asset and wealth building. CAC members meet semiannually with the members of the Board in Washington, DC to provide a range of perspectives on the economic circumstances and financial services needs of consumers and communities, with a particular focus on the concerns of low- and moderate-income consumers and communities. The CAC complements two of the Board’s other advisory councils—the Community Depository Institutions Advisory Council (CDIAC) and the Federal Advisory Council (FAC)—whose members represent depository institutions.

The CAC serves as a mechanism to gather feedback and perspectives on a wide range of policy matters and emerging issues of interest to the Board of Governors and aligns with the Federal Reserve’s mission and current responsibilities. These responsibilities include, but are not limited to, banking supervision and regulatory compliance (including the enforcement of consumer protection laws), systemic risk oversight and monetary policy decision-making, and, in conjunction with the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC), responsibility for implementation of the Community Reinvestment Act (CRA).

This Notice advises individuals of the opportunity to be considered for appointment to the CAC. To assist with the selection of CAC members, the Board will consider the information submitted by the candidate along with other publicly available information that it independently obtains.

Council Size and Terms

The CAC consists of at least 15 members. The Board will select members in the fall of 2023 to replace current members whose terms will expire on December 31, 2023. The newly appointed members will serve three-year terms that will begin on January 1, 2024. If a member vacates the CAC before the end of the three-year term, a replacement member will be appointed to fill the unexpired term.

Application

Candidates may submit applications by one of three options:

- **Online:** Complete the application form on the Board’s website at <https://www.federalreserve.gov/secure/CAC/Application/>.
- **Email:** Submit all required information to CCA-CAC@frb.gov.
- **Postal Mail:** If electronic submission is not feasible, submissions may be mailed to the Board of Governors of the Federal Reserve System, Attn: Community Advisory Council, Mail Stop I-305, 20th Street and Constitution Ave. NW, Washington, DC 20551.

Interested parties can view the current Privacy Act Statement at: <https://www.federalreserve.gov/aboutthefed/cac-privacy.htm>.

Below are the application fields.

Asterisks (*) indicate required fields.³⁹

- Salutation
- First Name *
- Middle Initial
- Last Name *
- Suffix
- Email Address *
- Phone Number *
- Postal Mail Street Address *
- Postal Mail City *
- Postal Mail State, Territory, or Federal District *
- Postal Zip Code *
- Organization *
- Title *
- Organization Type (select one) *
 - For Profit
 - Community Development Financial Institution (CDFI)
 - Non-CDFI Financial Institution
 - Financial Services
 - Professional Services
 - Other
 - Non-Profit
 - Advocacy
 - Association

³⁹OMB Number 7100-0371. Approval expires March 31, 2025. Application is authorized pursuant to sections 2A and 10 of the Federal Reserve Act (12 U.S.C. 225a and 244). The obligation to respond is required to obtain the benefit of consideration for CAC membership. Information provided on the Application will be kept confidential under exemption (b)(6) of the Freedom of Information Act to the extent that the disclosure of information “would constitute a clearly unwarranted invasion of personal privacy” (5 U.S.C. 552(b)(6)).

Public reporting burden for this collection of information is estimated to average 1 hour, including the time to gather and maintain data in the required form, to review instructions, and to complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0371), Washington, DC 20503. The Federal Reserve may not conduct or sponsor, and an organization or person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

- Community Development Financial Institution (CDFI)
- Educational Institution
- Foundation
- Service Provider
- Think Tank/Policy Organization
- Other
 - Government
- Primary Area of Expertise (select one) *
 - Civil rights
 - Community development finance
 - Community reinvestment and stabilization
 - Consumer protection
 - Economic and small business development
 - Labor and workforce development
 - Financial technology
 - Household wealth building and financial stability
 - Housing and mortgage finance
 - Rural issues
 - Other (please specify)
- Secondary Area of Expertise (select one)
 - Civil rights
 - Community development finance
 - Community reinvestment and stabilization
 - Consumer protection
 - Economic and small business development
 - Labor and workforce development
 - Financial technology
 - Household wealth building and financial stability
 - Housing and mortgage finance
 - Rural issues
 - Other (please specify)
- Resume *
- The resume should include information about past and present positions you have held, dates of service for each, and a description of responsibilities.
- Cover Letter *
- The cover letter should explain why you are interested in serving on the CAC as well as what you believe are your primary qualifications.
- Additional Information
- At your option, you may also provide additional information about your qualifications.

Qualifications

The Board is interested in candidates with knowledge of fields such as affordable housing, community and economic development, employment and labor, financial services and technology, small business, and asset and wealth building, with a particular focus on the concerns of low- and moderate-income consumers and communities. Candidates do not have to be experts on all topics related to consumer financial services or

community development, but they should possess some basic knowledge of these areas and related issues. In appointing members to the CAC, the Board will consider a number of factors, including diversity in terms of subject matter expertise, geographic representation, and the representation of women and minority groups.

CAC members must be willing and able to make the necessary time commitment to participate in organizational conference calls and prepare for and attend meetings two times per year (usually for two days). The meetings will be held at the Board's offices in Washington, DC. The Board will provide a nominal honorarium and will reimburse CAC members only for their actual travel expenses subject to Board policy.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2023-06435 Filed 4-6-23; 8:45 am]

BILLING CODE 6210-01-P

GENERAL SERVICES ADMINISTRATION

[Notice-P-2023-01; Docket No. 2023-0002; Sequence No. 13]

Notice of Intent To Prepare an Environmental Impact Statement and Public Scoping Meeting and Request for Comments for the Expansion and Modernization of the Alcan Land Port of Entry in Alcan, Alaska

AGENCY: Office of Public Building Services (PBS); General Services Administration, (GSA).

ACTION: Notice.

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA) and the GSA/PBS NEPA Desk Guide, GSA intends to prepare an Environmental Impact Statement (EIS) to analyze the potential impacts from the proposed modernization and expansion of the existing Alcan Land Port of Entry (LPOE) located in Alcan, Alaska. GSA has initiated the required section 106 consultation of the National Historic Preservation Act (NHPA) involving outreach efforts with the Alaska State Historic Preservation Office (SHPO) and Alaska Native Villages.

DATES: A virtual public scoping meeting in open house format will be held on Wednesday, April 26, 2023, from 5:00

p.m. to 7:00 p.m., Alaska Daylight Time (AKDT). Interested parties should submit comments by Monday, May 15, 2023, to be considered in the formation of the Draft EIS. The views and comments of the public are necessary to help determine the scope and content of the environmental analysis. The meeting will be on the Zoom platform where GSA will present and distribute project information and obtain public input on the project.

All mail in comments must be postmarked by May 15, 2023.

Deadlines for Requests of Special Accommodations: Persons needing special accommodations shall notify Emily Grimes at AlcanLPOE@gsa.gov by 2:30 p.m. AKDT, on Wednesday, April 19, 2023.

ADDRESSES: The public is encouraged to provide written comments regarding the scope of the EIS at the meeting and throughout the comment period.

Submit comments identified by Notice P-2023-01 by either of the following methods:

- **Email:** AlcanLPOE@gsa.gov. Include Notice Identifier in the subject line of the message.
- **Virtual Meeting:** Comment forms will be distributed during the virtual open-house public meeting, which can also be submitted during the meeting. The link for the public scoping meeting will be made available on the GSA project website: <https://www.gsa.gov/about-us/regions/welcome-to-the-northwest-arctic-region-10/buildings-and-facilities/alaska/alcan-land-port-of-entry>.

- **Mail:** U.S. General Services Administration, Attention: Emily Grimes, Environmental Program Manager, 1301 A Street, Suite 610, Tacoma, WA 98402

- **Federal Register:** Submit comments in response to Notice-P-2023-01 via <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "Notice-P-2023-01". Select the link "Comment" that corresponds with "Notice-P-2023-01." Follow the instructions provided at the screen. Please include your name, company name (if any), and "Notice-P-2023-01" on your attached document. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <http://www.regulations.gov>, approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Emily Grimes, Environmental Program

Manager, Facilities Management Division, GSA, Phone (253) 394–4026. Email AlcanLPOE@gsa.gov.

SUPPLEMENTARY INFORMATION: The Alcan LPOE is located in a remote area of eastern Alaska on the Alaska Highway and is subject to sub-arctic weather conditions. It is the only year-round land crossing between the Alaskan mainland and Canada. The current Alcan LPOE and its associated housing have only received minor additions and improvements since the original construction in 1972 and does not meet current operational needs. This modernization project is needed to meet the U.S. Customs and Border Protection's (CBP) current Program of Requirements for the port, provide optimal operational flow, address deficiencies, improve customer service to travelers, and provide a comfortable working and living environment for CBP personnel and their families. GSA and CBP are currently exploring the possibility of operating the Alcan LPOE jointly with the Canada Border Services Agency (CBSA) and will update the considered alternatives when a decision is finalized.

Alternatives Under Consideration

The EIS will consider two “action” alternatives and one “no action” alternative. Alternative 1 would consist of land acquisition, construction, and demolition activities. This alternative would relocate the Alcan LPOE location to a proposed site area on the Alaska Highway that is approximately 4 miles to the northwest of the Alaska-Canada border. This alternative would include the acquisition of the proposed site area and demolition of onsite defunct structures, including a gas station, duty-free shop, and small outbuildings. New LPOE facilities and structures would then be constructed on the acquired site, including a main port building with enclosed inspection lanes and a commercial inspection dock, a service building, a firing range, employee housing, and recreation amenities. Upon completion of the new LPOE, the existing LPOE would be decommissioned.

Alternative 2 consists of demolition, renovation, and expansion activities at the existing Alcan LPOE. These activities would include the demolition of existing housing units, construction of a new port building and housing, renovation or reuse of existing main port and support buildings, and the installation of new equipment, systems, and port support infrastructure. Expansion in this location would require the securement of additional

easements from the Tetlin National Wildlife Refuge. Demolition, construction, and renovation activities would be sequenced to maintain current port operations for the entirety of the construction period.

Alternative 3 consists of the “no action” alternative, which assumes that GSA would not expand or modernize the LPOE and that port operations would continue under current conditions.

Anamarie Crawley,

Director, Facilities Management Division, GSA–PBS Northwest/Arctic Region (R10).

[FR Doc. 2023–07304 Filed 4–6–23; 8:45 am]

BILLING CODE 6820–DL–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–23–0314; Docket No. CDC–2023–0024]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled The National Survey of Family Growth (NSFG). This survey is designed to provide nationally representative, scientifically credible data on factors related to birth and pregnancy rates, family formation and dissolution patterns, and reproductive health.

DATES: CDC must receive written comments on or before June 6, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0024 by any of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Follow the instructions for submitting comments.
- **Mail:** Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: ombcdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

The National Survey of Family Growth (NSFG) (OMB Control No. 0920–0314, Exp. 12/31/2024)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on “family formation, growth, and dissolution,” as well as “determinants of health” and “utilization of health care” in the United States. This clearance request includes the data collection in 2024–2026 for the continuous National Survey of Family Growth (NSFG).

The NSFG was conducted periodically between 1973 and 2002, continuously from 2006–2010, and after a break of 15 months, continuously from 2011–2019, by the NCHS, CDC. Each year, about 13,500 households will be screened, with about 5,000 participants interviewed annually. Participation in the NSFG is completely voluntary and confidential. Interviews are expected to average 50 minutes for males and 75 minutes for females. The response rate during the 2011–2019 data collection

period ranged from 64.5% to 74%, and the cumulative response rate for this eight-year fieldwork period was 67.7%.

The NSFG program produces descriptive statistics which document factors associated with birth and pregnancy rates, including contraception, infertility, marriage, cohabitation, and sexual activity, in the U.S. household population 15–49 years (15–44 prior to 2015), as well as behaviors that affect the risk of HIV and other sexually transmitted diseases (STD). The survey also disseminates statistics on the medical care associated with contraception, infertility, pregnancy, and related health conditions.

NSFG data users include the DHHS programs that fund the survey, including CDC/NCHS and 11 others within DHSS:

- Eunice Kennedy Shriver National Institute for Child Health and Human Development (NIH/NICHD)
- Office of Population Affairs (OPA)
- Children’s Bureau in the Administration for Children and Families (ACF/CB)
- Office of Planning, Research, and Evaluation (ACF/CB)
- Office on Women’s Health (OASH/OWH)
- CDC’s Division of HIV/AIDS Prevention (CDC/NCHHSTP/DHAP)

- CDC’s Division of STD Prevention (CDC/NCHHSTP/DSTDP)
- CDC’s Division of Adolescent and School Health (CDC/NCHHSTP/DASH)
- CDC’s Division of Reproductive Health (CDC/NCCDPHP/DRH)
- CDC’s Division of Cancer Prevention and Control (CDC/NCCDPHP/DCPC)
- CDC’s Division of Violence Prevention (CDC/NCIPC/DVP)

The NSFG is also used by state and local governments (primarily for benchmarking to national data); private research and action organizations focused on men’s and women’s health, child well-being, and marriage and the family; academic researchers in the social and public health sciences; journalists; and many others.

This submission requests approval for a revision to NSFG data collection for three years. The revision request includes the increase of the main survey incentive from \$40 to \$60, a small set of questionnaire revisions beginning in Year 3 (2024) data collection and to conduct several methodological studies designed to improve the efficiency and validity of NSFG data collection for the purposes described above. The total estimated annualized time burden to respondents is 6,584 hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of responses	Responses per respondent	Average burden per response (in hours)	Total burden hours
Household member	Screener Interview	15,000	1	5/60	1,250
Household Female 15–49 years of age.	Female Interview	2,750	1	75/60	3,438
Household Male 15–49 years of age	Male Interview	2,250	1	50/60	1,875
Household member	Screener Verification	230	1	2/60	8
Household Individual 15–49 years of age.	Main Verification	150	1	5/60	13
Total .....	.....	.....	.....	.....	6,584

Jeffrey M. Zirger,
Lead, Information Collection Review Office,
Office of Scientific Integrity, Office of Science,
Centers for Disease Control and Prevention.
[FR Doc. 2023–07350 Filed 4–6–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–23DV; Docket No. CDC–2023–0023]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Focus groups among adults with or caring for individuals with congenital heart

defects (CHD), muscular dystrophy (MD), and spina bifida (SB). The purpose of this project is to conduct focus groups to obtain firsthand perspectives from individuals with CHD, MD, and SB.

DATES: CDC must receive written comments on or before June 6, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2023-0023 by either of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-8, Atlanta, Georgia 30329; Telephone: 404-639-7570; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Focus groups among adults with or caring for individuals with congenital heart defects (CHD), muscular dystrophy (MD), and spina bifida (SB)—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Congenital Heart Defects (CHD) are the most common type of structural birth defects in the United States, affecting approximately one in 110 live-born children, and are a leading cause of birth defect-associated infant mortality, morbidity, and healthcare costs. Due to advances in diagnosis and medical interventions, CHD mortality has decreased over the past few decades. Therefore, more individuals are living into adulthood with CHD, a lifelong condition, that can increase the need for specialist care and clinical interventions due to the higher risk of CHD related long-term sequelae.

There is limited data on adults living with CHD who have fallen out of cardiac care, and the available information is strictly among those who returned to care. Currently, there is no information on adults with CHD who remain out of care and what might bring them back into cardiac care.

Understanding what may bring adults with CHD back into care, aside from an urgent cardiac need, would help in developing interventions, as well as improving access and retention to cardiac care, ultimately improving long-term health and wellbeing.

Focus group participants with CHD will be recruited from adults that participated in the Congenital Heart Survey to Recognize Outcomes, Needs and well-being (CH STRONG). Between 2016 and 2019, CH STRONG was administered to adults ages 19–38 with a confirmed CHD diagnosis, born in

Arizona, Arkansas, and 5-county Metro-Atlanta, Georgia. CH STRONG assessed many factors, including access to care and healthcare utilization. Through survey responses we will identify a subpopulation of respondents whose last cardiology encounter was ≥ 3 years before survey completion, creating a unique opportunity to better understand this population not typically available to researchers.

Muscular Dystrophies (MD) are a group of rare inherited disorders characterized by progressive and irreversible muscle weakness and wasting. The nine major types of MD (Duchenne and Becker [DBMD], myotonic dystrophy [DM], congenital [CMD], limb girdle [LGMD], Emory-Dreifuss [EDMD], facioscapulohumeral [FSHD], distal, and oculopharyngeal [OPMD]) vary by age of onset, muscle groups affected, genes involved, severity, and progression of disease. In 2002, CDC implemented the Muscular Dystrophy Surveillance, Tracking, and Research Network (MD STARnet [DD-19-002]). Now in its fourth funding cycle, MDSTARnet has conducted surveillance and collected epidemiologic and clinical data on people with DBMD, DM, FSHD, LGMD, CMD, OPMD, EDMD, and distal MD and has published numerous articles in scientific journals. However, qualitative data on the experiences of individuals with certain types of MD (DBMD, DM, FSHD, LGMD, and CMD) or their caregivers are limited. The MD portion of this collection will focus on gathering qualitative information to better understand the personal experiences of adults (≥ 18 years) with DBMD, FSHD, DM, and LGMD as well as adult caregivers of youth (< 18 years) with DBMD, congenital or juvenile onset DM, and CMD. Specifically, qualitative data on barriers to accessing and receiving care, the journey to diagnosis, and for those diagnosed early in life the transition into adulthood will help to address a gap in the literature and inform future research and surveillance efforts.

Spina bifida (SB) is among the most common disabling birth defects in the United States. Based on national data from 2010–2014, the estimated birth prevalence for spina bifida is 3.9 per 10,000 live births. SB impacts different organ systems, resulting in the need for various types of clinical specialists. In 2008, CDC implemented the National Spina Bifida Patient Registry (NSBPR; [DD-19-001]) with SB clinics across the United States. In 2014, CDC funded a subset of NSBPR clinics to establish and implement the “Urologic Management to Preserve Initial Renal Function

Protocol for Young Children with Spina Bifida" (UMPIRE Protocol; [DD-14-002]). NSBPR and UMPIRE have generated numerous publications on clinical interventions, health outcomes, and lessons learned. However, increases in survival for individuals with SB have prompted the need for greater understanding of the complexities involved in their clinical and psychological care. Qualitative data on individual and caregiver experiences with SB, including barriers to accessing specialty care, managing one's skin

health and bowel and bladder function, and the transition from childhood to adulthood (for those with MD diagnosed prior to adulthood) are needed to guide future SB surveillance and research projects as well as the care of those aging into adulthood.

The purpose of this project is to conduct virtual focus groups among adults with or caring for individuals with CHD, MD, and SB with a special focus on: receipt of and access to medical care (including specialist care), and barriers and facilitators to

accessing, receiving, or reengaging care; the journey to diagnosis; and the transition period from pediatric to adult care (for persons diagnosed during childhood). This information may be used to address gaps in knowledge, inform future surveillance, research, and data collection, and gather patient perspectives that may be shared with clinicians and inform clinical care.

CDC requests OMB approval for an estimated 533 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Adults with a CHD that have been out of cardiac care for ≥ 3 .	CHD Screening Questionnaire	410	1	10/60	68
Adults with a CHD that have been out of cardiac care for ≥ 3 .	CHD Focus Group Guide	80	1	90/60	120
Adults with MD or adult caregivers of individuals with MD.	MD Screening Tool	215	1	10/60	36
Adults with MD or adult caregivers of individuals with MD.	MD Focus Group Guide	135	1	90/60	203
Adults with SB or adult caregivers of individuals with SB.	SB Screening Tool	95	1	10/60	16
Adults with SB or adult caregivers of individuals with SB.	SB Focus Group Guide	60	1	90/60	90
Total .....	.....	.....	.....	.....	533

Jeffrey M. Zirger,

Lead, Information Collection Review Office,
Office of Scientific Integrity, Office of Science,
Centers for Disease Control and Prevention.

[FR Doc. 2023-07348 Filed 4-6-23; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[60Day-23-0060; Docket No. ATSDR-2023-0001]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to

comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Environmental Health and Land Reuse Certificate Training. This certification is a joint collaboration between ATSDR and the National Environmental Health Association (NEHA), and is designed to build capacity among environmental professionals.

DATES: ATSDR must receive written comments on or before June 6, 2023.

ADDRESSES: You may submit comments, identified by Docket No. ATSDR-2023-0001 by either of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. ATSDR will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal

(www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-8, Atlanta, Georgia 30329; Telephone: 404-639-7118; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are

publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Environmental Health and Land Reuse Certificate Training (formerly Assessment of Environmental Health and Land Reuse Certification Training) (OMB Control No. 0923-0060)—Reinstatement with Change—Agency for Toxic Substances and Disease Registry (ATSDR).

Background and Brief Description

The Agency for Toxic Substances and Disease Registry (ATSDR) is requesting a three-year Paperwork Reduction Act (PRA) clearance for a Reinstatement with Change of an Information Collection Request (ICR) titled Environmental Health and Land Reuse Certificate Training (formerly Assessment of Environmental Health and Land Reuse Certification Training) (OMB Control No. 0920-0060, Discontinued 08/31/2022).

This certificate is a joint collaboration between ATSDR and the National Environmental Health Association (NEHA) under a cooperative agreement. ATSDR and NEHA have a long-standing partnership to build capacity among environmental professionals. The EHLR certification is geared toward NEHA members and ATSDR stakeholders who are environmental professionals, primarily local and state health agency employees but also planners, environmental consultants, environmental non-profits, and students in environmental science, environmental/public health, and

planning. The certification goals and course objectives are:

- To increase participant awareness and knowledge of environmental health and land reuse,
- To increase skills and capacity of participants to engage in environmental health and land reuse work, and
- To assess participant feedback and assessment of their own increased awareness, skills, and knowledge in environmental health and land reuse.

Due to the prevalence of potentially contaminated land reuse sites such as brownfields, the certificate program and training modules focus on increasing skills in land reuse and redevelopment through the integration of epidemiology, risk assessment, risk communication, and toxicology concepts and resources. The Environmental Health and Land Reuse (EHLR) Certificate Training includes a 5-module “EHLR Basic” training. The EHLR Basic certificate is offered in two modes. ATSDR's National Land Reuse Health Program (Land Reuse Program) offers registration and maintains a classroom version of the training for learners who prefer virtual/classroom instruction or who may have limited broadband. NEHA independently maintains a non-federally sponsored online, asynchronous EHLR Basic training. NEHA's certificate registration and training is hosted on its existing online learning management system (LMS), which hosts a variety of certificate and credentialing courses.

As of the 08/31/2022 Discontinuation, ATSDR has eliminated the formerly approved one-time collection of feedback within 6–12 months after participation as part of this Reinstatement with Change ICR. This follow-up survey evaluated the subsequent use of the EHLR Basic certificate program training materials and resources to build capacity, and skills in environmental health and land reuse work. The follow-up survey is no longer needed because the EHLR Basic training course content has been successfully established using the feedback.

In addition, the EHLR Basic training was to be administered under the CDC Training and Continuing Education Online (TCEO) system (see “Application for Training” [OMB Control No. 0920-0017; Exp. 09/30/2025]). ATSDR has moved away from TCEO and will administer its own classroom courses. NEHA will assist ATSDR by issuing certificates of completion and continuing education credits.

Based on its experience in the past 30 months, ATSDR estimates approximately 100 participants per year

for classroom learning. For burden hour estimation, we make a simplifying assumption that all students have completed all modules and self-assessments. In reality, participants who download the EHLR Basic Course and teach it (e.g., in a college or workplace class) or complete it themselves, may complete these modules on a schedule spread over several months or even more than one year.

ATSDR will administer the following information collections: classroom registration and self-assessments for each of the five EHLR Basic modules (Engaging with Your Community, Evaluating Environmental and Health Risks, Communicating Environmental and Health Risks to the Community, Redesigning with Health in Mind, and Measuring Success). ATSDR is also planning a new mode of instruction for supplemental “EHLR Immersion Training” in three new modules: Community Engagement, Evaluation of Environmental and Health Risks, and Communicating Environmental and Health Risks. This training will be offered as a face-to-face classroom course at environmental conferences to those who have completed the prerequisite EHLR online or classroom certification. An additional certificate of completion and continuing education credits will be issued by NEHA for each of the three supplemental immersion trainings.

Regarding the supplemental immersion training, ATSDR estimates that 125 conference attendees will meet the prerequisite certification requirement and will register for the training through the conference portal. They will be asked to complete a voluntary self-assessment for each module to be submitted toward additional continuing education credits and to receive the supplemental certification.

For both EHLR Basic classroom and EHLR Immersion conference training, ATSDR estimates a total of 225 registered participants. Some of the registrations will be through conference registration portals and some may be directly with ATSDR. We estimate the time burden per registration will be three minutes. In keeping with the Privacy Act requirements, participants will be offered the ability to opt-out of having their names and email addresses shared with NEHA. Those that do will not receive a completion certificate or continuing education credits. We anticipate this will be a rare event but are still accounting for this possibility.

ATSDR requests OMB approval for an estimated 145 annual burden hours.

Participation in this information collection is voluntary and there is no

cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr.)	Total burden (in hr.)
Environmental Health Professionals and Affiliates.	EHLR Basic or Immersion Course Registration (classroom/conference registration).	225	1	3/60	11
	EHLR Privacy Act Opt Out Form (Basic/Immersion).	11	1	1/60	1
	Basic Course Module 1 Self-assessment (classroom).	100	1	5/60	8
	Basic Course Module 2 Self-assessment (classroom).	100	1	5/60	8
	Module 3 Self-assessment (classroom).	100	1	5/60	8
	Module 4 Self-assessment (classroom).	100	1	5/60	8
	Module 5 Self-assessment (classroom).	100	1	5/60	8
	Immersion Module 1 Self-assessment (conference).	125	1	15/60	31
	Immersion Module 2 Self-assessment (conference).	125	1	15/60	31
	Immersion Module 3 Self-assessment (conference).	125	1	15/60	31
Total .....	.....	.....	.....	.....	145

Jeffrey M. Zirger,

*Lead, Information Collection Review Office,
Office of Scientific Integrity, Office of Science,
Centers for Disease Control and Prevention.*

[FR Doc. 2023-07349 Filed 4-6-23; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Heritable Disorders in Newborns and Children

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 Advisory Committee on Heritable Disorders in Newborns and Children (ACHDNC or Committee) scheduled a public meeting. Information about ACHDNC and the agenda for this meeting can be found on the ACHDNC website at <https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html>.

DATES: Thursday, May 4, 2023, from 9:30 a.m. to 3:00 p.m. Eastern Time and

Friday, May 5, 2023, from 9:30 a.m. to 2:00 p.m. Eastern Time.

ADDRESSES: This meeting will be held in person with an option to join virtually. While this meeting is open to the public, advance registration is required. Please visit the ACHDNC website for information on registration: <https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html> by the deadline of 12:00 p.m. ET on May 3, 2023. Instructions on how to access the meeting via webcast will be provided upon registration.

If you are a non-U.S. citizen who would like to attend the May meeting in-person, please contact ACHDNC@hrsa.gov by April 12, 2023.

FOR FURTHER INFORMATION CONTACT: Alaina Harris, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18W66, Rockville, Maryland 20857; 301-443-0721; or ACHDNC@hrsa.gov.

SUPPLEMENTARY INFORMATION: ACHDNC provides advice and recommendations to the Secretary of Health and Human Services (Secretary) on the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. ACHDNC reviews and reports regularly on newborn and childhood screening practices,

recommends improvements in the national newborn and childhood screening programs, and fulfills requirements stated in the authorizing legislation. In addition, ACHDNC's recommendations regarding inclusion of additional conditions for screening on the Recommended Uniform Screening Panel, following adoption by the Secretary, are evidence-informed preventive health services provided for in the comprehensive guidelines supported by HRSA pursuant to section 2713 of the Public Health Service Act (42 U.S.C. 300gg-13). Under this provision, non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance are required to provide insurance coverage without cost-sharing (a co-payment, co-insurance, or deductible) for preventive services for plan years (*i.e.*, policy years) beginning on or after the date that is 1 year from the Secretary's adoption of the condition for screening.

During the May 4-5, 2023, meeting, ACHDNC will hear from experts in the fields of public health, medicine, heritable disorders, rare disorders, and newborn screening. Agenda items may include the following topics:

(1) ACHDNC committee processes including prioritization and capacity of reviewing initial nominations;

(2) Criteria for pilot studies related to newborn screening;

(3) Center for Disease Control and Prevention's Enhancing Data Driven Disease Detection in Newborns (ED3N) Project; and

(4) ACHDNC Decision Matrix.

Agenda items are subject to change as priorities dictate. However, no votes will be held at this meeting to recommend including additional conditions for screening to the Recommended Uniform Screening Panel. Information about ACHDNC, including a roster of members and past meeting summaries, is also available on ACHDNC's website.

Members of the public also will have the opportunity to provide comments on any or all of the above agenda items. Public participants may request to provide general oral comments and may submit written statements in advance of the scheduled meeting. Oral comments will be honored in the order they are requested and may be limited as time allows. Members of the public registered to provide oral public comments on all other newborn screening related topics are tentatively scheduled to provide their statements on Friday, May 5, 2023. Requests to provide a written statement or make oral comments to the ACHDNC must be submitted via the registration website by 12:00 p.m. ET on Wednesday, April 19, 2023. Written comments will be shared with the Committee, so that they have an opportunity to consider them prior to the meeting.

Individuals who need special assistance or another reasonable accommodation should notify Alaina Harris at the address and phone number listed above at least 10 business days prior to the meeting.

Since this meeting occurs in a federal government building, attendees must go through a security check to enter the building. Non-U.S. citizen attendees must notify HRSA of their planned attendance at least 15 business days prior to the meeting in order to facilitate their entry into the building. All attendees are required to present government-issued identification prior to entry.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023-07333 Filed 4-6-23; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection

Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Rural Maternity and Obstetrics Management Strategies Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than June 6, 2023.

ADDRESSES: Submit your comments to paperwork@hrsa.gov or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email paperwork@hrsa.gov or call Samantha Miller, the HRSA Information Collection Clearance Officer, at (301) 594-4394.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Rural Maternity and Obstetrics Management Strategies Program, OMB No. 0906-xxxx-New.

Abstract: HRSA administers the Rural Maternity and Obstetrics Management Strategies (RMOMS) Program, which is authorized by sections 501(a)(2) and 711(b)(5) of the Social Security Act (42 U.S.C. 701(a)(2) and 912(b)(5), respectively), and sections 330A(e) and 330A-2 of the Public Health Service Act (42 U.S.C. 254c(e) and 254c-1b, respectively). These authorities allow HRSA to, among other things, award grants to promote rural health care services outreach by improving and expanding the delivery of health care services to include new and enhanced services in rural areas, through

community engagement and evidence-based or innovative, evidence-informed models; as well as establish or continue collaborative improvement and innovation networks to improve access to, and delivery of, maternity and obstetrics care in rural areas.

The RMOMS program grants support networks that improve access to, and continuity of, maternal and obstetrics care in rural communities. The goals of the RMOMS program are to: (1) improve maternal and neonatal outcomes within a rural region; (2) develop a sustainable network approach to increase the delivery and access of preconception, prenatal, pregnancy, labor and delivery, and postpartum services; (3) develop a safe delivery environment with the support and access to specialty care for perinatal patients and infants; and (4) develop sustainable financing models for the provision of maternal and obstetrics care in rural hospitals and communities.

HRSA seeks OMB approval to collect information about RMOMS program grants using performance measures in HRSA's Electronic Handbooks via the Performance Improvement and Measurement System.

Need and Proposed Use of the Information: For this program, performance measures were drafted to provide data to the program and enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act of 1993. These measures cover the principal topic areas of interest to the Federal Office of Rural Health Policy, including: (1) consortium/network; (2) sustainability; (3) population demographics; (4) project specific domains. The annual collection of this information helps further inform and substantiate the focus and objectives of the RMOMS program.

Likely Respondents: The respondents will be recipients of the Rural Maternity and Obstetrics Management Strategies Program awards.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. 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. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Rural Maternity and Obstetrics Management Strategies Program Performance Improvement and Measurement System	10	1	10	9	90
	10	.....	10	.....	90

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023-07275 Filed 4-6-23; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend as well as those who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting website (<http://videocast.nih.gov/>).

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 Deafness and Other Communication Disorders Advisory Council.

Date: May 18–19, 2023.

Closed: May 18, 2023, 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Porter Neuroscience Research Center, Building 35A, Room 640/630, 35 Convent Drive, Bethesda, MD 20892.

Open: May 18, 2023, 2:00 p.m. to 4:40 p.m.

Agenda: Staff reports on divisional, programmatic, and special activities.

Place: Porter Neuroscience Research Center, Building 35A, Room 640/630, 35 Convent Drive, Bethesda, MD 20892.

Open: May 19, 2023, 9:00 a.m. to 11:45 a.m.

Agenda: Staff reports on divisional, programmatic, and special activities.

Place: Porter Neuroscience Research Center, Building 35A, Room 640/630, 35 Convent Drive, Bethesda, MD 20892.

Contact Person: Rebecca Wagenaar-Miller, Ph.D., Director, Division of Extramural Activities, NIDCD/NIH, 6001 Executive Boulevard, Bethesda, MD 20892, (301) 496-8693, rebecca.wagenaar-miller@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at <https://www.nih.gov/about-nih/visitor-information/campus-access-security> for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <https://www.nidcd.nih.gov/about/advisory-council>, where an agenda and any additional

information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: April 3, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-07319 Filed 4-6-23; 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; NIH Support for Conferences and Scientific Meetings (Parent R13 Clinical Trial Not Allowed).

Date: May 2–4, 2023.

Time: 9:00 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 3G53, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Konrad Krzewski, 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 3G53, Rockville, MD 20852, 240-747-7526, konrad.krzewski@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: April 3, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-07271 Filed 4-6-23; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: June 5, 2023.

Open: 10:30 a.m. to 11:30 a.m.

Agenda: Report of Institute Acting Director.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Closed: 11:45 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, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Kelly Y. Poe, Ph.D., Acting Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F50, Bethesda, MD 20892, 301-496-7291, poeky@mail.nih.gov.

Name of Committee: National Advisory Allergy and Infectious Diseases Council Acquired Immunodeficiency Syndrome Subcommittee.

Date: June 5, 2023.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, Natcher Building, Conference Room A 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to 4:00 p.m.

Agenda: Report of the Division Director and Division Staff.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Kelly Y. Poe, Ph.D., Acting Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F50, Bethesda, MD 20892, 301-496-7291, poeky@mail.nih.gov.

Name of Committee: National Advisory Allergy and Infectious Diseases Council Microbiology and Infectious Diseases Subcommittee.

Date: June 5, 2023.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to 4:00 p.m.

Agenda: Report of the Division Director and Division Staff.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Kelly Y. Poe, Ph.D., Acting Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F50, Bethesda, MD 20892, 301-496-7291, poeky@mail.nih.gov.

Name of Committee: National Advisory Allergy and Infectious Diseases Council Immunology and Transplantation Subcommittee.

Date: June 5, 2023.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to 4:00 p.m.

Agenda: Report of the Division Director and Division Staff.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Kelly Y. Poe, Ph.D., Acting Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F50, Bethesda, MD 20892, 301-496-7291, poeky@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice at least 10 days in advance of the meeting. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <https://www.niaid.nih.gov/about/advisory-council>, where an agenda and any additional information for the meeting will be posted when available.

(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: April 3, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-07276 Filed 4-6-23; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. The open session of the meeting will also be videocast. Individuals who plan to attend or participate and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Advisory Neurological Disorders and Stroke Council.

Date: May 31–June 1, 2023.

Open: May 31, 2023, 1:00 p.m. to 5:30 p.m.

Agenda: Report by the Director, NINDS; Report by the Director, Division of Extramural Activities; and Administrative and Program Developments.

Open session will be videocast from this link: <https://videocast.nih.gov/>.

Closed: June 1, 2023, 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, Room 160, 6701 Rockledge Drive, Bethesda, Maryland 20817.

Contact Person: Robert Finkelstein, Ph.D., Director of Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248, finkelsr@ninds.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice at least 10 days in advance of the meeting. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: www.ninds.nih.gov, where an agenda and any additional information for the meeting will be posted when available.

In the interest of security, NIH has procedures at <https://www.nih.gov/about-nih/visitor-information/campus-access-security> for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(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: April 3, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–07274 Filed 4–6–23; 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: May 1, 2023.

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 3G76, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Marci Scidmore, 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 3G76, Rockville, MD 20852, (240) 627–3255, marci.scidmore@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: April 3, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–07278 Filed 4–6–23; 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: May 30, 2023.

Time: 10:00 a.m. to 1:00 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 3G62A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Eleazar Cohen, 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 3G62A, Rockville, MD 20852, (240) 669–5081, ecohen@niaid.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: April 3, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–07272 Filed 4–6–23; 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 Planning Grant (R34 Clinical Trial Not Allowed); SBIR Phase II Implementation Cooperative Agreement (U44 Clinical Trial Required); Clinical Trial Implementation Cooperative Agreement (U01 Clinical Trial Required).

Date: May 1, 2023.

Time: 12:30 p.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 3E70A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Soheyla Saadi, 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 3E70A, Rockville, MD 20852, (240) 669-5178, saadisoh@niaid.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: April 3, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-07279 Filed 4-6-23; 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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Large Scale Integrated Mapping and Molecular Profiling of Cell Ensembles and/or Cell-Types

Mediating Opioid Action in the Rodent Brain (R01).

Date: June 7, 2023.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian Stefan Wolff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, Bethesda, MD 20892, (301) 480-1448, brian.wolff@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: April 3, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-07280 Filed 4-6-23; 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 Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: June 5, 2023.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: Report of Division Director and Division Staff.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Pamela Gilden, Branch Chief, Science Planning and Operations Branch, Division of AIDS, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 8D49, Rockville, MD 20852-9831, 301-594-9954, pamela.gilden@nih.gov.

Any interested person may file written comments with the committee by forwarding

the statement to the Contact Person listed on this notice at least 10 days in advance of the meeting. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <https://www.niaid.nih.gov/about/committees-aids-research>, where an agenda and any additional information for the meeting will be posted when available.

(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: April 3, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-07277 Filed 4-6-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2023-0124]

Port Access Route Study: Approaches to the Ports of Puerto Rico and U.S. Virgin Islands

AGENCY: Coast Guard, DHS.

ACTION: Notice of study; request for comments.

SUMMARY: The Coast Guard is conducting a Port Access Route Study to evaluate safe access routes for the movement of vessel traffic proceeding to or from the ports or places in the Commonwealth of Puerto Rico and the U.S. Virgin Islands and to determine whether shipping safety fairways and/or routing measures should be established, adjusted, or modified. The Puerto Rico and U.S. Virgin Islands Port Access Route Study considers whether such measures are necessary to improve navigation safety due to factors such as planned or potential offshore development, current port capabilities and planned improvements, increased vessel traffic, existing and potential anchorage areas, changing vessel traffic patterns, effects of weather, or navigational difficulty. Vessel routing measures, which include traffic

separation schemes, two-way routes, recommended tracks, deep-water routes, precautionary areas, and areas to be avoided, are implemented to reduce the risk of marine casualties. To assist us in conducting the Puerto Rico and U.S. Virgin Islands Port Access Route Study, we invite your responses to the questions in the INFORMATION REQUESTED section. The recommendations of the study may subsequently be implemented through rulemakings or in accordance with international agreements.

DATES: Comments and related material must be received on or before July 6, 2023. Requests for a public meeting must be submitted on or before May 8, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0124 using the Federal eRulemaking Portal <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTAL.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice or study, call or email LT Ryan Gilbert, Seventh Coast Guard District (dpw), U.S. Coast Guard; telephone (305) 415–6750, email Ryan.A.Gilbert@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

ACPARS	Atlantic Coast Port Access Route Study
AIS	Automatic Identification System
ANPRM	Advanced Notice of Proposed Rulemaking
AOR	Area of Responsibility
COMDTINST	Commandant Instruction
CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
EEZ	Exclusive Economic Zone
EO	Executive Order
FR	Federal Register
IMO	International Maritime Organization
IRA	Inflation Reduction Act
MTS	Marine Transportation System
NM	Nautical Mile
NPRM	Notice of Proposed Rulemaking
PARS	Port Access Route Study
PR PARS	Puerto Rico and U.S. Virgin Islands Port Access Route Study
PWSA	Ports and Waterways Safety Act
TSS	Traffic Separation Scheme
U.S.	United States
U.S.C.	United States Code
USCG	United States Coast Guard

II. Background and Purpose

A. Requirements for Port Access Route Studies: Under Section 70003 of Title 46 of the United States Code, the Commandant of the U.S. Coast Guard may designate necessary shipping safety fairways (“fairways”) and traffic

separation schemes (TSSs) to provide safe access routes for vessels proceeding to and from U.S. ports. The designation of fairways and TSSs recognizes the paramount right of navigation over all other uses in the designated areas.

Before establishing or adjusting fairways or TSSs, the Coast Guard must conduct a Port Access Route Study (“PARS”), a study of potential traffic density and the need for safe access routes for vessels. Through the study process, the Coast Guard must coordinate with federal, state, and foreign state agencies (where appropriate) and consider the views of maritime community representatives, environmental groups, and other interested stakeholders. The primary purpose of this coordination is, to the extent practicable, to reconcile the need for safe access routes with other reasonable waterway uses such as anchorages, construction, and operation of renewable energy facilities, marine sanctuary operations, commercial and recreational activities, and other uses.

In addition to aiding the Coast Guard in establishing new or adjusting fairways or TSSs, this PARS may recommend establishing or amending other vessel routing measures. Examples of other routing measures include two-way routes, recommended tracks, deep-water routes (for the benefit primarily of ships whose ability to maneuver is constrained by their draft), precautionary areas (where ships must navigate with particular caution), and areas to be avoided (for reasons of exceptional danger or especially sensitive ecological and environmental factors).

B. Previous Port Access Route Studies within this Study Area: In 2016, the Coast Guard published a notice of its Atlantic Coast Port Access Route Study (ACPARS) in the **Federal Register** (81 FR 13307; March 14, 2016) and announced the study report as final in the **Federal Register** (82 FR 16510; April 5, 2017). The ACPARS analyzed the Atlantic Coast waters seaward of existing port approaches within the U.S. Exclusive Economic Zone (EEZ). This multiyear study began in 2011, included public participation, and identified the navigation routes customarily followed by ships engaged in commerce between international and domestic U.S. ports. The study is available at <https://navcen.uscg.gov/?pageName=PARSReports>. Data and information from stakeholders, including Automatic Identification System (AIS) data from vessel traffic, were used to identify and verify deep draft and coastwise navigation routes that are typically followed by ships engaged in commerce

between international and domestic U.S. ports.

C. Need for a New Port Access Route Study: In 2022, the Coast Guard announced a new study of routes used by ships to access ports on the Southeast Atlantic Coast of the United States and the Commonwealth of Puerto Rico and U.S. Virgin Islands in the **Federal Register** (87 FR 76497; December 14, 2022). This new study is in support of the provisions provided in Public Law 117–169, commonly referred to as the Inflation Reduction Act of 2022 (IRA), and Executive Order on the Implementation of the Energy and Infrastructure Provisions of the Inflation Reduction Act of 2022 (E.O. 14082). This study will be separate from, but may expand upon, the proposals in the other Coast Guard rulemakings. The Puerto Rico and Virgin Island Port Access Route Study (“PR PARS”) will focus on the coastwise shipping routes and near coastal users of the Atlantic Ocean and Caribbean Sea between the coastal ports, and the approaches to coastal ports within the U.S. EEZ in Puerto Rico and the U.S. Virgin Islands. This PARS will help the Coast Guard determine what impact, if any, the siting, construction, and operation of new developments may have on existing near coastal users of the U.S. waters of the Atlantic Ocean and Caribbean Sea adjacent to the Commonwealth of Puerto Rico and the U.S. Virgin Islands and the potential impact of shipping to other maritime users. To ensure safety of navigation, the Coast Guard will determine the impacts of rerouting traffic, funneling traffic, and placement of structures that may obstruct navigation. Some of the impacts may include increased vessel traffic density, more restricted offshore vessel routing, fixed navigation obstructions, underwater cable hazards, and economic impacts. Analyzing the various impacts will require a thorough understanding of the interrelationships of shipping, other commercial and recreational uses, and port operations.

The goal of the PARS is to enhance navigational safety by examining existing shipping routes and waterway uses, and, to the extent practicable, reconciling the paramount right of navigation within designated port access routes with other waterway uses such as the development of offshore renewable energy installations, aquaculture farms, marine sanctuaries, and port expansions.

III. Information Requested

Timelines, Study Area, Focus, and Process: The PR PARS is expected to take 12 months or more to complete.

The study area will encompass all vessel traffic patterns approaching and departing major ports in the Commonwealth of Puerto Rico and the territories of the U.S. Virgin Islands and all federal navigable waters out to the EEZ. The PR PARS will focus on vessel traffic and navigation mitigation techniques to improve and support safe navigation transits.

As part of this study, we will analyze current and historical vessel traffic, fishing vessel information, agency and stakeholder experience in vessel traffic management, navigation, ship handling, and effects of weather. We encourage you to participate in the study process by submitting comments in response to this document.

We will publish the results of the PR PARS in the **Federal Register**. It is possible that the study may validate existing vessel routing measures and conclude that no changes are necessary. It is also possible that the study may recommend one or more changes to enhance navigational safety and the efficiency of vessel traffic. The recommendations may lead to future rulemakings or appropriate international agreements.

Possible Scope of the Recommendations: We are attempting to determine the scope of any safety concerns associated with vessel transits in the study area. The information gathered during the study should help us identify concerns and mitigating solutions. Considerations might include: (1) Maintain the current vessel routing measures; (2) modify the existing traffic separation schemes; (3) create one or more precautionary areas; (4) create one or more inshore traffic zones; (5) establish area(s) to be avoided; (6) create deep-draft routes; (7) establish Regulated Navigation Areas (RNA) with specific vessel operating requirements to ensure safe navigation near shallow water; (8) identify any other appropriate ships' routing measures; (9) use this study for future decisions on routing measures or other maritime traffic considerations and; (10) use this study to inform other agencies concerning the impacts of their future endeavors.

Questions: To help us conduct the PR PARS, we request information that will help answer the following questions, although comments on other issues addressed in this document are also welcome. In responding to a question, please explain your reasons for each answer and follow the instructions under "Public Participation and Request for Comments" below.

(1) What navigational hazards do vessels operating in the study area face? Please describe.

(2) Are there strains on the current vessel routing systems, such as increasing traffic density associated with future growth? Please describe.

(3) Are modifications to existing vessel routing measures needed to address hazards and improve traffic efficiency in the study area? If so, please describe.

(4) What costs and benefits are associated with the measures listed as potential study considerations? What measures do you think are most cost-effective?

(5) What impacts, both positive and negative, would changes to existing routing measures or new routing measures have on the study area?

(6) Where do you transit? Where are your transit routes? What criteria are used in determining your transit routes?

(7) Do you currently experience competing uses for the same waterway areas or transit routes? If so, please describe.

(8) Do you anticipate, or are you aware of, future competing uses for the same waterway areas or transit routes? These could include potential offshore energy projects, potential offshore aquaculture projects, or otherwise.

(9) Are there other environmental, cultural, tribal, marine mammal or other impacts which should be considered during this Port Access Route Study?

IV. Public Participation and Request for Comments

We encourage you to participate in this study by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting Comments: If you submit comments to the online public docket, please include the docket number for this rulemaking (USCG–2023–0124), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. We accept anonymous comments.

To submit your comment online, go to <http://www.regulations.gov>, and insert "USCG–2023–0124" in the "search box." Click "Search." Then click "Comment Now." We will consider all comments and material received during the comment period.

B. Public Meetings: The Coast Guard may hold public meeting(s) if there is sufficient public interest. You must submit a request for one on or before May 8, 2023. You may submit your request for a public meeting online via <http://www.regulations.gov>. Please explain why you believe a public

meeting would be beneficial. If we determine that a public meeting would aid in the study, we will hold a meeting at a time and place announced by a later notice in the **Federal Register**.

C. Viewing Comments and Documents: To view the comments and documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2023–0124" and click "Search." Click the "Open Docket Folder" in the "Actions" column.

D. Privacy Act: 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 Correspondence System of Records notice (84 FR 48645, September 26, 2018). Documents mentioned in this notice as being available in the docket, and all public comments, will be 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, or a final rule is published.

V. Puerto Rico and U.S. Virgin Islands PARS (PR PARS): Study Area

The Seventh Coast Guard District and Coast Guard Sector San Juan will conduct the PR PARS. The study will commence upon publication of this notice and take 12 months or more to complete.

The study area is bounded by a line connecting the following positions: 21°49'47.24" N 065°49'48.15" W 18°25'22.02" N 064°52'39" W thence along US/British Virgin Islands, Boarder to: 18°16'43.01" N 064°39'41" W 18°03'2.96" N 064°38'3" W 18°02'6.17" N 063°52'10.25" W 16°44'49" N 064°01'8" W 14°53'4.39" N 066°36'24.54" W 15°12'51.02" N 068°28'56" W 18°07'27.02" N 068°15'33.01" W 21°52'8.51" N 066°56'30.36" W thence return to origin.

The borders of this area approximately follow the Sector San Juan Captain of the Port Zone (33 CFR 3.35–25) and include both the Commonwealth of Puerto Rico and the Territory of the Virgin Islands, and the waters adjacent to both enclosed by the outermost extents of the EEZ. An

illustration showing the study area is available in the docket where indicated under **ADDRESSES**.

The PR PARS will analyze navigation routes to/from the Commonwealth of Puerto Rico and the U.S. Virgin Islands to international routes to and from the United States. Current capabilities and planned improvements to handle maritime conveyances will be considered. The analyses will be conducted in accordance with COMDTINST 16003.2B, Marine Planning to Operate and Maintain the Marine Transportation System (MTS) and Implement National Policy. This Instruction is available at https://media.defense.gov/2019/Jul/10/2002155400/-1/-1/0/CI_16003_2B.PDF.

We will publish the results of the PR PARS in the **Federal Register**. It is possible that the study may validate the status quo (no fairways or routing measures) and conclude that no changes are necessary. It is also possible that the study may recommend one or more changes to address navigational safety and the efficiency of vessel traffic management. The recommendations may lead to future rulemakings or appropriate international agreements.

This notice is published under the authority of 46 U.S.C. 70003(c)(1).

Dated: April 3, 2023.

Brendan. C. McPherson,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2023-07367 Filed 4-6-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6394-N-01]

Annual Indexing of Basic Statutory Mortgage Limits for Multifamily Housing Programs; Annual Indexing of Substantial Rehabilitation Threshold

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In accordance with the National Housing Act, HUD is providing notice of adjustment to the Basic Statutory Mortgage Limits for Multifamily Housing Programs for calendar year 2023. HUD is also providing notice of adjustment to the per unit cost threshold for determining substantial rehabilitation in the Multifamily Housing Programs pursuant to its administrative guidance for calendar year 2023.

DATES: Applicable January 1, 2023.

FOR FURTHER INFORMATION CONTACT:

Willie Fobbs III, Director, Office of Multifamily Production, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410-8000, telephone (202) 402-3242 (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 or 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:

Section 206A of the National Housing Act (12 U.S.C. 1712a) provides authority for the annual adjustment for the following FHA multifamily statutory dollar limits:

- I. Section 207(c)(3)(A) (12 U.S.C. 1713(c)(3)(A));
- II. Section 213(b)(2)(A) (12 U.S.C. 1715e(b)(2)(A));
- III. Section 220(d)(3)(B)(iii)(I) (12 U.S.C. 1715k(d)(3)(B)(iii)(I));
- IV. Section 221(d)(4)(ii)(I) (12 U.S.C. 1715l(d)(4)(ii)(I));
- V. Section 231(c)(2)(A) (12 U.S.C. 1715v(c)(2)(A)); and
- VI. Section 234(e)(3)(A) (12 U.S.C. 1715y(e)(3)(A)).

Section 206A goes on to state that the preceding “Dollar Amounts” shall be adjusted annually (commencing in 2004) on the effective date of the Federal Reserve Board’s adjustment of the \$400 figure in the Home Ownership and Equity Protection Act of 1994 (HOEPA). The adjustment of the Dollar Amounts shall be calculated using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) as applied by the Federal Reserve Board for purposes of the above-described HOEPA adjustment.

(b) Notification

The Federal Reserve Board on a timely basis shall notify the Secretary, or his designee, in writing of the adjustment described in subsection (a) and of the effective date of such adjustment to permit the Secretary to undertake publication in the **Federal Register** of corresponding adjustments to the Dollar Amounts. The dollar amount of any adjustment shall be rounded to the next lower dollar.

Note that 206A has not been updated to reflect the fact that HOEPA has been revised to use \$1,000 as the basis for the adjustment rather than \$400, and the Consumer Finance Protection Bureau has replaced the Federal Reserve Board in administering the adjustment. These

changes were made by the Dodd-Frank Wall Street Reform and Consumer Protection Act’s amendments to the Truth in Lending Act, as further explained in the regulatory implementation of said changes found in 78 FR 6856, 6879 (Jan. 31, 2013).

The percentage change in the CPI-U used for the HOEPA adjustment is an 8.3 percent increase and the effective date of the HOEPA adjustment is January 1, 2023. The Dollar Amounts under section 206A have been adjusted correspondingly and have an effective date of January 1, 2023. (See 87 FR 78831, Dec. 23, 2022).

These revised statutory limits may be applied to FHA multifamily mortgage insurance applications submitted or amended on or after January 1, 2023, so long as the loan has not been initially endorsed.

The adjusted Dollar Amounts for calendar year 2023 are shown below.

Basic Statutory Mortgage Limits for Calendar Year 2023 Multifamily Loan Program

Section 207—Multifamily Housing; Section 207 pursuant to Section 223(f)—

Purchase or Refinance Housing; and, Section 220—Housing in Urban Renewal Areas

Bedrooms	Non-elevator	Elevator
0	\$61,944	\$72,252
1	68,618	80,058
2	81,964	98,166
3	101,027	122,948
4+	114,373	139,021

Section 213—Cooperatives

Bedrooms	Non-elevator	Elevator
0	\$67,130	\$71,480
1	77,404	80,984
2	93,351	98,477
3	119,491	127,399
4+	133,122	139,848

Section 234—Condominium Housing

Bedrooms	Non-elevator	Elevator
0	\$68,500	\$72,088
1	78,983	82,638
2	95,256	100,490
3	121,932	130,002
4+	135,837	142,701

Section 221(d)(4)—Moderate Income Housing

Bedrooms	Non-elevator	Elevator
0	\$61,646	\$66,591
1	69,980	76,340
2	84,589	92,831
3	106,172	120,090
4+	119,973	131,826

Section 231—Housing for the Elderly

Bedrooms	Non-elevator	Elevator
0	\$58,609	\$66,591
1	65,522	76,340
2	78,244	92,831
3	94,163	120,090
4+	110,705	131,826

Section 207—Manufactured Home Parks

Per Space—\$28,437

Indexing of per Unit Limit for Substantial Rehabilitation for Calendar Year 2023

The 2016 Multifamily Accelerated Processing (MAP) Guide established a base amount of \$15,000 per unit to define substantial rehabilitation for FHA insured loan programs. Section 5.1.2.A.2.b of the 2020 MAP Guide requires that this base amount be annually adjusted for inflation based on the percentage change published by the Bureau of Labor Statistics of the Department of Labor or other inflation cost index. Applying the HOEPA adjustment to the base amount, the 2023 base amount per dwelling unit to determine substantial rehabilitation for FHA insured loan programs is \$18,392.

This per unit cost threshold for substantial rehabilitation may be applied to FHA multifamily mortgage insurance applications submitted or amended on or after January 1, 2023, so long as the loan has not been initially endorsed.

Environmental Impact

This issuance establishes mortgage and cost limits that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Julia R. Gordon,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 2023–07344 Filed 4–6–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

**[FWS–R4–ES–2023–0048;
FXES11130400000EA–123–FF04EF1000]**

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Alabama Beach Mouse, Baldwin County, AL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Sampath Srikanth (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed Alabama beach mouse (*Peromyscus polionotus ammobates*) incidental to construction on Fort Morgan Peninsula, Baldwin County, Alabama. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before May 8, 2023.

ADDRESSES: *Obtaining Documents:* You may obtain copies of the documents online in Docket No. FWS–R4–ES–2023–0048 at <https://www.regulations.gov>.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online:* <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2023–0048.
- *U.S. mail:* Public Comments Processing; Attn: Docket No. FWS–R4–ES–2023–0048; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Mr. William Lynn, Project Manager, by U.S.

mail (see **ADDRESSES**), via telephone at 251–441–5868, or by email at william_lynn@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. 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: We, the Fish and Wildlife Service (Service), announce receipt of an application from Sampath Srikanth (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally endangered Alabama beach mouse (ABM; *Peromyscus polionotus ammobates*) incidental to the construction of a single-family home (project) on Fort Morgan Peninsula, Baldwin County, Alabama. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this proposed ITP qualifies as “low effect,” and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

Proposed Project

The applicant requests a 25-year ITP to take ABM by converting approximately 0.079 acre (ac) of occupied ABM foraging and sheltering habitat incidental to the construction of a single-family home located on a 0.492-ac parcel within the Government Subdivision #1, located on the central portion of Fort Morgan Peninsula in Baldwin County, Alabama. The proposed use of the parcel will provide for a compressed development footprint, which allows for areas of contiguous habitat to remain post development. Landforms and vegetative communities on the parcel consist of 0.418 ac of secondary dune ABM habitat. The applicant would impact 0.079 ac of the occupied 0.418 ac of ABM habitat in constructing the single-family home. The remaining 0.34 ac of suitable

habitat on the parcel will be enhanced and perpetually maintained. The applicant proposes to donate a \$2.30-per-square-foot in-lieu fee totaling \$7,921 to the Alabama Coastal Heritage Trust (ACHT) for the 0.079-ac impact. ACHT will use the donation to manage, maintain, or acquire ABM habitat within Fort Morgan or elsewhere within the range of the ABM.

The applicant also proposes to implement standard minimization and mitigation measures to retain habitat within all areas outside the core footprint of the residence and, where possible, augment such habitat with native landscaping and topographic enhancement methods. The standard mitigation and minimization measures to be implemented on the site include installing sea turtle-friendly lighting and tinted windows, landscaping with native vegetation, enhancing the frontal dune area, constructing a concrete driveway that will not disperse in a storm surge, implementing refuse-control measures during construction and requiring that future residents utilize such measures, and restoring ABM habitat after tropical storms. Free-roaming cats and the use of exterior rodenticide will be prohibited within the parcel. Post-construction ABM habitat on site should total 0.34 ac of the 0.49-ac parcel. The Service would require the applicant to donate the total contribution to ACHT prior to engaging in any construction activities on the parcel that are associated with the project.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's proposed project, including land clearing, infrastructure building, and landscaping, and the proposed mitigation and minimization measures, would individually and cumulatively have a minor effect on the Alabama beach mouse and the human environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a "low-effect" ITP that individually or cumulatively would have a minor effect on the ABM and

may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A "low-effect" incidental take permit is one that would result in (1) minor or negligible effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonably foreseeable actions, would not result in significant cumulative effects to the human environment.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested ITP. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take on the species. We will consider all of the above in determining whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER0271956 to Sampath Srikanth.

Authority

The Service provides this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

William J. Pearson,

Field Supervisor, Alabama Ecological Service Field Office.

[FR Doc. 2023–07356 Filed 4–6–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23DK00GUH0300; OMB Control Number 1028–0118]

Agency Information Collection Activities; USGS Water Use Data and Research Program Announcement

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing to revise an information collection.

DATES: Interested persons are invited to submit comments on or before June 6, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to USGS, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to gs-info_collections@usgs.gov. Please reference OMB Control Number 1028–0118 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Erik A. Smith by email at easmith@usgs.gov, or by telephone at 512–466–8697. 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 PRA, 44 U.S.C. 3501 *et seq.* and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on 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 soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues:

- (1) Is the collection necessary to the proper functions of the USGS;
- (2) Will this information be processed and used in a timely manner;
- (3) Is the estimate of burden accurate;
- (4) How the USGS might enhance the quality, utility, and clarity of the information to be collected; and
- (4) How the USGS might minimize the burden of this collection on the respondents, including through the use of information technology.

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 personally identifiable information (PII) in your

comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you may ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: The USGS is authorized under SECURE Water Act section 9508 to assist state water-resource agencies with improving their water-use data collection activities. The USGS has implemented the Water Use Data and Research program (WUDR) to work with state water agencies in gathering and analyzing their data and assists this effort via cooperative agreements. The WUDR will work to improve the collection and reporting of water-use categories by state agencies, including categories of water use that were previously discontinued due to limited resources. This collection will be used in reports to Congress on water resources in the Nation. Program authorization is \$1,500,000 per year.

Cooperative agreements will be announced and awarded as part of a competitive process that will be guided, annually, by a technical committee whose members will include representatives from the stakeholder community as well as the USGS. WUDR funds will be coordinated with a single agency in each state.

Revision: As part of the ongoing efforts to include the collection and sharing of water use data, a nationwide data-sharing feasibility study of State and Territory agencies that provide water-use information to the USGS will be conducted. This study will investigate the water-use data availability and identify barriers that may prevent State and Territory agencies from sharing water-use data, in particular site-specific water-use data. Example feasibility study questions include the following: (1) whether water-use location data (latitude/longitude for example) is available to the public, and if so, the format of availability to the public (e.g., website, publication, accessible paper files); (2) sharing the water-use data with other agencies, such as the USGS, and any restrictions for sharing data (such as location and/or water quantity); (3) if information on quantities of water used, such as withdrawals, wastewater return, and sales/deliveries between users, is available to the public, and if so, the restrictions on water-quantity data such as categories of use or time intervals.

Collaboration and coordination with USGS personnel will be required as part of the WUDR program. Data must be stored electronically and made available in machine-readable formats that can be

incorporated into USGS databases. Additionally, methods used for data collection (estimated values, coefficients, etc.) and a description of data quality assurance and control must be provided to the USGS.

Title of Collection: USGS Water Use Data and Research Program Announcement.

OMB Control Number: 1028–0118.

Form Number: None.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: State water-resource agencies that collect water-use data.

Total Estimated Number of Annual Respondents: WUDR estimates that 30 respondents (states) will read the Program Announcement, 12 respondents will submit applications, 10 respondents will submit semi-annual progress reports and a final technical report, and 40 respondents (states) will respond to the water-use data-sharing feasibility study.

Total Estimated Number of Annual Responses: 12 applications; 20 progress reports, 10 final technical reports, 40 respondents to water use data sharing feasibility study.

Estimated Completion Time per Response: Read Program announcement: 1 hour; prepare applications: 40 hours; progress reports: 4 hours; final technical report: 24 hours; water use data sharing feasibility study: 8 hours.

Total Estimated Number of Annual Burden Hours: 1,150 hours.

Respondent's Obligation: Response is required to be eligible to receive funding, but it is voluntary to respond to the water-use data-sharing feasibility study.

Frequency of Collection: Program Announcements are published annually. Proposals are submitted annually by State water-resource agencies wishing to compete for funding through the annual Program Announcement. State water-resource agencies that receive a cooperative agreement must submit semi-annual progress reports and a final technical report. State water-resource agencies that respond to the water-use data-sharing feasibility study will only need to respond once with potential clarification questions on study responses.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq.*).

Cory Angeroth,

Deputy Program Coordinator, on behalf of Melinda Dalton, Program Coordinator, USGS Water Availability and Use Science Program.

[FR Doc. 2023–07303 Filed 4–6–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L13100000.PP0000.LLHQ310000.234; OMB Control No. 1004–0210]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; 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 (PRA), the Bureau of Land Management (BLM) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before May 8, 2023.

ADDRESSES: Written comments and recommendations for this information collection request (ICR) 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: 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 PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on new, proposed, revised and continuing collections of information. This helps the BLM assess

impacts of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BLM information collection requirements and ensure requested data are provided in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on November 15, 2022 (87 FR 68516). No comments were received in response to that notice.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again inviting the public and other Federal agencies to comment on the proposed ICR described below. The BLM is 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 might the agency 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 submitted in response to this notice are a matter of public record. 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 request that OMB renew this OMB

Control Number for an additional three years.

Title of Collection: Measurement of Gas (43 CFR Subpart 3175).

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 King,

Information Collection Clearance Officer.

[FR Doc. 2023–07358 Filed 4–6–23; 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; Submission to the Office of Management and Budget for Review and Approval; 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 (PRA), the Bureau of Land Management (BLM) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before May 8, 2023.

ADDRESSES: Written comments and recommendations for this information collection request (ICR) 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: 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 PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on new, proposed, revised and continuing collections of information. This helps the BLM assess impacts of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BLM information collection requirements and ensure requested data are provided in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on November 15, 2022 (87 FR 68517). No comments were received in response to that notice.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again inviting the public and other Federal agencies to comment on the proposed ICR described below. The BLM is 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 might the agency 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 submitted in response to this notice are a matter of public record. 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 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 Office of Management and Budget (OMB) Control Number is currently scheduled to expire on May 31, 2023. The BLM 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 King,

Information Collection Clearance Officer.

[FR Doc. 2023–07261 Filed 4–6–23; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_ID_FRN_MO4500170560]

Filing of Plats of Survey: Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing of plats of surveys.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Idaho State Office, Boise, Idaho, 30 days from the date of this publication. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

ADDRESSES: A copy of the plat may be obtained from the Public Room at the Bureau of Land Management, Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, upon required payment.

FOR FURTHER INFORMATION CONTACT: Daniel S. Young, Branch of Cadastral Survey, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657; (208) 373–3994; email: dsyoung@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 7–1–1 (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:

Boise Meridian, Idaho

T. 13 N., R. 42 E., Sections 10, 11, and 14, accepted March 16, 2023.

The plat, in one sheet, incorporating the field notes of the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 10, 11, and 14, Township 13 North, Range 42 East, Boise Meridian, Idaho, was accepted March 16, 2023.

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the Chief

Cadastral Surveyor for Idaho, BLM within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. The protest must identify the plat(s) of survey that the person or party wishes to protest and contain all reasons and evidence in support of the protest. A protest is considered filed on the date it is received by the Chief Cadastral Surveyor for Idaho during regular business hours; if received after regular business hours, a protest will be considered filed the next business day.

Before including your address, phone number, email address, or other personal identifying information in a protest, you should be aware that the documents you submit, including your personal identifying information, may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C., chapter 3.)

Michael L. Hart,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 2023–07384 Filed 4–6–23; 8:45 am]

BILLING CODE 4331–19–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–35597;
PPWOCRADNO–PCU00RP16.R50000]

Native American Graves Protection and Repatriation Review Committee Notice of Public Meeting

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: The National Park Service is hereby giving notice that the Native American Graves Protection and Repatriation Review Committee (Committee) will hold an in-person meeting as indicated below.

DATES: The Committee will meet on Wednesday, June 7, 2023, and Thursday, June 8, 2023, from 9 a.m. until approximately 5 p.m. (Eastern). The meeting is open to the public.

ADDRESSES: The Committee will meet at the Indiana University Memorial Union, 900 E 7th Street, Bloomington, Indiana 47405. Electronic submissions of materials or requests are to be sent to nagpra_info@nps.gov.

FOR FURTHER INFORMATION CONTACT: Melanie O'Brien, Designated Federal Officer, National Native American Graves Protection and Repatriation Act Program (2253), National Park Service,

telephone (202) 354-2201, or email nagpra_info@nps.gov.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Committee was established in section 8 of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA). Information about NAGPRA, the Committee, and Committee meetings is available on the National NAGPRA Program website at <https://www.nps.gov/subjects/nagpra/review-committee.htm>.

The Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum, and recommending specific actions for developing a process for disposition of such human remains; consulting with Indian Tribes and Native Hawaiian organizations and museums on matters affecting such Tribes or organizations lying within the scope of work of the Committee; consulting with the Secretary of the Interior on the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items. The Committee's work is carried out during the course of meetings that are open to the public.

The agenda for the meeting may include a report from the National NAGPRA Program; the discussion of the Review Committee Report to Congress; subcommittee reports and discussion; and other topics related to the Committee's responsibilities under section 8 of NAGPRA. In addition, the agenda may include requests to the Committee for a recommendation to the Secretary of the Interior that an agreed-upon disposition of Native American human remains proceed; presentations by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, associations, and individuals; and public comment. The agenda and materials for this meeting will be posted

on or before May 22, 2023, at <https://www.nps.gov/orgs/1335/events.htm>.

The Committee is soliciting presentations from Indian tribes, Native Hawaiian organizations, museums, and Federal agencies on the progress made, and any barriers encountered, in implementing NAGPRA. The Committee also will consider other presentations from Indian tribes, Native Hawaiian organizations, museums, Federal agencies, associations, and individuals. A presentation request must, at minimum, include an abstract of the presentation and contact information for the presenter(s). Presentation requests and materials must be received by May 8, 2023. Presentation to the Committee by telephone or video conference may be requested but is not guaranteed. Written comments will be accepted from any party and provided to the Committee. Written comments received by May 15, 2023, will be provided to the Committee before the meeting.

To submit a request or comment, see **FOR FURTHER INFORMATION CONTACT**. Information on joining the meeting by internet or telephone will be available on the National NAGPRA Program website at <https://www.nps.gov/orgs/1335/events.htm>.

Meeting Accessibility: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Disclosure of Comments: Before including your address, telephone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. 10; 25 U.S.C. 3006.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2023-07388 Filed 4-6-23; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000
231S180110; S2D2S SS08011000
SX064A000 23XS501520; OMB Control
Number 1029-0055]

Submission to the Office of Management and Budget for Review and Approval; Rights of Entry

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

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before June 6, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556-MIB, Washington, DC 20240, or by email to mgehlhar@osmre.gov. Please reference OMB Control Number 1029-0055 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at mgehlhar@osmre.gov, or by telephone at 202-208-2716. 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 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity 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 soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

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 regulation establishes procedures for non-consensual entry upon private lands for the purpose of abandoned mine land reclamation activities or exploratory studies when the landowner refuses consent or is not available.

Title of Collection: Rights of Entry.

OMB Control Number: 1029–0055.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and Tribal governments.

Total Estimated Number of Annual Respondents: 8.

Total Estimated Number of Annual Responses: 352.

Estimated Completion Time per Response: 4.5 hours.

Total Estimated Number of Annual Burden Hours: 1,584.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: \$2,500.

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.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

*Information Collection Clearance Officer,
Division of Regulatory Support.*

[FR Doc. 2023–07378 Filed 4–6–23; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

**[S1D1S SS08011000 SX064A000
231S180110; S2D2S SS08011000
SX064A000 23XS501520; OMB Control
Number 1029–0114]**

Submission to the Office of Management and Budget for Review and Approval; Technical Evaluation Surveys

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

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before June 6, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to mgehlhar@osmre.gov. Please reference OMB Control Number 1029–0114 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at mgehlhar@osmre.gov, or by telephone at 202–208–2716. 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 (44 U.S.C. 3501

et seq.) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity 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 soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

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 series of surveys are needed to ensure that technical assistance activities, technology transfer activities and technical forums are useful for those who participate or receive the assistance. Specifically, representatives from State and Tribal regulatory and reclamation authorities are the primary respondents, although representatives of industry, environmental or citizen groups, or the public, may be recipients of the assistance or may participate in these forums. These surveys are the primary means through which OSMRE evaluates its performance in meeting the performance goals outlined in its annual plans developed pursuant to the Government Performance and Results Act.

Title of Collection: Technical Evaluation Surveys.

OMB Control Number: 1029–0114.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and Tribal employees.

Total Estimated Number of Annual Respondents: 222.

Total Estimated Number of Annual Responses: 222.

Estimated Completion Time per Response: 5 minutes.

Total Estimated Number of Annual Burden Hours: 19.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

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.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

*Information Collection Clearance Officer,
Division of Regulatory Support.*

[FR Doc. 2023-07382 Filed 4-6-23; 8:45 am]

BILLING CODE 4310-05-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1288]

Certain Playards and Strollers; Notice of Request for Submissions on the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on March 31, 2023, the presiding administrative law judge (“ALJ”) issued an Initial Determination on Violation of section 337. The ALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-5453. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help

accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. (19 U.S.C. 1337(d)(1)). A similar provision applies to cease and desist orders. (19 U.S.C. 1337(f)(1)).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: a limited exclusion order directed to certain playards and strollers imported, sold for importation, and/or sold after importation by respondents Baby Trend, Inc.; Sichuan Hobbies Baby Products Co., Ltd.; and Anhui Chile Baby Products Co., Ltd.; and cease and desist orders directed to the same respondents. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ’s Recommended Determination on Remedy and Bonding issued in this investigation on March 31, 2023. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant’s licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on May 1, 2023.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission’s paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (“Inv. No. 337-TA-1288”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be

disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 3, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023-07264 Filed 4-6-23; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-847, and 849 (Fourth Review)]

Carbon and Alloy Seamless, Standard Line, and Pressure Pipe From Japan and Romania; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 ("the Act") to determine whether revocation of the antidumping duty orders on carbon and alloy seamless standard, line, and pressure pipe from Japan and Romania would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: January 6, 2023.

FOR FURTHER INFORMATION CONTACT:

(Nitin Joshi ((202) 708-1669)), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the

Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On January 6, 2023, the Commission determined that the domestic interested party group response to its notice of institution (87 FR 59821, October 3, 2022) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.¹ Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on April 19, 2023. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,² and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before April 27, 2023 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not

¹ A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

² The Commission has found the responses submitted on behalf of Vallourec Star, L.P. and U.S. Steel Tubular Products to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

contain any new factual information) pertinent to the reviews by April 27, 2023. However, should the Department of Commerce ("Commerce") extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: April 4, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023-07380 Filed 4-6-23; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Wi-Fi Routers, Wi-Fi Devices, Mesh Wi-Fi Network Devices, and Hardware and Software Components Thereof*. DN 3673; the Commission is soliciting comments on

any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Netgear Inc. on April 3, 2023. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wi-fi routers, wi-fi devices, mesh wi-fi network devices, and hardware and software components thereof. The complaint names as respondents: TP-Link Technologies Co., Ltd. of China; TP-Link Corporation Limited f/k/a TP-Link International Limited of Hong Kong; TP-Link USA Corporation of Irvine, CA; and TP-Link Research Institute USA Corp. d/b/a TP-Link Research America Corp. of San Jose, CA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondent alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States,

competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number ("Docket No. 3673) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures¹). Please note the

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at EDIS3Help@usitc.gov.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,² solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.³

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: April 4, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023-07353 Filed 4-6-23; 8:45 am]

BILLING CODE 7020-02-P

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

DEPARTMENT OF JUSTICE**Drug Enforcement Administration****[Docket No. 1164]****Bulk Manufacturer of Controlled Substances Application: Stepan Company****AGENCY:** Drug Enforcement Administration, Justice.**ACTION:** Notice of application.

SUMMARY: Stepan Company has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTAL INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before June 6, 2023. Such persons may also file a written request for a hearing on the application on or before June 6, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment."

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on January 30, 2023, Stepan Company, 100 West Hunter Avenue, Maywood, New Jersey 07607–1021, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Cocaine	9041	II
Ecgonine	9180	II

The company plans to bulk manufacture the listed controlled substances for the internal use

intermediates or for sale to its customers.

Matthew Strait,*Deputy Assistant Administrator.*

[FR Doc. 2023–07298 Filed 4–6–23; 8:45 am]

BILLING CODE P**DEPARTMENT OF LABOR****Agency Information Collection Activities; Submission for OMB Review; Comment Request; Competitive Grant Programs Reporting****ACTION:** Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Veterans' Employment and Training Service (VETS)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before May 8, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This information collection request contains performance data for the discretionary grants authorized under chapter 20 of

title 38 of the United States Code. The collection of information is necessary for the proper oversight of discretionary grant funds administered by the Department of Labor's Veterans' Employment and Training Service (VETS) as required by law and regulation. These discretionary grants fund over 160 homeless veterans' reintegration projects that serve nearly 17,000 veterans experiencing homelessness, veterans at-risk of homelessness, and incarcerated veterans annually. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 20, 2022 (87 FR 77896).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–VETS.

Title of Collection: Competitive Grant Programs Reporting.

OMB Control Number: 1293–0014.

Affected Public: State, Local, and Tribal Governments; Private Sector—Businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 264.

Total Estimated Number of Responses: 2,716.

Total Estimated Annual Time Burden: 11,006 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: April 3, 2023.

Mara Blumenthal,
Senior PRA Analyst.

[FR Doc. 2023–07257 Filed 4–6–23; 8:45 am]

BILLING CODE 4510–79–P

OFFICE OF MANAGEMENT AND BUDGET

Request for Nominations of Experts to Peer-Review Draft Guidance on Conducting Analysis of Federal Regulations

AGENCY: Office of Management and Budget.

ACTION: Notice; request for nominations.

SUMMARY: The Office of Management and Budget (OMB) is drafting proposed revisions to its *Circular A-4: Regulatory Analysis*. This notice requests public nominations of experts to participate in an independent scientific peer review of an updated draft of *Circular A-4: Regulatory Analysis*.

DATES: The 21-day public comment period to provide nominations begins April 7, 2023, and ends April 28, 2023. Nominations must be received on or before April 28, 2023.

ADDRESSES: Submit your nominations by emailing them to MBX.OMB.OIRA.A4PeerReview@omb.eop.gov (subject line: Peer Review Nomination for Updating Circular A-4) no later than April 28, 2023. To receive full consideration, nominations should include all of the information requested below. Please be advised that public comments, including communications on these nominations, are subject to release under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Office of Information and Regulatory Affairs, Office of Management and Budget, MBX.OMB.OIRA.A4PeerReview@omb.eop.gov (subject line: Peer Review Nomination for Updating Circular A-4).

SUPPLEMENTARY INFORMATION:

Privacy Act Statement

Submission of nominations is voluntary. Solicitation of this information is authorized by 31 U.S.C. 1111. The information furnished will be used to select independent peer reviewers to evaluate proposed updates to Circular A-4. While the information solicited by this notice is intended to be used for internal purposes, in certain circumstances it may be necessary to disclose this information externally, for example to contractors, as necessary to perform their duties for the Federal government; to a congressional office in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains; or to other agencies, courts, and persons as necessary and relevant in the course of litigation, and as necessary and in accordance with

requirements for law enforcement. A complete list of the routine uses can be found in the system of records notice associated with this collection of information, OMB Public Input System of Records, OMB/INPUT/01.

I. Background

Since 2003, OMB Circular A-4: *Regulatory Analysis*¹ has provided guidance to Federal agencies on the development of regulatory analysis as required under Section 6(a)(3) of Executive Order (E.O.) 12866 (Regulatory Planning and Review),² the Regulatory Right-to-Know Act,³ and a variety of related authorities. OMB is drafting proposed updates to the Circular, available at <https://www.whitehouse.gov/wp-content/uploads/2023/04/DraftCircularA-4.pdf>, as well as a preamble that offers further context for prospective public commenters and peer reviewers, <https://www.whitehouse.gov/wp-content/uploads/2023/04/DraftCircularA-4Preamble.pdf>; public comments on these materials is being solicited via a separate notice and, in addition, the proposed updates will be peer reviewed in accordance with OMB's *Final Information Quality Bulletin for Peer Review* (the *Bulletin*)⁴ and the Regulatory Right-to-Know Act. The independent, external scientific peer review will be managed by an OMB contractor. This notice requests public nominations of experts to participate in the independent scientific peer review of the proposed updates to Circular A-4.

II. Information About This Peer Review

OMB is seeking nominations of individuals with demonstrated and nationally-recognized expertise in economics and various aspects of the disciplines of public policy and administrative law that relate to the application of benefit-cost analysis to regulatory policy. A balanced review panel should include experts who possess the necessary domains of knowledge and a breadth of economic and scientific perspectives to provide

rigorous peer review.⁵ Consistent with the *Bulletin*, all nominations will be evaluated for real or perceived conflicts of interest and independence.

To achieve the necessary breadth, OMB seeks nominees with expertise in the following areas:

Primary fields:

- Applied microeconomics
- Macroeconomics
- Financial economics
- Industrial organization
- Public economics
- Welfare economics
- Risk management and risk assessment, including both policy and scientific expertise
- Regulatory process, including administrative law, as it intersects with regulatory and benefit-cost analysis

Secondary fields and sub-fields of primary fields:

- Behavioral economics
- Qualitative methods for policy impact analysis
- Applied statistics and econometrics
- Environmental and natural resource economics
- Agricultural economics
- Transportation economics
- Labor economics
- International trade
- Economics of health and medicine

To form the list of candidate external reviewers, nominations submitted in response to this notice will be considered along with candidates identified using traditional techniques (e.g., a literature search) to identify additional qualified candidates in the disciplines listed above. After consideration of public nominations, a final multi-disciplinary panel of eight to ten peer reviewers will be selected from the pool. Selection criteria to be used for panel membership include: (a) distinguished and nationally-recognized technical expertise, as well as experience; (b) availability and willingness to serve; and (c) real or perceived conflicts of interest and independence.

Process and Deadline for Submitting Nominations: Any person or organization may nominate individuals qualified in the areas described above. Self-nominations are permitted. Submit your nominations by email to MBX.OMB.OIRA.A4PeerReview@omb.eop.gov (subject line: Peer Review Nomination for Updating Circular A-4).

¹ OMB, Circular A-4, *Regulatory Analysis* (Sept. 17, 2003), available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf.

² Exec. Order No. 12866, 58 FR 51735 (Oct. 4, 1993).

³ Public Law 106-554, section 624, 114 Stat. 2763A-161 (codified at 31 U.S.C. 1105 note).

⁴ OMB, M-05-03, *Final Information Quality Bulletin for Peer Review* (Dec. 16, 2004), available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2005/m05-03.pdf.

⁵ See *id.* at 24 (emphasizing “that the term ‘balance’ here refers not to balancing of stakeholder or political interests but rather to a broad and diverse representation of respected perspectives and intellectual traditions within the scientific community”).

To receive full consideration, nominations should include all of the following information: contact information for the person making the nomination; the nominee's contact information and institutional affiliation; the nominee's disciplinary and specific areas of expertise; and the nominee's résumé or curriculum vitae or equivalent information about their current position, educational background, expertise, and experience. To assess conflicts of interest and independence for nominees being considered for the peer review, OMB will seek to identify, among other factors, professional affiliation with the Executive Office of the President within the last 3 years; current contracts with the Federal government to conduct regulatory impact analysis or other decision support analyses; and regular business streams to advocate for or critique regulatory impact analyses on behalf of non-federal entities.

Richard L. Revesz,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2023-07362 Filed 4-6-23; 4:15 pm]

BILLING CODE 3110-01-P

OFFICE OF MANAGEMENT AND BUDGET

Public Comment on Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs

AGENCY: Office of Management and Budget.

ACTION: Revisions to OMB Circular No. A-94.

SUMMARY: OMB is proposing revisions to Circular A-94, which provides guidance on benefit-cost analysis and cost-effectiveness analysis of Federal spending. Circular A-94 was last revised in 1992. These proposed revisions reflect scientific and economic advances since that time. Included in the proposed revisions are changes in the discount rate for benefit-cost analysis. This guidance is separate from Circular A-4, which covers benefit-cost analysis of regulations, rather than spending. Members of the public are encouraged to provide comment.

DATES: June 6, 2023.

ADDRESSES: The revised Circular can be accessed at <https://www.whitehouse.gov/wp-content/uploads/2023/04/CircularA94.pdf>.

Submit comments by the following method:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the

instructions for submitting comments. Comments submitted electronically, including attachments to <https://www.regulations.gov>, will be posted to the docket unchanged.

Instructions: Please submit comments only and cite Information Collection 0348-0065 in all correspondence related to this collection. To confirm receipt of your comment(s), please check [regulations.gov](https://www.regulations.gov), approximately two to three business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT:

Jamie Taber, Office of Economic Policy, Office of Management and Budget, (202) 395-2515, a94@omb.eop.gov.

Zachary Liscow,

Associate Director for Economic Policy, Office of Management and Budget.

[FR Doc. 2023-07179 Filed 4-6-23; 4:15 pm]

BILLING CODE 3110-01-P

OFFICE OF MANAGEMENT AND BUDGET

Privacy Act of 1974; System of Records

AGENCY: Office of Management and Budget.

ACTION: Notice of a new system of records, OMB/INPUT/01.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget Circular No. A-130, Appendix I, Federal Agency Responsibilities for Maintaining Records About Individuals, notice is hereby given that the Office of Management and Budget (OMB) is establishing the following new system of records: "OMB Public Input System of Records, OMB/INPUT/01" (OMB Public Input System). OMB engages in a number of activities, including issuing guidance, policy, and regulatory actions, many of which invite the public and interested stakeholders to provide input to OMB. The OMB Public Input System covers the collection of that public input received through the Federal Docket Management System, [Reginfo.gov](https://www.reginfo.gov), email, hardcopy communications, and other authorized means.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this system of records notice (SORN) is effective April 7, 2023, with the exception of the routine uses, which are subject to a 30-day comment period and will be effective May 8, 2023. Please submit any comments on or before May 8, 2023.

ADDRESSES: You may submit comments by:

- **Email:** SORN@omb.eop.gov.

Instructions: All submissions must contain the subject heading "OMB Public Input System of Records."

FOR FURTHER INFORMATION CONTACT:

SORN@omb.eop.gov. You must include "OMB Public Input System of Records" in the subject line.

SUPPLEMENTARY INFORMATION:

OMB engages in a number of activities, including issuing guidance, policy, and regulatory actions, many of which invite the public to provide input to OMB. One way in which OMB makes documents available for public input is through the Federal eRulemaking system, which is managed by the General Services Administration (GSA). The eRulemaking system is a centralized repository for all Federal rulemaking dockets, including notices of proposed rulemaking, interim rules, final rules, other types of rulemaking actions, supporting materials such as scientific or economic analyses, and public comments, as well as for some non-rulemaking dockets, such as notices and guidance or policy documents. It consists of a public facing interface, www.regulations.gov, and a portal visible to OMB called the Federal Docket Management System (FDMS), at www.FDMS.gov. The FDMS is a Federal Government-wide document management system. OMB employees with a need to use the system may self-register to use FDMS but may only see dockets of OMB.

Additionally, OMB uses the website at www.reginfo.gov to post notices of and accept meeting requests regarding regulatory actions currently under review pursuant to Executive Order (E.O.) 12866 of September 30, 1993 (Regulatory Planning and Review). OMB also reviews information collection requests under the Paperwork Reduction Act (PRA) and, during the 30-day review of information collections, the public may comment on materials submitted by the agency as part of their request for a new information collection or an extension or revision to an existing information collection through www.reginfo.gov. E.O. 12866 establishes and governs the process under which OMB reviews agencies' regulatory actions, including any substantive action that promulgates or is expected to lead to the promulgation of a final rule. Under E.O. 12866, non-governmental parties can request meetings concerning proposed regulatory actions under OMB review to present their views. Meeting requesters may submit to OMB documents to be discussed during the

course of those meetings. OMB's meeting request form collects information from the public and is subject to the PRA. This form is assigned OMB Control Number 0348-0065 and is available at www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202206-0348-001.

OMB may also receive and solicit information from the public when implementing the Information Quality Act (IQA), which aims to ensure the "quality, objectivity, utility, and integrity" of information disseminated to the public. 44 U.S.C. 3516 note. In particular, OMB may request the name and contact information of nominees for peer review, as well as query those being considered to peer review OMB documents about activities that may pose or give the appearance of a conflict of interest. Individuals who submit requests for correction to OMB under the IQA may also include their name and contact information.

In accordance with 5 U.S.C. 552a(r), OMB has provided a report of this OMB Public Input System of Records, OMB/INPUT/01, to OMB and to Congress.

SYSTEM NAME AND NUMBER:

OMB Public Input System of Records, OMB/INPUT/01.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at OMB, 725 17th Street NW, Washington, DC 20503, and GSA Headquarters, 1800 F Street NW, Washington, DC 20405.

SYSTEM MANAGER(S):

OMB Senior Agency Official for Privacy, 725 17th Street NW, Washington, DC; SORN@omb.eop.gov.

AUTHORITY FOR THE MAINTENANCE OF THIS SYSTEM:

Authorities of the Office of Management and Budget including the following: 31 U.S.C. 501-507; the Freedom of Information Act, 5 U.S.C. 552; Information Quality Act, 44 U.S.C. 3516 note; Paperwork Reduction Act, 44 U.S.C. 3501-3520; Foundations for Evidence-Based Policymaking Act of 2018, 5 U.S.C. 3551; Administrative Procedure Act, e.g., 5 U.S.C. 553; Privacy Act, 5 U.S.C. 552; the E-Government Act, 44 U.S.C. 3501 note; the Infrastructure Investment and Jobs Act, Public Law 117-58, 135 Stat. 429; the Federal Funding Accountability and Transparency Act (Pub. L. 109-282), 31 U.S.C. 6101 note; the Digital Accountability and Transparency Act of 2014 (Pub. L. 113-101), 31 U.S.C. 6101 note; 41 U.S.C. 1101; 44 U.S.C. 3551-

3558; other statutes, such as the AI in Government Act, Pub. L. 116-260, div. U, section 104(b) (2020), specifically requiring OMB to seek public comment on proposed policy documents; and executive orders, including E.O. 14005, 86 FR 7475 (Jan. 25, 2021), and E.O. 12866, 58 FR 51735 (Oct. 4, 1993).

PURPOSE(S) OF THE SYSTEM:

OMB engages in a number of activities, including issuing guidance, policy, and regulatory actions, during which the public and interested stakeholders may be invited to provide input to OMB. The purpose of this system of records is:

- to appropriately address comments or input received from the public as part of OMB's own rulemaking and non-rulemaking actions, including obtaining clarification when necessary;
- to effectively manage the E.O. 12866 regulatory review process, including responding to meeting requests and information submissions;
- to effectively address public input received as part of OMB's development of Government-wide guidance and policy; and
- to effectively manage OMB's review of agency proposed regulatory actions and information collection requests.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who provides personally identifiable information to OMB when responding to a request by OMB for information, including during OMB's review or development of guidance, policy, regulatory actions, notices, or information collection requests, and other individuals mentioned or identified in the body of a comment or in the information provided, including in response to OMB solicitations concerning peer review.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes:

- information submitted in response to OMB-specific proposed regulatory actions or other actions, including proposed and final rulemakings, SORNs, and ICRs;
- information submitted in response to OMB's invitation or request during OMB's development of Government-wide guidance and policies pursuant to one or more of its legal authorities;
- information submitted by requesters in connection with meetings under E.O. 12866;
- information submitted as part of the Government-wide information collection request review process; and
- information received for purposes of OMB's Information Quality Act

responsibilities, including management of IQA requests and information about submitters or nominees for peer review.

Records may include name and contact information, such as a mailing address, email address, and phone or fax number. Records may also include additional information, including supporting documentation, submitted by individuals or entities in connection with E.O. 12866 meetings. Records submitted during a peer review function may include resumes and other personal information.

RECORD SOURCE CATEGORIES:

OMB receives records from members of the public, including representatives of Federal, State, or local governments, non-governmental organizations, and the private sector.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under the Privacy Act, 5 U.S.C. 552a(b), records or information contained therein may be disclosed outside of OMB as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To GSA when needed for purposes of its management of the public websites through which comments and other information are submitted.

B. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by DOJ is deemed by OMB to be relevant and necessary to the litigation: (1) OMB, or any component thereof; (2) any employee of OMB in the employee's official capacity; (3) any employee of OMB in the employee's individual capacity where DOJ has agreed to represent the employee; or (4) a Federal agency, a Federal entity, a Federal official, or the United States, where OMB determines that litigation is likely to affect OMB or any of its components.

C. To a congressional office in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

D. To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

E. In a proceeding before a court or adjudicative body before which OMB is authorized to appear, when OMB determines that the records are relevant and necessary to the litigation; or in an appropriate proceeding before an administrative or adjudicative body

when the adjudicator determines the records to be relevant to the proceeding.

F. To appropriate agencies, entities, and persons when (1) OMB suspects or has confirmed that there has been a breach of the system of records; (2) OMB has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, OMB (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OMB's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

G. To another Federal agency or Federal entity, when OMB determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach; or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

H. Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate Federal, state, local, territorial, tribal, international, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

I. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for OMB, when necessary to accomplish an agency function related to this system of records.

J. To the public, unless it is determined that the release of the specific information in the context of a particular case would constitute a clearly unwarranted invasion of personal privacy.

K. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

L. To other agencies as necessary for the review of regulatory actions or information collection requests.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are stored in electronic or paper form in secure facilities. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by individuals' names, titles, or organizations.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

These records will be managed in accordance with OMB's published records schedules as approved by the National Archives and Records Administration (NARA). All unscheduled records, meaning records without a NARA-approved records retention schedule, are retained until a records retention schedule is approved by NARA. Once a schedule is approved, all existing records will be processed according to the requirements set forth in that schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All records are maintained in secure, password-protected electronic systems that use security hardware and software to include multiple firewalls, active intrusion detection, encryption, identification, and authentication of users. All security controls are reviewed on a periodic basis by external assessors. The controls themselves include measures for access control, security awareness training, audits, configuration management, contingency planning, incident response, and maintenance. Access to the information technology systems containing the records in this system is limited to those individuals who need the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals' requests for access to records in this system of records may be sent to OMB's FOIA Officer, by mail to Office of Management and Budget, 725 17th Street NW, Room 9204, Washington, DC 20503, or by email to OMBFOIA@omb.eop.gov, and should be made in accordance with OMB's Privacy Act Procedures which can be found at 5 CFR part 1302.

CONTESTING RECORDS PROCEDURES:

Individuals' requests for amendment of a record in this system of records may be sent to OMB's FOIA Officer, by mail to Office of Management and Budget, 725 17th Street NW, Room 9204, Washington, DC 20503, or by email to

OMBFOIA@omb.eop.gov, and should be made in accordance with OMB's Privacy Act Procedures, which can be found at 5 CFR part 1302.

NOTIFICATION PROCEDURES:

Individuals' requests for notification as to whether this system of records contains a record pertaining to them may be sent to OMB's FOIA Officer, by mail to Office of Management and Budget, 725 17th Street NW, Room 9204, Washington, DC 20503, or by email to OMBFOIA@omb.eop.gov, and should be made in accordance with OMB's Privacy Act Procedures, which can be found at 5 CFR part 1302.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Shraddha A. Upadhyaya,

Senior Agency Official for Privacy, Office of Management and Budget.

[FR Doc. 2023-07452 Filed 4-6-23; 4:15 pm]

BILLING CODE 3110-01-P

OFFICE OF MANAGEMENT AND BUDGET

Request for Comments on Proposed OMB Circular No. A-4, "Regulatory Analysis"

AGENCY: Office of Management and Budget.

ACTION: Notice of availability and request for comments.

SUMMARY: The Office of Management and Budget (OMB) is requesting comments on proposed Circular A-4, "Regulatory Analysis."

DATES: Comments are requested on the proposed Circular on or before June 6, 2023.

ADDRESSES: The proposed Circular itself is available at <https://www.whitehouse.gov/wp-content/uploads/2023/04/DraftCircularA-4.pdf>.

A preamble to the proposed Circular is available at <https://www.whitehouse.gov/wp-content/uploads/2023/04/DraftCircularA-4Preamble.pdf>.

Please submit comments via <http://www.regulations.gov>, a Federal website that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type "OMB-2022-0014" in the search box, click "Search," click "Comment," and follow the instructions for submitting comments. All comments received will be posted to

<http://www.regulations.gov>, so commenters should not include information they do not wish to be posted (e.g., personal or confidential business information).

FOR FURTHER INFORMATION CONTACT: Office of Management and Budget, Office of Information and Regulatory Affairs, at MBX.OMB.OIRA.A4Modernization@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Since 2003, *OMB Circular A-4, Regulatory Analysis*,¹ has provided guidance to Federal agencies on the development of regulatory analysis as required under Section 6(a)(3)(C) of Executive Order 12866 (Regulatory Planning and Review),² the Regulatory Right-to-Know Act,³ and a variety of related authorities. OMB has proposed revisions to the Circular, as well as a preamble that offers further context for prospective public commenters and peer reviewers. In addition to this request for public comments, OMB will be conducting a peer review of these materials in accordance with OMB's *Final Information Quality Bulletin for Peer Review*⁴ and the Regulatory Right-to-Know Act.

Richard L. Revesz,
Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2023-07364 Filed 4-6-23; 4:15 pm]

BILLING CODE 3110-01-P

OFFICE OF MANAGEMENT AND BUDGET

Request for Comments on Guidance Implementing Section 2(e) of the Executive Order of April 6, 2023 (Modernizing Regulatory Review)

AGENCY: Office of Management and Budget.

ACTION: Notice of availability and request for comments.

SUMMARY: The Executive Order of April 6, 2023 (Modernizing Regulatory Review) (hereinafter, Modernizing E.O.) calls for a number of reforms to the

process through which the public requests meeting with the Office of Information and Regulatory Affairs (OIRA) on regulatory actions under review pursuant to Executive Order 12866 (E.O. 12866 meetings). These reforms are intended to facilitate the initiation of meeting requests from potential participants who have not historically requested such meetings, as well as to improve the efficiency and effectiveness of E.O. 12866 meetings. This notice announces and requests comment on guidance regarding these reforms.

DATES: Consideration will be given to all comments received by June 6, 2023.

ADDRESSES: The draft guidance is available at <https://www.whitehouse.gov/wp-content/uploads/2023/04/ModernizingEOSection2eDraftGuidance.pdf>. Submit comments by the following method:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments at the docket OMB-2022-0011. Comments submitted electronically, including attachments to <https://www.regulations.gov>, will be posted to the docket.

Please submit comments only and cite 12866 Meetings Guidance in all correspondence. To confirm receipt of your comment(s), please check [regulations.gov](https://www.regulations.gov), approximately two to three business days after your submission.

FOR FURTHER INFORMATION CONTACT: Office of Management and Budget, Office of Information and Regulatory Affairs, at MBX.OMB.OIRA.EOmeetingsguidance@omb.eop.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order 12866 of September 30, 1993, "Regulatory Planning and Review," as amended, establishes and governs the process under which OIRA reviews agencies' significant regulatory actions. E.O. 12866 meetings occur at the initiative of outside parties who request a meeting with OIRA about a regulatory action that is under OIRA review to present their views. OIRA invites to these meetings representatives from the agency or agencies that would issue the regulatory action, though participation may be limited by scheduling or other considerations.

E.O. 12866 meetings serve as listening sessions for OIRA officials. Members of the public can share their views with OIRA on a regulatory action under review, as well as any scientific,

technical, social, or economic information, or information drawn from individual experience that may be helpful to OIRA officials while reviewing a regulatory action. During such meetings, OIRA officials may ask clarifying questions but will not share deliberative or pre-decisional information about the regulatory action under review.

E.O. 12866 meetings with OIRA are not a substitute for submitting comments to the action agencies under their applicable regulatory procedures.¹ OIRA typically reviews regulatory actions, such as rules, undertaken by other agencies. Accordingly, OIRA is not the action agency and views shared only through the E.O. 12866 review process would not be considered properly submitted during the notice and comment period.

II. Overview of Reforms

The Modernizing E.O. directs the OIRA Administrator to implement reforms designed to reduce the risk or the appearance of disparate and undue influence on regulatory development. The reforms outlined here serve to facilitate meeting requests from individuals and groups that have not historically requested such meetings, including those from underserved communities, improve the efficiency and effectiveness of the regulatory review process, and increase transparency around the E.O. 12866 meetings process, while treating all members of the public—no matter their resources or viewpoints—consistently and fairly. These reforms also help to implement President Biden's Presidential Memorandum of January 20, 2021, "Modernizing Regulatory Review." That Memorandum called for the Office of Management and Budget (OMB) to "identify reforms that will promote the efficiency, transparency, and inclusiveness of the interagency review process,"² which includes E.O. 12866 meetings. Reforms under consideration include:

- a variety of strategies to provide information to facilitate the initiation of meeting requests from potential

¹ Office of Mgmt. & Budget, Exec. Office of the President, Circular A-4, *Regulatory Analysis* (Sept. 17, 2003), available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf.

² Exec. Order No. 12866, 58 FR 51735 (Oct. 4, 1993).

³ Public Law 106-554, section 624, 114 Stat. 2763A-161 (codified at 31 U.S.C. 1105 note).

⁴ Office of Mgmt. & Budget, Exec. Office of the President, OMB M-05-03, *Final Information Quality Bulletin for Peer Review* (Dec. 16, 2004), available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2005/m05-03.pdf.

¹ See Executive Order 12866 section 10, 58 FR 51735, 51744 (Oct. 4, 1993) ("This Executive order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person."). The E.O. 12866 process also does not supersede the requirement to do Tribal consultation where it is required pursuant to E.O. 13175. See Executive Order 13175, 65 FR 67249 (Nov. 9, 2000).

² Modernizing Regulatory Review section 2(b)(iv), 86 FR 7223, 7224 (Jan. 26, 2021).

participants that have not historically requested meetings;

- efforts to ensure access for meeting requestors that have not historically requested such meetings;
- discouraging meeting requests that are duplicative of earlier meetings with OIRA regarding the same regulatory action (at the same stage of the regulatory process) by the same meeting requestors;
- encouraging groups that would like to present similar views on a regulatory action to submit joint meeting requests wherever possible; and the
- disclosure of additional information about E.O. 12866 meetings that may be helpful to OIRA, to agencies, and to the general public, such as providing information about E.O. 12866 meeting requests in an open, machine-readable and accessible format.

OMB is seeking comments on its proposed 12866 Meetings Guidance regarding reforms under consideration by June 6, 2023. The draft is available at <https://www.whitehouse.gov/wp-content/uploads/2023/04/ModernizingEOSection2eDraftGuidance.pdf>.

Richard L. Revesz,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2023-07360 Filed 4-6-23; 4:15 pm]

BILLING CODE 3110-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (23-028)]

Request for Information: Draft Federal Strategy To Advance an Integrated U.S. Greenhouse Gas Monitoring and Information System; Number NNH23ZDA009L

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Request for Information (RFI); extension of comment period.

SUMMARY: The National Aeronautics and Space Administration (NASA) issued a document that appeared in the **Federal Register** on March 2, 2023, concerning a Request for Information (RFI) on behalf of the Biden-Harris Administration's Greenhouse Gas Monitoring & Measurement Interagency Working Group (GHG IWG), established by the Office of Science & Technology Policy, White House Climate Policy Office, and Office of Management and Budget. The deadline for submitting comments is being extended from April 4, 2023, to April 19, 2023. The GHG IWG seeks to receive input from the public on the draft *Federal Strategy to*

Advance an Integrated U.S. Greenhouse Gas Monitoring & Information System (GHGMIS Strategy) that is posted on the NASA Solicitation and Proposal Integrated Review and Evaluation System's (NSPIRES). The GHG IWG will use information received to inform the drafting of the final version of the *GHGMIS Strategy* and in discussions on potential partnerships related to demonstration projects.

DATES: For the Request for Information published on March 3, 2023, submit comments by April 19, 2023. Early comments are encouraged. Comments received after this date will be considered to the extent practicable.

ADDRESSES:

- All responses to this RFI must be submitted in an electronic format only via the NASA Solicitation and Proposal Integrated Review and Evaluation System (NSPIRES) located at <https://go.nasa.gov/USGGMIDraftFederalStrategy>. A copy of the draft *GHGMIS Strategy* is posted as a separate PDF file at the same location.

- *Mail:* Comments submitted in a manner other than the one listed above, including emails or letters sent to SMD or other GHG IWG officials may not be accepted.

- *Hand Delivery:* Please note that NASA cannot accept any comments that are hand delivered or couriered. In addition, NASA cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives.

FOR FURTHER INFORMATION CONTACT:

Issues regarding clarifications or questions on this RFI can be sent to Ken Jucks, Program Manager, Earth Science Division, at kenneth.w.jucks@nasa.gov. Phone: 202-358-0476. For submission help or for any questions regarding the NSPIRES website, contact nspires-help@nasaprs.com. Phone: (202) 479-9376, M-F, 8 a.m. to 6 p.m. EST/EDT.

SUPPLEMENTARY INFORMATION:

I. Background

The Greenhouse Gas Monitoring & Measurement Interagency Working Group (GHG IWG) was established by the Office of Science & Technology Policy, White House Climate Policy Office, and Office of Management and Budget in 2022 to enhance coordination on existing capabilities and opportunities for enhancing measurement and quantification of GHG emissions and removals. In addition to the White House offices mentioned above, the GHG IWG includes the following United States (U.S.) federal agencies listed in alphabetical order: Department of Agriculture (USDA),

Department of Commerce (including the National Institute of Standards and Technology, NIST, and the National Oceanic and Atmospheric Administration, NOAA), Department of Defense (DOD), Department of Energy (DOE), Department of Interior (DOI), Department of State (State), Environmental Protection Agency (EPA), NASA, and the National Science Foundation (NSF).

The draft *GHGMIS Strategy* developed by the GHG IWG outlines a framework for an integrated U.S. GHG monitoring & information system, near-term strategies to advance the system, and areas of interest for demonstration projects.

The GHG IWG is seeking public comments on the draft *GHGMIS Strategy* in recognition of the significant expertise on this topic that exists outside of government and the growing interest by companies, non-governmental organizations, and local and state agencies in generating or using GHG emissions data. A copy of the draft *GHGMIS Strategy* is posted as a PDF file on the NASA Solicitation and Proposal Integrated Review and Evaluation System's (NSPIRES) landing page for this RFI at <https://go.nasa.gov/USGGMIDraftFederalStrategy>.

II. Discussion of Questions

The RFI requests information on the following themes:

1. Does the draft *GHGMIS Strategy* contain any significant omissions, gaps or errors that would impede effectiveness?

2. What opportunities exist for federal agencies to partner with external entities on the framework, strategies, or demonstration projects outlined in the draft *GHGMIS Strategy* in ways that they have not previously done?

3. What coordination mechanisms, including existing convening or organizing bodies with current limited federal government engagement, should the GHG IWG agencies consider to enhance collaboration with external entities to advance U.S. greenhouse gas monitoring and information capabilities?

III. Written Comments

Written responses should not exceed 4 pages, excluding a cover page and any references as described in the NSPIRES solicitation number: NNH23ZDA009L entitled *Request for Information: DRAFT Federal Strategy to Advance an Integrated U.S. Greenhouse Gas Monitoring and Information System (GHGMIS)*. You may respond to some or all questions listed in the RFI. There is no limit on the number of responses

from an individual or an institution or its organizational units. The RFI should not be construed as a solicitation for proposals or an obligation on the part of the government. Interested parties who respond to this RFI may be contacted for a follow-on strategic dialogue, discussion, or event.

IV. Review of Public Feedback

NASA will share the public's feedback with the GHG IWG members, who will use the feedback to help to develop the final *GHGMIS Strategy* and discuss potential partnerships related to demonstration projects. This notice is issued solely for information and program-planning purposes. Public input provided in response to this notice does not bind NASA or other GHG IWG members to any further actions, to include publishing a formal response or agreement to initiate a recommended change. The GHG IWG, including NASA, will consider the feedback and make changes or process improvements at its sole discretion.

Any public discussion by NASA or the other GHG IWG members of the results of this RFI will not disclose the identities of the respondents. It is not NASA's or other GHG IWG members' intent to disclose publicly respondents' proprietary information obtained in response to this RFI. To the full extent that it is protected pursuant to the Freedom of Information Act and other laws and regulations, information identified by a Respondent as "Proprietary or Confidential" will be kept confidential.

Cheryl Parker,

Federal Register Liaison Officer.

[FR Doc. 2023-07269 Filed 4-6-23; 8:45 am]

BILLING CODE 7510-13-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-390 and 50-391; NRC-2023-0074]

Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating License No. NPF-90 and NPF-96, issued to Tennessee Valley Authority (TVA, the licensee), for

operation of the Watts Bar Nuclear Plant (Watts Bar or WBN), Units 1 and 2. The proposed amendments would revise Watts Bar, Units 1 and 2, Technical Specification (TS) 3.7.11, "Control Room Emergency Air Temperature Control System (CREATCS)," to change the dates in the one-time footnotes for Required Actions A.1 and E.1 for performing modifications to the Watts Bar, Units 1 and 2, main control room CREATCS chillers.

DATES: Submit comments by May 8, 2023. Request for a hearing or petitions for leave to intervene must be filed by June 6, 2023.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2023-0074. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN-7-A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Kimberly Green, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1627; email: Kimberly.Green@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2023-0074 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2023-0074.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the

ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to PDR.Resource@nrc.gov. The "Expedited Application to Modify the Watts Bar Nuclear Plant, Unit 1 and Unit 2 Technical Specifications for Main Control Room Chiller Completion Time Extension (WBN-TS-22-08)," and "Watts Bar Nuclear Plant, Units 1 and 2—Issuance of Amendment Nos. 145 and 51 for One-Time Change to Technical Specification 3.7.11 to Extend the Completion Time for Main Control Room Chiller Modifications (EPID L-2020-LLA-0114)" are available in ADAMS under Accession Nos. ML23058A447 and ML21078A484.

- *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 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2023-0074 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering issuance of amendments to Facility Operating License Nos. NPF-90 and NPF-96, issued to Tennessee Valley Authority, for operation of the Watts Bar Nuclear Plant, Units 1 and 2, located in Rhea County, Tennessee.

By letter dated May 5, 2021, the NRC issued Amendment Nos. 145 and 51 to Facility Operating Licenses Nos. NPF-90 and NPF-96, for Watts Bar Nuclear Plant, Units 1 and 2, respectively. The amendments revised Watts Bar, Units 1 and 2, TS 3.7.11, “Control Room Emergency Air Temperature Control System (CREATCS),” by adding a one-time footnote to the Completion Time for Required Action A.1 to allow one CREATCS train to be inoperable for up to 60 days while performing modifications to the main control room CREATCS chillers between May 1, 2022, and May 1, 2023. Additionally, the amendments added a one-time footnote to the Completion Time for Required Action E.1 to allow delayed entry into TS Limiting Condition for Operation 3.0.3 for up to 4 days in the event that both CREATCS trains are inoperable during the modifications to the main control room CREATCS chillers between May 1, 2022, and May 1, 2023.

Due to delays in the vendor delivery of the main control room CREATCS chillers, TVA is requesting to revise the timeframe in the previously mentioned footnotes to begin no earlier than July 1, 2023, and end no later than December 31, 2024.

Before any issuance of the proposed license amendments, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC’s regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration (NSHC). Under the NRC’s regulations in section 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of NSHC, which is presented as follows:

1. Does the proposed change involve a significant increase in the probability

or consequences of an accident previously evaluated?

Response: No.

The proposed revision to the footnotes in the Completion Time for WBN Units 1 and 2 TS 3.7.11, Required Actions A.1 and E.1, is administrative in nature to reflect the revision to the scheduled completion time for the modification activities planned for the upgrade of the MCR chillers. The compensatory measures listed in References 1 and 3¹ remain unchanged. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed revision to the footnotes in the Completion Time for WBN Units 1 and 2 TS 3.7.11, Required Actions A.1 and E.1, is administrative in nature to reflect the revision to the scheduled completion time for the modification activities planned for the upgrade of the MCR chillers. The compensatory measures listed in References 1 and 3 remain unchanged. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed revision to the footnotes in the Completion Time for WBN Units 1 and 2 TS 3.7.11, Required Actions A.1 and E.1, is administrative in nature to reflect the revision to the scheduled completion time for the modification activities planned for the upgrade of the MCR chillers. The compensatory measures listed in References 1 and 3 remain unchanged. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee’s analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the license amendment request involves NSHC.

The NRC is seeking public comments on this proposed determination that the license amendment request involves NSHC. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 60-day notice period. However, the Commission may issue the license amendment before the expiration of the notice period, provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. A final NSHC determination, if made, will consider all public and State comments received. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination for the amendments, any hearing will take place after issuance. The Commission expects that the need to take action on any amendment before 60 days have elapsed will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission’s “Agency Rules of Practice and Procedure” in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the “Electronic Submissions (E-Filing)” section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

¹ Reference 1 is the TVA letter to NRC, CNL-20-012, “Application to Modify the Watts Bar Nuclear Plant Unit 1 and Unit 2 Technical Specifications for Main Control Room Chiller Completion Time Extension (WBN-TS-18-16),” dated May 19, 2020 (ML20140A342). Reference 3 is the NRC letter to TVA, “Watts Bar Nuclear Plant, Units 1 and 2—Issuance of Amendment Nos. 145 and 51 for One-Time Change to Technical Specification 3.7.11 to Extend the Completion Time for Main Control Room Chiller Modifications (EPID L-2020-LLA-0114),” dated May 5, 2021 (ML21078A484).

If a hearing is requested and the Commission has not made a final determination on the issue of NSHC, the Commission will make a final determination on the issue of NSHC, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves NSHC, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053>) and on the NRC's public website at <https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate>.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the "Guidance for Electronic Submissions to the NRC" (ADAMS Accession No. ML13031A056) and on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at Hearing.Docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>, by email to MSHD.Resource@nrc.gov, or by a toll-

free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)-(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated February 27, 2023 (ADAMS Accession No. ML23058A447). *Attorney for licensee:* David Fountain, Executive VP and General Counsel, Tennessee Valley Authority, 6A West Tower, 400 West Summit Hill Drive, Knoxville, TN 37902. *NRC Branch Chief:* David Wrona.

Dated: April 3, 2023.

For the Nuclear Regulatory Commission.
Kimberly J. Green,
*Senior Project Manager, Plant Licensing
 Branch II-2, Division of Operating Reactor
 Licensing, Office of Nuclear Reactor
 Regulation.*

[FR Doc. 2023-07268 Filed 4-6-23; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2022-0169]

Information Collection: NRC Forms 366, 366A, and 366B, Licensee Event Report

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, "NRC Forms 366, 366A, and 366B, Licensee Event Report."

DATES: Submit comments by June 6, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject); however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2022-0169. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* David C. Cullison, Office of the Chief Information Officer, Mail Stop: T-6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief

Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2022-0169 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2022-0169. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC-2022-0169 on this website.

- *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. A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession Nos. ML22269A458, ML22269A459, and ML22269A460. The supporting statement is available in ADAMS under Accession No. ML22269A457.

- *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 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2022-0169, in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <https://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the 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 comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Forms 366, 366A, and 366B, Licensee Event Report.
2. *OMB approval number:* 3150-0104.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* Forms 366, 366A, and 366B.
5. *How often the collection is required or requested:* As needed per section 50.73 of title 10 of the *Code of Federal Regulations* (10 CFR), "Licensee event report system."
6. *Who will be required or asked to respond:* The holder of an operating license under 10 CFR part 50 or a combined license under 10 CFR part 52 (after the Commission has made the finding under 10 CFR 52.103(g)).
7. *The estimated number of annual responses:* 344.
8. *The estimated number of annual respondents:* 94 (92 operating license under 10 CFR part 50 + 2 combined license holders under 10 CFR part 52).
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* The total estimated burden for completing License Event Reports is

20,000 hours (16,000 reporting + 4,000 recordkeeping).

10. *Abstract*: Part of the NRC's function is to license and regulate the operation of commercial nuclear power plants to ensure protection of public health and safety and the environment in accordance with the Atomic Energy Act of 1954 as amended. In order for the NRC to carry out these responsibilities, licensees must report significant events in accordance with 10 CFR 50.73, so that the NRC can evaluate the events to determine what actions, if any, are warranted to ensure protection of public health and safety or the environment. Section 50.73 requires reporting on NRC Forms 366, 366A, and 366B.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? Please explain your answer.

2. Is the estimate of the burden of the information collection accurate? Please explain your answer.

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: April 4, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023-07299 Filed 4-6-23; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023-129 and CP2023-132]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 11, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

www.prc.gov. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and

39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s)*: MC2023-129 and CP2023-132; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 111 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: April 3, 2023; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Arif Hafiz; *Comments Due*: April 11, 2023.

This Notice will be published in the **Federal Register**.

Mallory Richards,
Attorney-Advisor.

[FR Doc. 2023-07332 Filed 4-6-23; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97241; File No. SR-NYSEARCA-2023-26]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule To Delete Text That Is No Longer in Effect

April 3, 2023.

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 March 29, 2023, 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 below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule ("Fee Schedule") to delete text relating to pricing that is no longer in effect. The Exchange proposes to implement the fee changes effective March 29, 2023. The proposed rule change is available on the Exchange's website at www.nyse.com, at

¹ See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 purpose of this filing is to amend the Fee Schedule to delete text relating to discontinued or expired pricing. The Exchange proposes to implement the rule change on March 20, 2023.

The Exchange proposes to remove text relating to now-expired pricing programs that were implemented in connection with the Exchange's migration to the Pillar trading platform (the "Pillar Migration"), which completed in July 2022. First, the Exchange proposes to remove outdated NYSE Arca Market Maker OTP fees from the Fee Schedule, which fees are no longer effective following the restructuring of Market Maker OTP fees in connection with the Pillar Migration.⁴ The Exchange also proposes to eliminate text providing for a temporary cap on fees for Order/Quote Entry Ports, Quote Takedown Ports, and Drop Copy Ports (collectively, "Port Fees"); the cap on Port Fees was only effective during the period of the Pillar Migration and no longer applies to any OTP Holders.⁵ The Exchange further proposes to modify the table setting forth Port Fees to eliminate fees for Quote Takedown Ports altogether, as

such ports no longer exist following the Pillar Migration.⁶ Finally, the Exchange proposes to delete the last sentence of Endnote 8, which currently sets forth pricing intended to provide OTP Holders with certainty regarding their eligibility for certain tiers, incentives, and discounts during the Pillar Migration and which was effective only for the month during which the Pillar Migration occurred.⁷

The Exchange next proposes to amend the Fee Schedule to remove text relating to certain other pricing that is no longer in effect. First, the Exchange proposes to eliminate text that provided for a waiver of the Options Regulatory Fee from November 1, 2022 to January 31, 2023, as the waiver period has now ended.⁸ The Exchange also proposes to eliminate the section of the Fee Schedule setting forth NYSE FANG+ Index ("FAANG") transaction fees and FAANG credits for Market Makers,⁹ as

⁶ The Fee Schedule currently provides that, for each order/quote entry port utilized, NYSE Arca Market Makers may utilize, free of charge, one port dedicated to quote cancellation or "quote takedown." Any such port(s) are not included in the count of order/quote entry ports utilized, but any quote takedown port in excess of the number of order/quote entry ports utilized will be counted and charged as an order/quote entry port. *See* Fee Schedule, PORT FEES. The Exchange proposes to delete this text, as well as the reference to quote takedown ports in connection with how the Exchange would aggregate ports of affiliates for purposes of calculating the number of ports utilized. The Exchange notes that it began offering dedicated quote takedown ports to minimize latency for quote takedown. *See* Securities Exchange Act Release No. 74841 (April 29, 2015), 80 FR 25758 (May 5, 2015) (SR-NYSEARCA-2015-32) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying its Rules to Provide for the Use of Ports that Provide Connectivity to the Exchange's Trading Systems Solely for the Cancellation or "Takedown" of Quotes and Changes to the NYSE Arca Options Fee Schedule Related to Quote Takedown Service). Order/quote entry ports on Pillar process more efficiently than their pre-Pillar counterparts because the Pillar trading platform is designed to optimize throughput and provide minimal latency; accordingly, Market Makers can use their Pillar order/quote entry ports to readily accomplish both order/quote entry and quote takedown, thereby eliminating the need to obtain additional ports to effect the prompt cancellation of quotes.

⁷ *See* Securities Exchange Act Release No. 94125 (February 1, 2022), 87 FR 6910 (February 7, 2022) (SR-NYSEArca-2022-05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule) (providing for continuity of eligibility for certain tiers, incentives, and discounts for the month of July 2022).

⁸ *See* Securities Exchange Act Release No. 96374 (November 22, 2022), 87 FR 73372 (November 29, 2022) (SR-NYSEARCA-2022-78) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule Concerning the Options Regulatory Fee).

⁹ The Fee Schedule currently provides that Non-Customers and Professional Customers incur a \$0.35 per contract fee for FAANG transactions and that Customers and Market Makers do not incur a fee for FAANG transactions. The Fee Schedule also

FAANG options were delisted in February 2023, and these fees and credits are no longer applicable to any OTP Holders.¹⁰ Lastly, the Exchange proposes to delete the text of current Endnote 14 relating to Binary Return Derivatives ("ByRDs") transactions, as the last ByRDs expired in April 2018, and to designate Endnote 14 as Reserved.

The Exchange believes the proposed change would improve the clarity of Fee Schedule by removing obsolete text, thereby obviating potential confusion regarding pricing currently in effect.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,¹¹ in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,¹² in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange believes the proposed elimination of text in the Fee Schedule describing pricing that is no longer applicable to any OTP Holders is reasonable because it would improve the clarity of the Fee Schedule and reduce confusion as to which fees and credits are applicable on the Exchange. The Exchange believes that amending the Fee Schedule to remove obsolete pricing would further the protection of investors and the public interest by promoting clarity and transparency in the Fee Schedule and making the Fee Schedule easier to navigate and understand.

The Proposal Is an Equitable Allocation of Fees and Credits

The Exchange believes the proposed change supports an equitable allocation of fees and credits among its market

provides for certain credits to NYSE Arca Options Market Makers and LMMs that execute a minimum number of total monthly contract sides that open a position in FAANG on the Exchange. *See* Fee Schedule, NYSE FANG+ Index (FAANG) Transaction Fees.

¹⁰ The Exchange also proposes to delete references to FAANG in Endnote 2 (which currently provides that the Lead Market Maker Rights Fee does not apply to FAANG options) and Endnote 8 (which currently provides that options on FAANG would be included in calculations to qualify for volume-based incentives), which no longer have application following the delisting of FAANG options.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

⁴ *See* Securities Exchange Act Release No. 95142 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR-NYSEArca-2022-36) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule) (providing for new Market Maker OTP fees, which became effective August 1, 2022).

⁵ *See* Securities Exchange Act Release No. 94017 (January 20, 2022), 87 FR 4095 (January 26, 2022) (SR-NYSEArca-2022-03) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule To Cap Certain Port Fees) (providing that Port Fees would be capped for the month of July 2022).

participants because it would eliminate obsolete text from the Fee Schedule describing pricing programs that are no longer applicable to any market participants. Accordingly, the Exchange believes the proposal would impact all similarly situated OTP Holders on an equal basis. The Exchange also believes that the proposed change would promote investor protection and the public interest because the deletion of expired or discontinued pricing programs from the Fee Schedule would enhance the clarity of the Fee Schedule and reduce confusion regarding fees and credits currently applicable to market participants who transact on the Exchange.

The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any category of market participant. The proposed elimination of obsolete pricing would affect all market participants on an equal and non-discriminatory basis, as the programs with which such pricing is associated are no longer available to any market participants. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of expired or discontinued pricing programs would facilitate market participants' understanding of the pricing currently applicable on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act, 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. Instead, as discussed above, the proposed change relates solely to the elimination of obsolete pricing associated with discontinued or expired pricing and, accordingly, would not have any impact on intramarket or intermarket competition. The proposed change is designed to ensure that the Fee Schedule accurately reflects pricing currently effective on the Exchange, thereby adding clarity to the Fee Schedule to the benefit of all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A)¹³ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁴ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)¹⁵ 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-2023-26 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-2023-26. 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-2023-26, and should be submitted on or before April 28, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-07265 Filed 4-6-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97240; File No. SR-CBOE-2023-016]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fees Schedule

April 3, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 21, 2023, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(2).

¹⁵ 15 U.S.C. 78s(b)(2)(B).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to modify the fee for the SPX (and SPXW) Floor Market-Maker Tier Appointment Fee.³

By way of background, Exchange Rule 5.50(g)(2) provides that the Exchange may establish one or more types of tier appointments and Exchange Rule 5.50(g)(2)(B) provides such tier appointments are subject to such fees and charges the Exchange may establish. In 2010, the Exchange established the SPX Tier Appointment and adopted an initial fee of \$3,000 per Market-Maker

trading permit, per month.⁴ The SPX (and SPXW) Tier Appointment fee for Floor Market-Makers currently applies to any Market-Maker that executes any contracts in SPX and/or SPXW on the trading floor.⁵ The Exchange now seeks to increase the fee for the SPX/SPXW Floor Market-Maker Tier Appointment from \$3,000 per Market-Maker Floor Trading Permit to \$5,000 per Market-Maker Floor Trading Permit.

In connection with the proposed change, the Exchange also proposes to update Footnote 24 in the Fees Schedule, as well as remove the reference to Footnote 24 in the Market-Maker Tier Appointment Fee Table. By way of background, in June 2020, the Exchange adopted Footnote 24 to describe pricing changes that would apply for the duration of time the Exchange trading floor was being operated in a modified manner in connection with the COVID-19 pandemic.⁶ Among other changes, Footnote 24 provided that the monthly fee for the SPX/SPXW Floor Market-Maker Tier Appointment Fee was to be increased to \$5,000 per Trading Permit from \$3,000 per Trading Permit. As the Exchange now proposes to maintain the \$5,000 rate on a permanent basis (*i.e.*, regardless of whether the Exchange is operating in a modified state due to COVID-19 pandemic), the Exchange proposes to eliminate the reference to the SPX/SPXW Floor Market-Maker Tier Appointment Fee in Footnote 24.⁷

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)⁹ requirements that the rules of an exchange be designed to prevent

fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)¹⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly competitive environment. On May 21, 2019, the SEC Division of Trading and Markets issued non-rulemaking fee filing guidance titled "Staff Guidance on SRO Rule Filings Relating to Fees" ("Fee Guidance"), which provided, among other things, that in determining whether a proposed fee is constrained by significant competitive forces, the Commission will consider whether there are reasonable substitutes for the product or service that is the subject of a proposed fee.¹¹ As described in further detail below, the Exchange believes substitutable products¹² are in fact available to market participants, including in the Over-the-Counter (OTC) markets. Indeed, there are currently 16 registered options exchanges that trade options, with a 17th options exchange expected to launch in 2023. Based on publicly available information, no single options exchange has more than 15% of the market share as of January 19, 2023.¹³ Further, low barriers to entry mean that new exchanges may rapidly and inexpensively enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers, including exclusively listed products as discussed further below. For example, there are 3 exchanges that have been added in the U.S. options markets in the last 5 years

³ The Exchange initially filed the proposed fee change, among other changes, on June 1, 2022 (SR-CBOE-2022-026). On June 10, 2022, the Exchange withdrew that filing and submitted SR-CBOE-2022-029. On August 5, 2022, the Exchange withdrew that filing and submitted SR-CBOE-2022-042. On September 26, 2022, the Exchange withdrew that filing and submitted SR-CBOE-2022-050 to address the proposed fee change relating to the SPX/SPXW Floor Market-Maker Tier Appointment Fee. On November 23, 2022, the Exchange advised of its intent to withdraw that filing and submitted SR-CBOE-2022-060. On January 20, 2023, the Exchange withdrew SR-CBOE-2022-060 and submitted SR-CBOE-2023-008. On March 21, 2023, the Exchange withdrew SR-CBOE-2023-008 and submitted this filing. No comment letters were received in connection with any of the foregoing rule filings.

⁴ See Securities Exchange Act Release No. 62386 (June 25, 2010), 75 FR 38566 (July 2, 2010) (SR-CBOE-2010-060).

⁵ The Exchange notes that the fee is not assessed to a Market-Maker Floor Permit Holder who only executes SPX (including SPXW) options transactions as part of multi-class broad-based index spread transactions. See Cboe Options Fees Schedule, Market-Maker Tier Appointment Fees, Notes.

⁶ See Securities Exchange Act Release No. 89189 (June 30, 2020), 85 FR 40344 (July 6, 2020) (SR-CBOE-2020-058).

⁷ The Exchange notes that since its transition to a new trading floor facility on June 6, 2022, it has not been operating in a modified manner. As such Footnote 24 (*i.e.*, the modified fee changes it describes) does not currently apply.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ *Id.*

¹¹ See Chairman Jay Clayton, Statement on Division of Trading and Markets Staff Fee Guidance, June 12, 2019. The Fee Guidance also recognized that "products need to be substantially similar but not identical to be substitutable."

¹² A substitute, or substitutable good, in economics and consumer theory refers to a product or service that consumers see as essentially the same or similar-enough to another product. See <https://www.investopedia.com/terms/s/substitute.asp>.

¹³ See Cboe Global Markets U.S. Options Market Volume Summary (March 17, 2023), available at https://markets.cboe.com/us/options/market_statistics/.

(i.e., Nasdaq MRX, LLC, MIAX Pearl, LLC, and MIAX Emerald LLC) and one additional options exchange that is expected to launch in 2023 (i.e., MEMX LLC).

The Exchange believes that competition in the marketplace constrains the ability of exchanges to charge supracompetitive fees for access to its products exclusive to that market (“proprietary products”). Notably, just as there is no regulatory requirement to become a member of any one options exchange, there is also no regulatory requirement for any market participant to participate on the Exchange in any particular capacity, including as a Market Maker, nor trade any particular product. Additionally, there is no requirement that any Exchange create or indefinitely maintain any particular product.¹⁴ The Exchange also highlights that market participants may trade an exchange’s proprietary products through a third-party without directly or indirectly connecting to the exchange. Further, market participants, including Market-Makers, may trade the Exchange’s products, including proprietary products, on or off the Exchange’s trading floor (i.e., all products are available both electronically and via open outcry on the Exchange’s trading floor). Particularly, market participants are not obligated to trade on the Exchange’s trading floor and therefore a market participant, including Market-Makers, can choose to trade a product electronically instead of on the Exchange’s trading floor at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Indeed, the Exchange notes that only one Market-Maker TPH trades SPX exclusively on the floor. The Exchange notes that nothing precludes such TPH from also deciding to trade SPX electronically. Rather, what products a market participant chooses to trade, and the manner in which they choose to do so, is ultimately determined by factors relevant and specific to each market participant,

including its business model and associated costs.

Additionally, market participants may trade any options product, including proprietary products, in the unregulated Over-the-Counter (OTC)¹⁵ markets for which there is no requirement for fees related to those markets to be public. Given the benefits offered by trading options on a listed exchange, such as increased market transparency and heightened contra-party creditworthiness due to the role of the Options Clearing Corporation as issuer and guarantor, the Exchange generally seeks to incentivize market participants to trade options on an exchange, which further constrains fees that an Exchange may assess. Market participants may also access other exchanges to trade other similar or competing proprietary or multi-listed products. Alternative products to the Exchange’s proprietary products may include other options products, including options on ETFs or options futures, as well as particular ETFs or futures. Particularly, exclusively listed SPX options (i.e., a proprietary product) may compete with the following products traded on other markets: multiply-listed SPY options (options on the ETF that replicates performance of the S&P 500), E-mini S&P 500 Options (options on futures), and E-Mini S&P 500 futures (futures on index). Indeed, as a practical matter, investors utilize SPX and SPY options and their respective underlying instruments and futures to gain exposure to the same benchmark index: the S&P 500.

Notably, the Commission itself has affirmed that notwithstanding the exclusive nature of SPX options, alternatives to this product exist in the marketplace. For example, in approving a PM-settled S&P 500 cash settled contract (“SPXPM”) on its affiliate exchange Cboe C2 Exchange, Inc. (which product was later transferred to the Exchange), the Commission stated that it “recognizes the potential impact on competition resulting from the inability of other options exchanges to list and trade SPXPM. In acting on this proposal, however, the Commission has balanced the potentially negative competitive effects with the countervailing positive competitive effects of C2’s proposal. The Commission believes that the availability of SPXPM on the C2 exchange will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic

trading environment, through which investors can gain and hedge exposure to the S&P 500 stocks. Further, this product could offer a competitive alternative to other existing investment products that seek to allow investors to gain broad market exposure. Also, we note that it is possible for other exchanges to develop or license the use of a new or different index to compete with the S&P 500 index and seek Commission approval to list and trade options on such index.”¹⁶

The economic equivalence of SPX and SPY options was further acknowledged and cited as a basis for the elimination of position limits for SPY options across the industry not long after the Commission’s findings above in 2011.¹⁷ Moreover, other exchanges have acknowledged that SPY options are considered to be an economic equivalent to SPX options.¹⁸

Additionally, in connection with a proposed amendment to the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”) the Commission again discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models.¹⁹ Similar to, and consistent with, its findings in approving SPXPM, 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.²⁰ Accordingly, although the Exchange may have proprietary products not

¹⁴ If an option class is open for trading on another national securities exchange, the Exchange may delist such option class immediately. For proprietary products, the Exchange may determine to not open for trading any additional series in that option class; may restrict series with open interest to closing transactions, provided that, opening transactions by Market-Makers executed to accommodate closing transactions of other market participants and opening transactions by TPH organizations to facilitate the closing transactions of public customers executed as crosses pursuant to and in accordance with Rule 6.74(b) or (d) may be permitted; and may delist the option class when all series within that class have expired. See Cboe Rule 4.4, Interpretations and Policies .11.

¹⁵ Derivatives that are functionally identical to the Exchange’s exclusively-listed options, including SPX, can be traded on the OTC market.

¹⁶ See Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR-C2–2011–008). The Exchange notes SPXPM was later transferred to the Exchange, where it currently remains listed. See Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2013) (SR-CBOE–2012–120).

¹⁷ See, e.g., Securities Exchange Act Release No. 67936 (September 27, 2012), 77 FR 60491 (October 3, 2012) (SR-BOX–2012–013). See also Securities Exchange Act Release No. 67999 (October 5, 2012), 77 FR 62295 (October 12, 2012) (SR-Phlx–2012–122).

¹⁸ NYSE Euronext, on behalf of its subsidiary options exchanges, NYSE Arca Inc. and NYSE Amex LLC, commented on a Nasdaq OMX PHLX LLC (“PHLX”) proposal to increase the position limits for SPY options, noting “. . . when a contract that is considered by many to be economically equivalent to SPY options—namely SPX options . . .” See (<http://www.sec.gov/comments/sr-phlx-2011-58/phlx201158-1.pdf>).

¹⁹ See Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19).

²⁰ *Id.*

offered by other competitors, not unlike unique business models, a competitor could create similar products to an existing proprietary product if demand were adequate. As an illustration of this point, MIAX created its exclusive product SPIKES specifically to compete against VIX options, another product exclusive to the Exchange.²¹

The Commission has also acknowledged competition with respect to OTC products. For example, in its proposal to eliminate position and exercise limits for broad-based index options, the Exchange had noted that “[i]nvestors who trade listed options on the [Exchange] are placed at a serious disadvantage in comparison to the OTC market where index options and other types of index based derivatives (e.g., forwards and swaps) are not subject to position and exercise limits. Member firms continue to express concern to the Exchange that position limits on [Exchange] products are an impediment to their business and that they have no choice but to move their business to the OTC market where position limits are not an issue.”²² In approving the Exchange’s proposal to eliminate position and exercise limits for certain broad-based index options, including SPX, on a two-year pilot basis, the Commission stated that “the index options and other types of index-based derivatives (e.g., forwards and swaps) are not subject to position and exercise limits in the OTC market. The Commission believes that eliminating position and exercise limits for the SPX . . . options on a two-year pilot basis will better allow [the Exchange] to compete with the OTC market.”²³

The Exchange is not aware of any changes in the market that make the Commission’s foregoing findings and assertions relating to competition for SPX and exclusively listed products generally any less true today. In fact, competitive forces within the market have resulted in an expansion of products. For example, in recent years, the exchange-traded fund (“ETF”)

industry has experienced significant growth and diversification. ETFs that hold options have become increasingly popular. There are several examples of ETFs that hold SPX options and others that hold SPY options, as both types of options may offer investors different benefits. Accordingly, if a market participant views the Exchange’s proprietary products, including SPX and SPXW, as more or less attractive than the competition they can and do switch between substantially similar products. Despite having economic differences, substitute products have significant similarities and may have characteristics that cause investors to find those products to be beneficial to SPX options (e.g., strike availability, settlement, liquidity, tax reasons, product size). As such, the Exchange is subject to competition and does not possess anti-competitive pricing power, even with its offering of proprietary products such as SPX.

The Exchange also believes the proposed fee is reasonable as the Exchange believes it remains commensurate with the value of operating as a Market-Maker on the Exchange’s trading floor in the SPX pit. For example, the Exchange recently transitioned from its previous trading floor, which it had occupied since the 1980s, to a brand new, modern and upgraded trading floor facility. The Exchange believes customers continue to find value in open outcry trading and rely on the floor for price discovery and the deep liquidity provided by floor Market-Makers. The build out of a new modern trading floor reflects the Exchange’s commitment to open outcry trading and focus on providing the best possible trading experience for its customers, including Market-Makers. For example, the new trading floor provides a state-of-the-art environment and technology and more efficient use of physical space, which the Exchange believes better reflects and supports the current trading environment. The Exchange also believes the new infrastructure provides a cost-effective, streamlined, and modernized approach to floor connectivity. For example, the new trading floor has more than 330 individual kiosks, equipped with top-of-the-line technology, that enable floor participants to plug in and use their devices with greater ease and flexibility. It also provides floor Market-Makers with more space and increased capacity to support additional floor-based traders on the trading floor. Moreover, the new trading floor is conveniently located across the street from the LaSalle trading floor, which resulted in minimal

disruption to TPH floor participants, many of whom have office space nearby, including in the same facility in which the trading floor is located. The Exchange believes the new location, which was also home to the Exchange’s original trading floor in the 1970s and early 1980s, is also able to support robust trading floor infrastructure as it currently hosts several banks, trading firms and even trading floors (i.e., trading floors for the Chicago Mercantile Exchange and BOX Options Market). The Exchange also believes the relocation to the new trading floor resulted in a streamlined and simplified trading floor and facility fee structure, as further described in the Exchange’s proposal to amend certain facility fees in connection with the new trading floor.²⁴

The Exchange further believes the proposal to increase the fee is reasonable as the Exchange has expanded the suite of SPX products available to Market-Makers on the trading floor since 2010 when the SPX (and SPXW) Floor Market-Maker Tier Appointment fee was first adopted. For example, in 2013, the Exchange began listing SPXPM.²⁵ In 2016, the Exchange began listing SPX Weekly options with Monday and Wednesday expirations.²⁶ Most recently in 2022, the Exchange added SPX Weekly options with Tuesday and Thursday expirations.²⁷ The introduction of these products means SPX options now have an available expiration every trading day of the week, thereby providing Floor Market-Makers with additional opportunities to trade SPX and greater trading flexibility as compared to 2010. Moreover, average daily volume (ADV) in SPX has increased nearly 30%. Therefore, increasing the price to trade SPX on the trading floor is consistent with the simple law of supply and demand—demand to trade SPX options has increased (as evidenced by the ADV increase), and therefore the Exchange is proposing to increase the price to trade these options. Additionally, the notional ADV in SPX has increased over 380% on the trading floor since July 2010

²¹ MIAX has described SPIKES options as “designed specifically to compete head-to-head against Cboe’s proprietary VIX® product.” See MIAX Press Release, *SPIKES Options Launched on MIAX*, February 21, 2019, available at: https://www.miaxoptions.com/sites/default/files/press-release-files/MIAX_Press_Release_02212019.pdf.

²² See Securities Exchange Act Release No. 40158 (July 1, 1998), 63 FR 37153 (July 9, 1998) (SR-CBOE-1998-23).

²³ See Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911 (February 1, 1999) (SR-CBOE-1998-23). The pilot program that was originally allowed for the elimination of position and exercise limits of SPX was approved on a permanent basis in 2001. See Securities Exchange Act Release No. 44994 (November 2, 2001), 66 FR 55722 (October 26, 2001) (SR-CBOE-2001-22).

²⁴ See Securities Exchange Act Release No. 96001 (October 6, 2022), 87 FR 62129 (October 13, 2022) (SR-CBOE-2022-049).

²⁵ See Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2013) (SR-CBOE-2012-120).

²⁶ See Securities Exchange Act Release No. 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (SR-CBOE-2015-106). See also Securities Exchange Act Release No. 78531 (August 10, 2016), 81 FR 54643 (August 16, 2016) (SR-CBOE-2016-146).

²⁷ See Securities Exchange Act Release No. 94682 (April 12, 2022), 87 FR 22993 (April 18, 2022) (CBOE-2022-005).

when the fee was first adopted. Given this significant increase in the cost of an SPX option contract, compared to the SPX Tier Appointment Fee, it is cheaper to trade SPX options on the trading floor than it was in 2010 when the fee was first adopted.²⁸

To demonstrate the value the Exchange believes Market-Makers find transacting with SPX on the trading floor (notwithstanding the proposed fee change), Market-Maker presence on the new trading floor in SPX and SPXW has actually increased. Particularly, as of December 30, 2022, there are 12 additional Market-Makers trading SPX and SPXW on the trading floor as compared to May 2022 (which was the month prior to the proposed fee change being implemented on a permanent basis and transition to the new trading floor).²⁹ Further, in June 2022, the month in which the proposed fee change took effect on the new trading floor on a permanent basis, there were 5 additional Market-Makers trading SPX and SPXW on the trading floor as compared to May 2022. Further, as of December 30, 2022, there are 4 additional Market-Makers trading SPX and SPXW on the trading floor as compared to March 2020, which was the last month the Exchange assessed \$3,000 for the SPX and SPXW Floor Market Maker Tier Appointment fee. The Exchange believes the increasing SPX and SPXW Market-Maker presence on the trading floor since the last time the Exchange assessed \$3,000 for the SPX and SPXW Floor Market Maker Tier Appointment fee (*i.e.*, March 2020) and since the time the current proposal was submitted (*i.e.*, June 2020) speaks not only to the value Market-Makers find in participating as a Market-Maker in SPX and SPXW on the (new and improved) trading floor, but also to the reasonableness of the fee. Moreover, as established above, if a Market-Maker viewed trading SPX and SPXW as less attractive than competitive products,

including those described above, they can switch between such similar products and choose not to remain as a Market-Maker trading SPX and SPX on the trading floor. As such, the Exchange is subject to competition and does not possess anti-competitive pricing power, even with its offering of proprietary products such as SPX.

Moreover, as noted above, market participants are not obligated to trade on the Exchange's trading floor and therefore a market participant, including Market-Makers, can choose to trade a product electronically instead of on the Exchange's trading floor at any time and for any reason, including due to an assessment of the reasonableness of fees charged. In particular, as of January 2023, SPX and SPXW open outcry volume accounted for approximately 26% of total SPX and SPXW volume (*i.e.*, approximately 74% is traded electronically). Accordingly, Market-Makers may continue to choose to trade SPX and SPXW electronically should they deem fees associated with trading on the trading floor as unreasonable, further demonstrating that the Exchange is constrained from imposing unreasonable and supracompetitive fees. The Exchange notes this applies to all SPX Market-Makers, even a Market-Maker who may currently not participate electronically and only trades SPX in open outcry. Should any Market-Maker find the costs for executing SPX in open outcry unreasonable based on its business model and needs, such Market-Maker could instead elect to execute SPX solely electronically (or choose to trade other competing products). Accordingly, the Exchange believes that SPX Floor Market-Makers that continue to participate in open outcry trading find value in doing so.

The Exchange finally believes its proposal to increase the SPX (and SPXW) Floor Market-Maker Tier Appointment fee is reasonable because the proposed amount is not significantly higher than was previously assessed (and is the same amount that has been assessed under Footnote 24 for the last two years). Additionally, the Exchange believes its proposal to increase the fee is reasonable as the fee amount has not been increased since it was adopted over 12 years ago in July 2010.³⁰ Particularly, since its adoption 12 years ago, there has been notable inflation. Indeed, the dollar has had an average inflation rate of 2.6% per year between 2010 and today, producing a cumulative

price increase of approximately 37% inflation since 2010, when the SPX and SPXW Floor Market-Maker Tier Appointment was first adopted.³¹ Additionally, for nearly ten years, Market-Makers were only subject to the original rate that was adopted in 2010 (*i.e.*, \$3,000) notwithstanding an average inflation rate of 2.64% per year. The Exchange acknowledges its proposed fee exceeds 37%. However, the Exchange believes such increase is reasonable given many Market-Makers for nearly 10 years did not have to pay increased fees notwithstanding yearly inflation. For example, by not increasing the fee each year to correspond to the average per year inflation rate of 2.6%, Market-Makers trading SPX on the trading floor since 2011 through 2020 (when then Exchange originally increased the fee due to the COVID-19 pandemic) have saved nearly \$10,000. The Exchange therefore believes that proposing a fee in excess of the cumulative 37% inflation rate is still reasonable, especially when considered in conjunction with all of the additional and further rationale discussed above. The Exchange is also unaware of any standard that suggests any fee proposal that exceeds a yearly or cumulative inflation rate is unreasonable.

The proposed change is also equitable and not unfairly discriminatory as it applies to all Market-Makers that trade SPX on the trading floor uniformly. The Exchange believes it's reasonable, equitable and not unfairly discriminatory to increase the SPX/SPXW floor Market-Maker Tier Appointment fee and not the SPX/SPXW electronic Market-Maker Tier Appointment fee, as Floor Market-Makers are not subject to other costs that electronic Market-Makers are subject to. For example, while all Floor Market-Makers automatically have an appointment to trade open outcry in all classes traded on the Exchange and at no additional cost per appointment, electronic Market-Makers must select an appointment in a class (such as SPX) to make markets electronically and such appointments are subject to fees under the Market-Maker Electronic Appointments Sliding Scale.³²

The Exchange lastly notes that it is not required by the Exchange Act, nor any other rule or regulation, to undertake a cost-of-service or rate-making approach with respect to fee proposals. The Exchange believes that,

²⁸ On December 31, 2010, the S&P 500 Index closed at 1,257.64, making the notional value of one SPX contract \$125,764 on that date. On March 20, 2023, the S&P 500 Index closed at 3,951.57, making the notional value of one SPX contract \$395,157 on that date. Therefore, based on the cost of the SPX Floor Market Maker Tier Appointment fee of \$3,000 in 2010 and \$5,000 in 2023, it is cheaper per SPX contract despite the higher fee (\$0.0239 (\$3,000/\$125,764) v. \$0.0127 (\$5,000/\$395,157)). Consistent with basic economic principles, if the value of a good increases, it is reasonable for the price of that good to also increase.

²⁹ As noted above, the Exchange has been assessing \$5,000 for the SPX and SPXW Floor Market Maker Tier Appointment fee since June 2020 as the Exchange was operating in a modified state until its transition to the new trading floor in June 2022, at which time the Exchange submitted this proposal to make such increase permanent.

³⁰ See Securities Exchange Act Release No. 62386 (June 25, 2010), 75 FR 38566 (July 2, 2010) (SR-CBOE-2010-060).

³¹ See <https://www.officaldata.org/us/inflation/2010?amount=1>.

³² See Cboe Options Rules 5.50(a) and (e). See also Cboe Options Fees Schedule, Market-Maker EAP Appointments Sliding Scale.

even if it were possible as a matter of economic theory, cost-based pricing for the proposed fee would be so complicated that it could not be done practically.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule changes will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes would be applied in the same manner to all Floor Market-Makers that trade SPX (and/or SPXW). As noted above, the Exchange believes it's reasonable to increase the SPX/SPWX Tier Appointment Fee for only Floor Market-Makers only as opposed to electronic Market-Makers, because electronic Market-Makers are subject to costs Floor Market-Makers are not, such as the fees under Market-Maker EAP Appointments Sliding Scale.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule changes apply only to a fee relating to a product exclusively listed on the Exchange. Additionally, the Exchange operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on (which, as described above, list products that compete with SPX options) and direct their order flow, including 15 other options exchanges (four of which also maintain physical trading floors), as well as off-exchange venues, where competitive products are available for trading. Based on publicly available information, no single options exchange has more than 15% of the market share of executed volume of options trades.³³ Therefore, no exchange possesses significant pricing power in the execution of option order flow. Moreover, as discussed above, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance

of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."³⁴ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[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'. . . ."³⁵ Accordingly, the Exchange does not believe its proposed changes to the incentive programs impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act³⁶ and paragraph (f) of Rule 19b-4³⁷ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

³⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

³⁵ *NetCoalition v. SEC*, 615 F.3d 525, 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)).

³⁶ 15 U.S.C. 78s(b)(3)(A).

³⁷ 17 CFR 240.19b-4(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2023-016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2023-016. 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-CBOE-2023-016 and should be submitted on or before April 28, 2023.

³³ See Cboe Global Markets, U.S. Options Market Volume Summary by Month (January 19, 2023), available at: http://markets.cboe.com/us/options/market_share/.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-07266 Filed 4-6-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-017, OMB Control No. 3235-0018]

Proposed Collection; Comment Request; Extension: Rule 15b6-1 and Form BDW

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the existing collection of information provided for in Rule 15b6-1 (17 CFR 240.15b6-1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Registered broker-dealers use Form BDW (17 CFR 249.501a) to withdraw from registration with the Commission, the self-regulatory organizations, and the states. On average, the Commission estimates that it would take a broker-dealer approximately one hour to complete and file a Form BDW to withdraw from Commission registration as required by Rule 15b6-1. The Commission estimates that approximately 411 broker-dealers withdraw from Commission registration annually¹ and, therefore, file a Form BDW via the internet with the Central Registration Depository, a computer system operated by the Financial Industry Regulatory Authority, Inc. that maintains information regarding registered broker-dealers and their registered personnel. The 411 broker-

dealers that withdraw from registration by filing Form BDW would incur an aggregate annual reporting burden of approximately 411 hours.²

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by June 6, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: PRA_Mailbox@sec.gov.

Dated: April 4, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-07390 Filed 4-6-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97239; File No. SR-MIAX-2023-13]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

April 3, 2023.

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 March 22, 2023, Miami International Securities Exchange LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items

have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the “Fee Schedule”) to extend the SPIKES Options Market Maker Incentive Program (the “Incentive Program”) until June 30, 2023.

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings>, at MIAX’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to extend the Incentive Program until June 30, 2023.

On September 30, 2021, the Exchange filed its initial proposal to implement a SPIKES Options Market Maker Incentive Program for SPIKES options to incentivize Market Makers³ to improve liquidity, available volume, and the quote spread width of SPIKES options beginning October 1, 2021, and ending December 31, 2021.⁴ Technical details regarding the Incentive Program were published in a Regulatory Circular on September 30, 2021.⁵ On October 12,

³ The term “Market Makers” refers to “Lead Market Makers”, “Primary Lead Market Makers” and “Registered Market Makers” collectively. See Exchange Rule 100.

⁴ See SR-MIAX-2021-45.

⁵ See MIAX Options Regulatory Circular 2021-56, SPIKES Options Market Maker Incentive Program (September 30, 2021) available at https://www.miaxoptions.com/sites/default/files/circular_files/MIAX_Options_RC_2021_56.pdf.

³⁸ 17 CFR 200.30-3(a)(12).

¹ This estimate is based on Form BDW data collected over the past three years for fully registered broker-dealers. This estimate is based on the numbers of forms filed; therefore, the number may include multiple forms per broker-dealer if the broker-dealer’s initial filing was incomplete. In fiscal year (from 10/1 through 9/30) 2020, 499 broker-dealers withdrew from registration. In fiscal year 2021, 417 broker-dealers withdrew from registration. In fiscal year 2022, 318 broker-dealers withdrew from registration. $(499 + 417 + 318)/3 = 411$ (rounded down from 411.33).

² $(411 \times 1 \text{ hour}) = 411 \text{ hours}$.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

2021, the Exchange withdrew SR-MIAX-2021-45 and refiled its proposal to implement the Incentive Program to provide additional details.⁶ In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (December 31, 2021) unless the Exchange filed another 19b-4 Filing to amend the fees (or extend the Incentive Program).⁷

On December 23, 2021, the Exchange filed its proposal to extend the Incentive Program until March 31, 2022.⁸ In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (March 31, 2022) unless the Exchange filed another 19b-4 Filing to amend the fees (or extend the Incentive Program).⁹ On March 23, 2022, the Exchange filed its proposal to extend the Incentive Program until June 30, 2022.¹⁰ In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (June 30, 2022) unless the Exchange filed another 19b-4 Filing to amend the fees (or extend the Incentive Program).¹¹ On June 29, 2022, the Exchange filed its proposal to extend the Incentive Program until September 30, 2022.¹² In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (September 30, 2022) unless the Exchange filed another 19b-4 Filing to amend the fees (or extend the Incentive Program).¹³ On September 30, 2022, the Exchange filed its proposal to extend the Incentive Program until December 31, 2022.¹⁴ In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (December 31, 2022) unless the Exchange filed another 19b-4 Filing to amend the fees (or extend the Incentive Program).¹⁵ On December 20, 2022, the Exchange filed its proposal to extend the Incentive Program until

March 31, 2023.¹⁶ In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (March 31, 2023) unless the Exchange filed another 19b-4 Filing to amend the fees (or extend the Incentive Program).¹⁷ The Exchange now proposes to extend the Incentive Program until June 30, 2023.¹⁸

The Exchange proposes to extend the Incentive Program for SPIKES options to continue to incentivize Market Makers to improve liquidity, available volume, and the quote spread width of SPIKES options. Currently, to be eligible to participate in the Incentive Program, a Market Maker must meet certain minimum requirements related to quote spread width in certain in-the-money (ITM) and out-of-the-money (OTM) options as determined by the Exchange and communicated to Members via Regulatory Circular.¹⁹ Market Makers must also satisfy a minimum time in the market in the front 2 expiry months of 70%, and have an average quote size of 25 contracts. The Exchange established two separate incentive compensation pools that are used to compensate Market Makers that satisfy the criteria pursuant to the Incentive Program.

The first pool (Incentive 1) has a total amount of \$40,000 per month, which is allocated to Market Makers that meet the minimum requirements of the Incentive Program. Market Makers are required to meet minimum spread width requirements in a select number of ITM and OTM SPIKES option contracts as determined by the Exchange and communicated to Members via Regulatory Circular.²⁰ A complete description of how the Exchange calculates the minimum spread width requirements in ITM and OTM SPIKES options can be found in the published Regulatory Circular.²¹ Market Makers are also required to maintain the minimum spread width, described above, for at least 70% of the time in the front two (2) SPIKES options contract expiry months and maintain an average quote size of at least 25 SPIKES options contracts. The amount available to each individual Market Maker is capped at \$10,000 per month for satisfying the minimum requirements of the Incentive Program. In the event that

more than four Market Makers meet the requirements of the Incentive Program, each qualifying Market Maker is entitled to receive a pro-rated share of the \$40,000 monthly compensation pool dependent upon the number of qualifying Market Makers in that particular month.

The second pool (Incentive 2 Pool) is capped at a total amount of \$100,000 per month which is used during the Incentive Program to further incentivize Market Makers who meet or exceed the requirements of Incentive 1 (“qualifying Market Makers”) to provide tighter quote width spreads. The Exchange ranks each qualifying Market Maker’s quote width spread relative to each other qualifying Market Maker’s quote width spread. Market Makers with tighter spreads in certain strikes, as determined by the Exchange and communicated to Members via Regulatory Circular,²² are eligible to receive a pro-rated share of the compensation pool as calculated by the Exchange and communicated to Members via Regulatory Circular,²³ not to exceed \$25,000 per Member per month. Qualifying Market Makers are ranked relative to each other based on the quality of their spread width (*i.e.*, tighter spreads are ranked higher than wider spreads) and the Market Maker with the best quality spread width receives the highest rebate, while other eligible qualifying Market Makers receive a rebate relative to their quality spread width.

The Exchange proposes to extend the Incentive Program until June 30, 2023. The Exchange does not propose to make any amendments to how it calculates any of the incentives provided for in Incentive Pools 1 or 2. The details of the Incentive Program can continue to be found in the Regulatory Circular that was published on September 30, 2021 to all Exchange Members.²⁴ The purpose of this extension is to continue to incentivize Market Makers to improve liquidity, available volume, and the quote spread width of SPIKES options. The Exchange will announce the extension of the Incentive Program to all Members via a Regulatory Circular.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with section 6(b) of the Act²⁵ in general, and furthers the objectives of

⁶ See Securities Exchange Act Release No. 93424 (October 26, 2021), 86 FR 60322 (November 1, 2021) (SR-MIAX-2021-49).

⁷ See *id.*

⁸ See Securities Exchange Act Release No. 93881 (December 30, 2021), 87 FR 517 (January 5, 2022) (SR-MIAX-2021-63).

⁹ See *id.*

¹⁰ See Securities Exchange Act Release No. 94574 (April 1, 2022), 87 FR 20492 (April 7, 2022) (SR-MIAX-2022-12).

¹¹ See *id.*

¹² See Securities Exchange Act Release No. 95259 (July 12, 2022), 87 FR 42754 (July 17, 2022) (SR-MIAX-2022-24).

¹³ See *id.*

¹⁴ See Securities Exchange Act Release No. 96007 (October 7, 2022), 87 FR 62151 (October 13, 2022) (SR-MIAX-2022-32).

¹⁵ See *id.*

¹⁶ See Securities Exchange Act Release No. 96588 (December 28, 2022), 88 FR 381 (January 4, 2023) (SR-MIAX-2022-47).

¹⁷ See *id.*

¹⁸ The Exchange notes that at the end of the extension period, the Incentive Program will expire unless the Exchange files another 19b-4 Filing to amend the terms or extend the Incentive Program.

¹⁹ See *supra* note 5.

²⁰ See *id.*

²¹ See *id.*

²² See *id.*

²³ See *id.*

²⁴ See *id.*

²⁵ 15 U.S.C. 78f(b).

section 6(b)(4) of the Act²⁶ in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to extend the Incentive Program for Market Makers in SPIKES options until June 30, 2023. The Incentive Program is reasonably designed because it will continue to incentivize Market Makers to provide quotes and increased liquidity in select SPIKES options contracts. The Incentive Program is reasonable, equitably allocated and not unfairly discriminatory because all Market Makers in SPIKES options may continue to qualify for Incentive 1 and Incentive 2, dependent upon each Market Maker's quoting in SPIKES options in a particular month. Additionally, if a SPIKES Market Maker does not satisfy the requirements of Incentive Pool 1 or 2, then it simply will not receive the rebate offered by the Incentive Program for that month.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to continue to offer this financial incentive to SPIKES Market Makers because it will continue to benefit all market participants trading in SPIKES options. SPIKES options is a Proprietary Product on the Exchange and the continuation of the Incentive Program encourages SPIKES Market Makers to satisfy a heightened quoting standard, average quote size, and time in market. A continued increase in quoting activity and tighter quotes may yield a corresponding increase in order flow from other market participants, which benefits all investors by deepening the Exchange's liquidity pool, potentially providing greater execution incentives and opportunities, while promoting market transparency and improving investor protection.

The Exchange believes that the Incentive Program is equitable and not unfairly discriminatory because it will continue to promote an increase in SPIKES options liquidity, which may

facilitate tighter spreads and an increase in trading opportunities to the benefit of all market participants. The Exchange believes it is reasonable to operate the Incentive Program for a continued limited period of time to strengthen market quality for all market participants. The resulting increased volume and liquidity will benefit those Members who are eligible to participate in the Incentive Program and will also continue to benefit those Members who are not eligible to participate in the Incentive Program by providing more trading opportunities and tighter spreads.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes that the proposed extension of the Incentive Program to June 30, 2023 would continue to increase intra-market competition by incentivizing Market Makers to quote SPIKES options, which will continue to enhance the quality of quoting and increase the volume of contracts available to trade in SPIKES options. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity for SPIKES options. Enhanced market quality and increased transaction volume in SPIKES options that results from the anticipated increase in Market Maker activity on the Exchange will benefit all market participants and improve competition on the Exchange.

Inter-Market Competition

The Exchange does not believe that the proposed rule changes will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed extension of the Incentive Program applies only to the Market Makers in SPIKES Options, which are traded exclusively on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act,²⁷ and Rule 19b-4(f)(2)²⁸ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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-MIAX-2023-13 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-MIAX-2023-13. 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

²⁶ 15 U.S.C. 78f(b)(4) and (5).

²⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁸ 17 CFR 240.19b-4(f)(2).

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-MIAX-2023-13, and should be submitted on or before April 28, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-07267 Filed 4-6-23; 8:45 am]
BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #17836 and #17837;
MISSISSIPPI Disaster Number MS-00151]**

Presidential Declaration Amendment of a Major Disaster for the State of Mississippi

AGENCY: Small Business Administration.
ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Mississippi (FEMA-4697-DR), dated 03/26/2023.
Incident: Severe Storms, Straight-line Winds, and Tornadoes.
Incident Period: 03/24/2023 through 03/25/2023.

DATES: Issued on 03/30/2023.
Physical Loan Application Deadline Date: 05/25/2023.
Economic Injury (EIDL) Loan Application Deadline Date: 12/26/2023.

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 Recovery & Resilience, 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 MISSISSIPPI,

dated 03/26/2023, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):
Montgomery, Panola.

Contiguous Counties (Economic Injury Loans Only):

Mississippi: Choctaw, Lafayette, Quitman, Tallahatchie, Tate, Tunica, Webster, Yalobusha.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023-07281 Filed 4-6-23; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #17840 and #17841;
ARKANSAS Disaster Number AR-00128]**

Presidential Declaration of a Major Disaster for the State of Arkansas

AGENCY: Small Business Administration.
ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA-4698-DR), dated 04/02/2023.
Incident: Severe Storms and Tornadoes.
Incident Period: 03/31/2023.

DATES: Issued on 04/02/2023.
Physical Loan Application Deadline Date: 06/01/2023.
Economic Injury (EIDL) Loan Application Deadline Date: 01/02/2024.

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 Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/02/2023, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Cross, Lonoke, Pulaski.

Contiguous Counties (Economic Injury Loans Only):

Arkansas: Arkansas, Crittenden, Faulkner, Grant, Jackson, Jefferson, Perry, Poinsett, Prairie, Saint Francis, Saline, White, Woodruff.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	4.750
Homeowners without Credit Available Elsewhere	2.375
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17840 C and for economic injury is 17841 O.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023-07283 Filed 4-6-23; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #17838 and #17839;
MISSISSIPPI Disaster Number MS-00152]**

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Mississippi

AGENCY: Small Business Administration.
ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA-4697-DR), dated 03/30/2023.

Incident: Severe Storms, Straight-line Winds, and Tornadoes.
Incident Period: 03/24/2023 through 03/25/2023.

DATES: Issued on 03/30/2023.
Physical Loan Application Deadline Date: 05/30/2023.
Economic Injury (EIDL) Loan Application Deadline Date: 01/02/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business

²⁹ 17 CFR 200.30-3(a)(12).

Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/30/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Carroll, Humphreys, Monroe, Montgomery, Panola, Sharkey.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17838 C and for economic injury is 17839 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023-07282 Filed 4-6-23; 8:45 am]

BILLING CODE 8026-09-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36685]

Macquarie Infrastructure Partners V GP, LLC—Control Exemption—Camp Chase Rail, LLC, Chesapeake and Indiana Railroad Company, Inc., and Vermilion Valley Railroad Company, Inc.

Macquarie Infrastructure Partners V GP, LLC (MIP GP), a noncarrier, filed on behalf of MIP Infrastructure Partners V fund vehicle (MIP V), MIP V Rail, LLC (MIP Rail), and Gulf & Atlantic Railway

LLC (G&A),¹ a verified notice of exemption under 49 CFR 1180.2(d)(2) to acquire control of three Class III railroads currently controlled by MB Rail IB, LLC (MBR IB);² Camp Chase Rail, LLC (Camp Chase); Chesapeake and Indiana Railroad Company, Inc. (CKIN); and Vermilion Valley Railroad Company, Inc. (VVRC), (collectively the Target Railroads).³

The verified notice states that, pursuant to a Purchase Agreement dated March 17, 2023,⁴ G&A has agreed to acquire from MBR IB 100% of the equity interests of the Target Railroads. Currently, G&A directly controls, and MIP GP, MIP V, and MIP Rail indirectly control, Grenada Railroad, LLC (GRYR), and Florida, Gulf & Atlantic Railroad, LLC (FG&A).⁵ (Verified Notice 3.)

MIP GP states that: (1) the Target Railroad lines, GRYR, and FG&A do not connect with one another; (2) the proposed transaction is not part of a series of anticipated transactions that would connect the Target Railroads, GRYR, or FG&A with each other or with any railroad in their corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the proposed transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

The earliest this transaction may be consummated is April 21, 2023, the effective date of the exemption (30 days after the verified notice was filed).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its

employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than April 14, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36685, should be filed with the Surface Transportation Board 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 MIP GP's representative, Terence M. Hynes, Sidley Austin LLP, 1501 K Street NW, Washington, DC 20005.

According to MIP GP, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Aretha Laws-Byrum,
Clearance Clerk.

[FR Doc. 2023-07366 Filed 4-6-23; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36684]

Jason W. Grube—Continuance in Control Exemption—Rochester & Erie Railway, LLC

Jason W. Grube (Grube), a noncarrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to exempt from the provisions of 49 U.S.C. 11323 his continuance in control of Rochester & Erie Railway, LLC (RERY), a noncarrier, upon RERY's becoming a Class III rail carrier.

The transaction is related to a concurrently filed verified notice of exemption in *Rochester & Erie Railway—Operation Exemption—Fulton County, LLC*, Docket No. FD 36671. In that proceeding, RERY seeks an

¹ The verified notice states that G&A is wholly owned by MIP Rail, which is wholly owned by MIP V. MIP V is controlled by its general partner, MIP GP. (Verified Notice 4.)

² *See MB Rail IB, LLC—Acquis. of Control Exemption—Chesapeake & Ind. R.R.*, FD 36413 (STB served Sept. 10, 2021).

³ Camp Chase operates approximately 14 miles of rail line in Ohio. (Verified Notice 4); *see also Camp Chase Rail—Acquis. & Operation Exemption—Camp Chase Ry.*, FD 36414 (STB served July 1, 2020). CKIN operates approximately 28 miles of rail line in northwestern Indiana. (Verified Notice 4); *see also Chesapeake & Ind. R.R.—Amended Operation Exemption—Town of North Judson, Ind.*, FD 36147 (STB served Oct. 20, 2017). VVRC operates approximately 8.4 miles of track (including approximately 7.81 main line miles) in east-central Illinois and west-central Indiana. (Verified Notice 4); *see also Vermilion Valley R.R.—Operation Exemption—FNG Logistics Co.*, FD 34340 (STB served May 16, 2003) & *Vermilion Valley R.R.—Lease & Operation Exemption—CSX Transp., Inc.*, FD 36350 (STB served Oct. 18, 2019).

⁴ Public and confidential versions of the Purchase Agreement were filed with the verified notice. The confidential version was submitted under seal concurrently with a motion for protective order, which is addressed in a separate decision.

⁵ *See Macquarie Infrastructure Partners V GP, LLC—Acquis. of Control Exemption—Grenada R.R. & Fla., Gulf & Atl. R.R.*, FD 36566 (STB served Dec. 10, 2021 & Apr. 7, 2022).

exemption under 49 CFR 1150.31 to operate 11.7 miles of rail line between milepost I-108.6 near Argos and milepost I-96.9 at Rochester, in Marshall and Fulton Counties, Ind. (the Line). The Line is owned by Fulton County, LLC, d/b/a Fulton County Railroad (FCRR), a Class III carrier.

According to the verified notice, Grube indirectly controls FCRR—the owner of the Line—through his ownership of Grube Industries, LLC, which owns Steel on Steel Railways, LLC, which in turn owns FCRR. The verified notice states that Grube will continue in control of RERY (as majority owner) upon RERY's becoming a Class III rail carrier. Grube states that the Line is the only rail line owned or operated by the corporate family, and therefore it does not connect with any other railroads in the corporate family; nor is the continuance in control of RERY part of series of anticipated transactions that would connect the Line with any other railroad in the corporate family. Furthermore, the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 U.S.C. 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Accordingly, because this transaction involves Class III rail carriers only, the Board may not impose labor protective conditions here.

The earliest this transaction may be consummated is April 21, 2023, the effective date of the exemption (30 days after the verified notice was filed). If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than April 14, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36684, 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 Grube's representative, Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market Street, Suite 2620, Philadelphia, PA 19103.

According to Grube, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: April 4, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Brendetta Jones,
Clearance Clerk.

[FR Doc. 2023-07355 Filed 4-6-23; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36671]

Rochester & Erie Railway, LLC— Operation Exemption—Fulton County, LLC, d/b/a Fulton County Railroad

Rochester & Erie Railway, LLC (RERY), a noncarrier, has filed a verified notice of exemption pursuant to 49 CFR 1150.31 to operate 11.7 miles of rail line between milepost I-108.6 near Argos and milepost I-96.9 at Rochester, in Marshall and Fulton Counties, Ind. (the Line). The Line includes a short stub-ended spur extending west from approximately milepost 98.1 and terminating at U.S. Route 31.

The verified notice states that the Line is owned by Fulton County, LLC, d/b/a Fulton County Railroad (FCRR), a Class III carrier, and local service has been provided on the Line by Elkhart & Western Railroad Company (EWR) under a local trackage rights agreement. According to the verified notice, that local trackage rights agreement has expired and RERY is entering into an agreement to operate the following on behalf of FCRR: (1) the Line; and (2) FCRR's incidental trackage rights over Norfolk Southern Railway Company's (NSR) tracks between milepost I-108.6 and NSR's Argos Yard, a distance of 1.1 miles. RERY states that EWR has advised the shippers on the Line that it will no longer provide service.¹

This transaction is related to a concurrently filed verified notice of exemption in *Grube—Continuance in Control Exemption—Rochester & Erie Railway*, Docket No. FD 36684, in which the Jason W. Grube seeks to continue in control of RERY upon RERY's becoming a Class III rail carrier.

¹ EWR has filed a petition for exemption from the prior approval requirements of 49 U.S.C. 10903 to discontinue its local trackage rights over the Line. See Pet. for Exemption, *Elkhart & W. R.R.—Discontinuance of Trackage Rts. Exemption—in Marshall & Fulton Cntys., Ind.*, AB 1329X (Mar. 24, 2023).

RERY certifies that its projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier. The verified notice states that, upon commencement of operations under the operating agreement, RERY will be a Class III rail carrier. RERY also certifies that FCRR is not subject to any interchange commitments and the new operating agreement will not impose or include an interchange commitment.

The transaction may be consummated on or after April 21, 2023, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than April 14, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36671, 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 RERY's representative, Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market Street, Suite 2620, Philadelphia, PA 19103.

According to RERY, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: April 4, 2020.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Regena Smith-Bernard,
Clearance Clerk.

[FR Doc. 2023-07354 Filed 4-6-23; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Key West International Airport, Key West, Florida

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure

Maps submitted by Monroe County for the Key West International Airport under the provisions of the Aviation Safety and Noise Abatement Act are in compliance with applicable requirements.

DATES: The effective date of the FAA's determination on the Noise Exposure Maps is April 4, 2023.

FOR FURTHER INFORMATION CONTACT: Peter Green, Federal Aviation Administration, Orlando Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, Florida 32819, (407) 487-7296.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for the Key West International Airport are in compliance with applicable requirements of title 14 Code of Federal Regulations (CFR) part 150, effective April 4, 2023. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act ("the Act"), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of 14 CFR part 150, promulgated pursuant to the Act, may submit a Noise Compatibility Program for FAA approval, which sets forth the measures the airport operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the Noise Exposure Maps and accompanying documentation submitted by Monroe County. The documentation that constitutes the "Noise Exposure Maps" as defined in 14 CFR 150.7 includes: 2022 Existing Condition Noise Exposure Map, 2028 Future Condition Noise Exposure Map, East Flow Flight Tracks map, West Flow Flight Tracks map, and the Final Noise Exposure Maps and Supporting Documentation Report. The FAA has determined that these Noise Exposure Maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on April 4, 2023.

FAA's determination on the airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of 14 CFR part 150. Such determination does not constitute approval of the airport operator's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that Program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise exposure contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under 14 CFR part 150 or through FAA's review of the Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under 14 CFR 150.21, that the statutorily required consultation has been accomplished.

Copies of the full Noise Exposure Maps and report are available for examination by appointment at the following location: Federal Aviation Administration, Orlando Airports District Office, 8427 SouthPark Circle, 5th Floor, Orlando, Florida 32819. The Noise Exposure Maps and report are also available for viewing and download at the airport's website (<https://eyw.com/noise-concerns>).

To arrange an appointment to review the Noise Exposure Maps and report, contact Peter Green, Federal Aviation Administration, Southern Region/Orlando Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, FL 32819, (407) 487-7296. Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando Airports District Office, Orlando, FL, on April 4, 2021.

Bartholomew Vernace,
Manager, FAA/Orlando Airports District Office.

[FR Doc. 2023-07320 Filed 4-6-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2008-0063]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter dated March 16, 2023, Memphis Area Transit Authority (MATA) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 210 (Railroad Noise Emission Compliance Regulations); 215 (Railroad Freight Car Safety Standards); 218 (Railroad Operating Practices); 219 (Control of Alcohol and Drug Use); 221 (Rear End Marking Device—Passenger, Commuter and Freight Trains); 223 (Safety Glazing Standards—Locomotives, Passenger Cars and Caboose); 225 (Railroad Accidents/Incidents: Reports Classification, and Investigations);¹ 228 (Passenger Train Employee Hours of Service; Recordkeeping and Reporting; Sleeping Quarters); 229 (Railroad Locomotive Safety Standards); 231 (Railroad Safety Appliance Standards); 238 (Passenger Equipment Safety Standards); 239 (Passenger Train Emergency Preparedness); 240 (Qualification and Certification of Locomotive Engineers); and 242 (Qualification and Certification of Conductors). The relevant Docket Number is FRA-2008-0063.

Specifically, MATA requests to extend its relief from the above listed CFR parts, as pertaining to its vintage streetcar rapid transit operation, which includes a 1.5-mile corridor shared with both Canadian National Railway Company and Amtrak comprising 11 shared highway-rail grade crossings and one diamond at-grade rail crossing. In support of its request, MATA states that, since FRA last granted an extension of relief, by letter dated September 17,

¹ With MATA complying with the Federal Transit Administration and the Occupational Safety and Health Administration's rules pertaining to injury reporting, MATA seeks continued relief from the requirements of part 225 regarding the reporting of employee injuries.

2018,² “there have been no changes to the training and operations that affect the terms and conditions of the waiver.” MATA states that since the relief was granted in 2008, “there has not been a reportable ‘accident/incident’ . . . on the line.”

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Communications received by June 6, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,
Associate Administrator for Railroad Safety,
Chief Safety Officer.

[FR Doc. 2023-07325 Filed 4-6-23; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2022-0058, Notice No. 1]

Review of Quiet Zone in Deerfield Beach, Pompano Beach, Fort Lauderdale, Oakland Park, Wilton Manors, Dania Beach, Hollywood, and Hallandale Beach, Florida

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of quiet zone review.

SUMMARY: FRA is providing notice of its intent to review a quiet zone located in Deerfield Beach, Pompano Beach, Fort Lauderdale, Oakland Park, Wilton Manors, Dania Beach, Hollywood, and Hallandale Beach, Florida (Cities). Based on a high rate of reported accidents/incidents and related injuries and fatalities that occurred between January and December 2022, FRA has made a preliminary determination that the safety systems and measures implemented within the quiet zone do not fully compensate for the absence of routine sounding of locomotive horns due to a substantial increase in risk. In addition, FRA has made a preliminary determination of significant risk with respect to loss of life or serious personal injury within the quiet zone. Therefore, FRA intends to review existing conditions within the quiet zone to determine whether the quiet zone should be terminated or whether additional safety measures may be necessary to ensure motorist and pedestrian safety.

DATES: Written comments must be received on or before May 8, 2023. FRA will consider comments filed after this date to the extent practicable.

ADDRESSES: *Comments:* Comments related to this notice may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number (FRA-2022-0058). Please note that comments submitted online via www.regulations.gov are not immediately posted to the docket. Several business days may elapse after a comment has been submitted online before it is posted to the docket.

Privacy Act: DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. To facilitate comment tracking and response, commenters are encouraged to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Docket: For access to the docket to read comments received, please visit <https://www.regulations.gov> and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT:

James Payne, Staff Director, Highway-Rail Crossing and Trespasser Programs Division (telephone: 202-441-2787, email: james.payne@dot.gov); or Kathryn Gresham, Attorney-Adviser, Office of the Chief Counsel (telephone: 202-577-7142, email: kathryn.gresham@dot.gov).

SUPPLEMENTARY INFORMATION:

Background

FRA's amended final rule on the Use of Locomotive Horns at Public Highway-Rail Grade Crossings, which was issued on August 17, 2006,¹ permits a jurisdiction to establish a quiet zone by designation, if the jurisdiction attests that they have implemented safety measures that reduce the risk of accidents/incidents and fatalities at public highway-rail grade crossings within the quiet zone to the Risk Index With Horns (RIWH).² Through issuance of a Notice of Quiet Zone Establishment, dated April 24, 2019, the Cities established a multi-jurisdictional quiet zone in Broward County, Florida (THR-000001420003) that includes the following highway-rail grade crossings:

² See <https://www.regulations.gov/document/FRA-2008-0063-0012>.

¹ 71 FR 47613, codified at 49 CFR parts 222 and 229.

² The RIWH is the level of risk to the motoring public when locomotive horns are routinely sounded at every public highway-rail grade crossing within the quiet zone.

State	City	U.S. DOT crossing inventory No. (GX ID)	Street name
FL	Deerfield Beach	272511K	NE 2nd Street.
FL	Deerfield Beach	272512S	Hillsboro Blvd.
FL	Deerfield Beach	272513Y	SE 4th Street.
FL	Deerfield Beach	272514F	SW 10th Street.
FL	Deerfield Beach	272515M	SW 15th Street.
FL	Pompano Beach	272516U	NE 48th Street.
FL	Pompano Beach	272517B	Sample Road.
FL	Pompano Beach	272518H	NE 33rd Street.
FL	Pompano Beach	272519P	Copans Road.
FL	Pompano Beach	272526A	NE 10th Street.
FL	Pompano Beach	272528N	NE 6th Street.
FL	Pompano Beach	272531W	NE 3rd Street.
FL	Pompano Beach	272533K	West Atlantic Avenue.
FL	Pompano Beach	272534S	SW 2nd Street.
FL	Pompano Beach	272535Y	SW 6th Street.
FL	Oakland Park	272536F	Cypress Creek Road.
FL	Oakland Park	272537M	Commercial Blvd.
FL	Oakland Park	272538U	NE 45th Street.
FL	Oakland Park	272540V	NE 38th Street.
FL	Oakland Park	272541C	NE 36th Street.
FL	Oakland Park	272542J	NE 34th Court.
FL	Oakland Park	272544X	Oakland Park Blvd.
FL	Wilton Manors	272545E	NE 26th Street.
FL	Wilton Manors	272546L	NE 24th Street.
FL	Fort Lauderdale	272547T	NE 17th Court.
FL	Fort Lauderdale	272548A	NE 13th Street.
FL	Fort Lauderdale	272549G	Sunrise Blvd.
FL	Fort Lauderdale	272550B	NE 3rd Avenue.
FL	Fort Lauderdale	272551H	North Andrews Avenue.
FL	Fort Lauderdale	272552P	Sistrunk Blvd.
FL	Fort Lauderdale	272553W	NE 4th Street.
FL	Fort Lauderdale	272556S	West Broward Blvd.
FL	Fort Lauderdale	272557Y	SW 2nd Street.
FL	Fort Lauderdale	272558F	SW 5th Street.
FL	Fort Lauderdale	272559M	SW 6th Street.
FL	Fort Lauderdale	272560G	SW 7th Street.
FL	Fort Lauderdale	272561N	SW 9th Street.
FL	Fort Lauderdale	272562V	Davie Blvd.
FL	Fort Lauderdale	272563C	SW 15th Street.
FL	Fort Lauderdale	272564J	SW 17th Street.
FL	Fort Lauderdale	272566X	SW 22nd Street.
FL	Fort Lauderdale	272567E	SW 24th Street.
FL	Dania	272571U	Griffin Road.
FL	Dania	272572B	NW 4 Old Griffin Road.
FL	Dania	272573H	NW 1st Street.
FL	Dania	272574P	West Dania Beach Blvd.
FL	Dania	272575W	Stirling Road.
FL	Dania	272576D	Dixie Highway.
FL	Hollywood	272577K	Sheridan Street.
FL	Hollywood	272578S	Taft Street.
FL	Hollywood	272582G	Garfield Street.
FL	Hollywood	272584V	Johnson Street.
FL	Hollywood	272585C	Filmore Street.
FL	Hollywood	272586J	Hollywood Blvd.
FL	Hollywood	272587R	Harrison Street.
FL	Hollywood	272588X	Monroe Street.
FL	Hollywood	272589E	Washington Street.
FL	Hallandale	272590Y	Pembroke Road.
FL	Hallandale	272591F	NW 3rd Street.
FL	Hallandale	272592M	E. Hallandale Beach Blvd.
FL	Hallandale	272593U	SW 3rd Street.
FL	Hollywood	272868A	Tyler Street.
FL	Oakland Park	272870B	NE 56th Street.
FL	Pompano Beach	273022D	SW 3rd St.

According to the Notice of Quiet Zone Establishment, this crossing corridor qualified for quiet zone status on the basis of having a Quiet Zone Risk Index

that was below the RIWH. Accordingly, the Notice of Quiet Zone Establishment indicated that the Cities had taken appropriate measures to compensate for

the excess risk that results from restricting routine train horn sounding at the highway-rail grade crossings

identified in the notice, and the quiet zone took effect on May 18, 2019.

Substantial Increase in Risk

As reflected in the table below, between January and December 2022, at least 34 accidents/incidents have occurred within this multi-jurisdictional quiet zone, resulting in 22 fatalities, six injuries, and six incidents where no

injuries were reported. This is a significant number of accidents/incidents and fatalities as compared to quiet zone accident/incident data over the same period in other quiet zones across the country. While accidents/incidents and fatalities have occurred throughout the quiet zone, the table below reflects a concentration of

accident/incidents and fatalities around Hollywood, Florida, including those involving persons classified as trespassers. In accordance with 49 CFR 222.51(c), FRA has made a preliminary determination that there is significant risk with respect to loss of life or serious personal injury within this quiet zone which necessitates a review by FRA.

No.	Date	Incident	City	GX ID
1	19-Jan-22	Fatality	Deerfield Beach, FL	272513Y.
2	27-Jan-22	Fatality	Hollywood, FL	272587R.
3	12-Feb-22	Injury	Hollywood, FL	272582G.
4	15-Feb-22	Fatality	Hallandale Beach, FL	Trespass.
5	21-Feb-22	Fatality	Hollywood, FL	Trespass.
6	25-Feb-22	Non-Injury	Pompano Beach, FL	272518H.
7	06-Mar-22	Injury	Oakland Park, FL	272542J.
8	12-Mar-22	Fatality	Hollywood, FL	Trespass.
9	18-Mar-22	Injury	Hallandale Beach, FL	272593U.
10	31-Mar-22	Injury	Wilton Manors, FL	272545E.
11	04-Apr-22	Injury	Hallandale Beach, FL	272595H.
12	12-Apr-22	Fatality	Oakland Park, FL	Trespass.
13	20-Apr-22	Non-Injury	Oakland Park, FL	272542J.
14	02-May-22	Fatality	Pompano Beach, FL	272528N.
15	03-May-22	Fatality	Hollywood, FL	272582G.
16	07-May-22	Fatality	Pompano Beach, FL	272519P.
17	08-May-22	Non-Injury	Pompano Beach, FL	272531W.
18	25-May-22	Fatality	Pompano Beach, FL	Trespass.
19	31-May-22	Fatality	Pompano Beach, FL	Trespass.
20	02-Jun-22	Fatality	Pompano Beach, FL	Trespass.
21	07-Jun-22	Fatality	Pompano Beach, FL	272536F.
22	13-Jun-22	Non-Injury	Dania Beach, FL	272576D.
23	24-Aug-22	Fatality	Hollywood, FL	Trespass.
24	30-Aug-22	Fatality	Wilton Manor, FL	Trespass.
25	02-Sep-22	Fatality	Oakland Park, FL	Trespass.
26	06-Sep-22	Non-Injury	Pompano Beach, FL	272533K.
27	19-Sep-22	Fatality	Hollywood, FL	272868A.
28	01-Oct-22	Fatality	Oakland, FL	Trespass.
29	03-Oct-22	Injury	Hollywood, FL	Trespass.
30	01-Nov-22	Non-Injury	Fort Lauderdale, FL	Trespass.
31	15-Nov-22	Fatality	Fort Lauderdale, FL	Trespass.
32	21-Nov-22	Fatality	Dania Beach, FL	Trespass.
33	11-Dec-22	Fatality	Hollywood, FL	272588X.
34	27-Dec-22	Fatality	Fort Lauderdale, FL	Trespass.

Scope of Review

Since 1991, when FRA issued Emergency Order No. 15 regarding the use of locomotive horns at public highway-rail grade crossings,³ FRA has adopted a corridor-wide approach to evaluating and mitigating risk within quiet zones. A corridor-wide approach permits the most efficient deployment of risk reduction measures and encourages public authorities to focus their resources on addressing the most hazardous public highway-rail grade crossings.

As described in this notice, FRA intends to conduct a review of this multi-jurisdictional quiet zone (THR-000001420003) located along the Brightline passenger rail corridor and

Florida East Coast Railway (FEC) freight rail corridor.

Interested parties are invited to submit written comments on this quiet zone review to the docket. FRA is interested in obtaining information from the public about the prevalence of unsafe actions that have been observed at any of the above-listed grade crossings, including information about motorists or pedestrians that have been observed engaging in unsafe actions at any of the above-listed grade crossings. FRA is also interested in obtaining information from public authorities in the affected quiet zone about the effectiveness of existing quiet zone crossing safety improvements, as well as any additional quiet zone safety improvements that may be under consideration and the anticipated timeline for implementing any such improvements. Please refer to the

ADDRESSES section above for guidance on the submission of comments to the electronic docket.

After the comment period closes, the Associate Administrator may require that additional safety measures be taken or that the quiet zone be terminated. The Associate Administrator will provide a copy of his decision to the Cities in which this multi-jurisdictional quiet zone is located, as well as the railroads that operate through the quiet zone and the State agencies responsible for grade crossing, highway, and road safety.

Issued in Washington, DC.

John Karl Alexy,

*Associate Administrator for Railroad Safety,
Chief Safety Officer.*

[FR Doc. 2023-07293 Filed 4-6-23; 8:45 am]

BILLING CODE 4910-06-P

³ 56 FR 36190 (July 31, 1991).

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****[Docket Number FRA–2006–25764]****Petition for Extension of Waiver of Compliance**

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on February 24, 2023, Union Pacific Railroad Company (UP) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 215 (Railroad Freight Car Safety Standards) and 232 (Brake System Safety Standards for Freight and Other Non-passenger Trains and Equipment; End of Train Devices). The relevant Docket Number is FRA–2006–25764.

Specifically, UP requests a waiver extension from 49 CFR 232.205, *Class 1 brake test—initial terminal inspection*, and certain provisions of part 215 related to the inspection of trains entering the United States from Mexico at Calexico, California. UP seeks to continue to move trains received in interchange from Mexico approximately 10.1 miles to the facility at El Centro, California, before an initial terminal air brake test is performed. UP notes that the inspection point at El Centro “was designed and built . . . for the sole purpose of inspecting and testing of equipment” passing through the interchange. Further, UP states that the facility “supports inspections and any repair associated activities . . . safer and better than other upstream properties.” Finally, UP states that the relief “avoid[s] . . . excessively blocked crossings” and “alleviates undue additional locomotive emissions from excessive idling times.”

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be

submitted at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Communications are requested by June 6, 2023. Comments received after that date will be considered if practicable. FRA reserves the right to extend the existing relief subject to subsequent consideration of any comments submitted to the docket.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–07324 Filed 4–6–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****[Docket Number FRA–2003–15010]****Petition for Extension of Waiver of Compliance**

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on February 28, 2023, Canadian Pacific Railway (CP) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 241 (United States Locational Requirements for Dispatching of United States Rail Operations). The relevant Docket Number is FRA–2003–15010.

Specifically, CP requests an extension of relief and permanent waiver pursuant to 49 CFR 241.7(c), *Fringe border dispatching*, to allow the continuation of Canadian dispatching of three locations in the United States: (1) 1.8 miles of the Windsor Subdivision

between Windsor, Ontario, Canada, and Detroit, Michigan, United States;¹ and (2) two track segments totaling 23.44 miles on the Newport Subdivision between Richford, Vermont, and East Richford, Vermont, United States and between North Troy, Vermont, and Newport, Vermont, United States.² CP notes that all locations are dispatched by the Operations Centre in Calgary, Alberta, Canada. In support of its request, CP states that “in the approximately twenty years since the original waiver was granted, CP has operated safely on the Windsor Subdivision and has operated safe[ly] on the Newport Subdivision since the acquisition of this territory in 2020.”

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Communications received by June 6, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in

¹ This section on the Windsor Subdivision is defined in appendix A to part 241, *List of Lines Being Extraterritorially Dispatched in Accordance with the Regulations Contained in 49 CFR part 241*, Revised as of October 1, 2002.

² The track segments on the Newport Subdivision cross the U.S./Canada border at three separate locations.

the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

*Associate Administrator for Railroad Safety,
Chief Safety Officer.*

[FR Doc. 2023-07322 Filed 4-6-23; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2003-15638]

Petition for Expansion of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter dated March 8, 2023, Long Island Rail Road (LIRR) petitioned the Federal Railroad Administration (FRA) for an expansion of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 238 (Passenger Equipment Safety Standards). The relevant Docket Number is FRA-2003-15638.

Specifically, LIRR requests to expand its relief from § 238.303(e)(15)(i)(C), which states that multiple unit (MU)-type locomotives equipped with dynamic brakes that become defective, “shall be repaired or removed from service by or at the locomotive’s next exterior calendar day mechanical inspection.” LIRR’s existing relief applies to its fleet of M7 locomotives, which has multiple propulsion inverters. LIRR seeks to expand the relief to include its fleet of M9 locomotives, as LIRR states that the “IGBT inverter-controlled propulsion system of the M9 is similar to that of the M7 with an additional layer of redundancy.” LIRR explains that the arrangement of the pneumatic braking on the M9 locomotives “limits thermal stresses on the wheels and provides the same braking performance even when dynamic braking is not available.” LIRR requests that as the current waiver provides relief on a per-axle basis and considers two dead brake trucks on an M7 train to be the equivalent of a dead locomotive, the requirement be four dead axles on an M9 train to be considered the same. In support of its request, LIRR states that in the 19 years of relief, “LIRR has had no reports of a

slow or poorly braking train related to inactive inverters.”

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Communications received by June 6, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

*Associate Administrator for Railroad Safety,
Chief Safety Officer.*

[FR Doc. 2023-07323 Filed 4-6-23; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Revision of an Approved Information Collection; Comment Request; Margin and Capital Requirements for Covered Swap Entities

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning a revision to its information collection titled, “Margin and Capital Requirements for Covered Swap Entities.”

DATES: You should submit written comments by June 6, 2023.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email:* prainfo@occ.treas.gov.
- *Mail:* Chief Counsel’s Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557-0251, 400 7th Street SW, Suite 3E-218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E-218, Washington, DC 20219.
- *Fax:* (571) 465-4326.

Instructions: You must include “OCC” as the agency name and “1557-0251” in your comment. In general, the OCC will publish comments on www.reginfo.gov without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth below.

- **Viewing Comments Electronically:** Go to www.reginfo.gov. Hover over the "Information Collection Review" drop down menu. Click on "Information Collection Review." From the "Currently under Review" drop-down menu, select "Department of Treasury" and then click "submit." This information collection can be located by searching by OMB control number "1557-0251" or "Margin and Capital Requirements for Covered Swap Entities." Upon finding the appropriate information collection, click on the related "ICR Reference Number." On the next screen, select "View Supporting Statement and Other Documents" and then click on the link to any comment listed at the bottom of the screen.

- For assistance in navigating www.reginfo.gov, please contact the Regulatory Information Service Center at (202) 482-7340.

FOR FURTHER INFORMATION CONTACT:

Shaquita Merritt, OCC Clearance Officer, (202) 649-5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor.

"Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, and/or provide information to a third party. Section 3506(c)(2)(A) of title 44 generally requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the revision to the collection of information set forth in this document. The OCC asks OMB to approve this revised collection.

Title: Margin and Capital Requirements for Covered Swap Entities.

OMB Control No.: 1557-0251.

Affected Public: Business or other for-profit.

Type of Review: Regular review.

Abstract: Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) established a comprehensive regulatory framework for derivatives, which are generally characterized as swaps and security-based swaps.

Sections 731 and 764 of the Dodd-Frank Act require the registration and regulation of swap dealers and major swap participants and security-based swap dealers and major security-based swap participants, respectively (collectively, "swap entities"). For certain types of swap entities that are prudentially regulated by one of the Agencies,¹ sections 731 and 764 of the Dodd-Frank Act require the Agencies to jointly adopt rules for swap entities under their respective jurisdictions imposing capital requirements and initial and variation margin requirements on all non-cleared swaps. Swap entities that are prudentially regulated by the Agencies are referred to herein as "covered swap entities." OCC's rules for swap entities can be found in 12 CFR part 45.

The OCC, in conjunction with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation, has determined that § 45.1(h), previously cleared as part of this information collection, no longer includes a disclosure collection of information because the conditions triggering the disclosure have expired. In addition, the OCC has omitted from this information collection the following provisions that were formerly referenced in the clearance because it has determined that they do not constitute collections of information under the Paperwork Reduction Act: §§ 45.1(d); 45.5(c)(2)(i); 45.8(c)(2); 45.8(d)(5), (12), and (13); 45.8(e); and 45.8(f)(2), (3), and (4).

Twelve CFR 45.2 defines terms referenced in part 45. Under the definition of "eligible master netting agreement," a covered swap entity that relies on such agreement for purpose of calculating required margin must (1) conduct sufficient legal review of the agreement to conclude with a well-founded basis that the agreement meets

specified criteria and maintain sufficient written documentation of that legal review and (2) establish and maintain written procedures for monitoring relevant changes in law and to ensure that the agreement continues to satisfy the requirements of the definition. To demonstrate compliance, these records must be retained for as long as the covered swap entity relies on such agreement. The term "eligible master netting agreement" is used elsewhere in the rule to specify instances in which a covered swap entity may (1) calculate variation margin on an aggregate basis across multiple non-cleared swaps and security-based swaps and (2) calculate initial margin requirements under an initial margin model for one or more swaps and security-based swaps.

Section 45.7 generally requires a covered swap entity to ensure that any initial margin collateral that it collect or posts is held at a third-party custodian. Section 45.7(c) requires the custodian to act pursuant to a custody agreement that: (1) prohibits the custodian from rehypothecating, replying, reusing, or otherwise transferring (through securities lending, securities borrowing, repurchase agreement, reverse repurchase agreement or other means) the collateral held by the custodian except that cash collateral may be held in a general deposit account with the custodian if the funds in the account are used to purchase certain assets, such as assets are held in compliance with § 45.7, and such purchase takes place within a time period reasonably necessary to consummate such purchase after the cash collateral is posted as initial margin; and (2) is a legal, valid, binding, and enforceable agreement under the laws of all relevant jurisdictions, including in the event of bankruptcy, insolvency, or a similar proceeding. A custody agreement may permit the posting party to substitute or direct any reinvestment of posted collateral held by the custodian, provided that, with respect to collateral collected by a covered swap entity pursuant to § 45.3(a) or posted by a covered swap entity pursuant to § 45.3(b), the agreement requires the posting party to substitute only funds or other property that would qualify as eligible collateral under § 45.6, and for which the amount net of applicable discounts described in Appendix B would be sufficient to meet the requirements of § 45.3 and direct reinvestment of funds only in assets that would qualify as eligible collateral under § 45.6, and for which the amount net of applicable discounts described in

¹ The Agencies are the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, and the Farm Credit Administration.

Appendix B would be sufficient to meet the requirements of § 45.3.

Section 45.8 sets forth standards for the use of initial margin models. These standards include: (1) a requirement that the covered swap entity receive prior approval from the OCC based on demonstration that the initial margin model meets specific requirements (§ 45.8(c)(1)); (2) a requirement that a covered swap entity notify the OCC in writing 60 days before extending use of the model to additional product types, making certain changes to the initial margin model, or making material changes to modeling assumptions (§ 45.8(c)(3)); and (3) a requirement that the covered swap entity demonstrate to the satisfaction of the OCC that the omission of any risk factor from the calculation of its initial margin is appropriate, prior to omitting such risk factor (§ 45.8(d)(10)), and demonstrate to the satisfaction of the OCC that the incorporation of any proxy or approximation used to capture the risks of the covered swap entity's non-cleared swaps or non-cleared security-based swaps is appropriate, prior to incorporating such proxy or approximation (§ 45.8(d)(11)). Also, if the validation process reveals any material problems with the initial margin model, the covered swap entity must promptly notify the OCC of the problems, describe to the OCC any remedial actions being taken, and adjust the initial margin model to ensure an appropriately conservative amount of required initial margin is being calculated (§ 45.8(f)(3)).

Section 45.8 also sets forth requirements for the ongoing review and documentation of initial margin models. These standards include a requirement that the covered swap entity adequately document all material aspects of its initial margin model (§ 45.8(g)) and that the covered swap entity must adequately document internal authorization procedures, including escalation procedures, that require review and approval of any change to the initial margin calculation under the initial margin model, demonstrable analysis that any basis for any such change is consistent with the requirements of § 45.8, and independent review of such demonstrable analysis and approval (§ 45.8(h)).

Section 45.9 addresses the treatment of cross-border transactions and, in certain limited situations, will permit a covered swap entity to comply with a foreign regulatory framework for non-cleared swaps (as a substitute for compliance with the prudential regulators' rule) if the prudential regulators jointly determine that the

foreign regulatory framework is comparable to the requirements in the prudential regulators' rule. Section 45.9(e) allows a covered swap entity to request that the prudential regulators make a substituted compliance determination and provides that the covered swap entity must provide the reasons for the request and other required supporting documentation. A request for a substituted compliance determination must include a description of the scope and objectives of the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps; the specific provisions of the foreign regulatory framework for non-cleared swaps and security-based swaps (scope of transactions covered; determination of the amount of initial and variation margin required; timing of margin requirements; documentation requirements; forms of eligible collateral; segregation and re-hypothecation requirements; and approval process and standards for models); the supervisory compliance program and enforcement authority exercised by a foreign financial regulatory authority or authorities in such system to support its oversight of the application of the non-cleared swap and security-based swap regulatory framework; and any other descriptions and documentation that the prudential regulators determine are appropriate. A covered swap entity may make a request under § 45.9 only if it is directly supervised by the authorities administering the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps.

Section 45.10 requires a covered swap entity to execute trading documentation with each counterparty that is either a swap entity or financial end user regarding credit support arrangements that: (1) provides the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required; and (2) specifies the methods, procedures, rules, and inputs for determining the value of each non-cleared swap or non-cleared security-based swap for purposes of calculating variation margin requirements, and the procedures for resolving any disputes concerning valuation.

Estimated Number of Respondents: 11.

Estimated Total Annual Burden: 4,895 hours.

Comments submitted in response to this notice will be summarized and 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 OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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.

Patrick T. Tierney,

Assistant Director, Bank Advisory, Office of the Comptroller of the Currency.

[FR Doc. 2023-07374 Filed 4-6-23; 8:45 am]

BILLING CODE 4810-33-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 dates.

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 Actions

On March 28, 2023, OFAC determined that the property and

interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

BILLING CODE 4810-AL-P

Individuals

1. DAQQOU, Hassan Muhammad (Arabic: حسن محمد دقو) (a.k.a. DAQOU, Hassan; a.k.a. DAQOU, Hassan bin Muhammad; a.k.a. DAQOU, Hassan Muhammed; a.k.a. DAQOU, Mohamed Hassan; a.k.a. DEQQU, Hassan Mohammed; a.k.a. "DAGO, Hassan Mohamed"; a.k.a. "DAQU, Hassan"; a.k.a. "DUKKO, Hassan"), Tfail, Lebanon; DOB 01 Feb 1985; nationality Syria; alt. nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: HIZBALLAH).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism," 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. ZAITAR, Noah (Arabic: نوح زعيتار) (a.k.a. ZUAITER, Nuah), Syria; Lebanon; DOB 1971; alt. DOB 1977; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: HIZBALLAH).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

3. ABU ZUREIK, Imad (Arabic: عماد ابو زريق) (a.k.a. ABU ZUREIQ, Imad), Nassib, Syria; DOB 09 Feb 1979; POB Dara', Syria; nationality Syria; Gender Male; National ID No. 12010031783 (Syria) (individual) [SYRIA] (Linked To: SYRIAN MILITARY INTELLIGENCE DIRECTORATE).

Designated pursuant to Section 1(b)(iv) of E.O. 13572 of April 29, 2011 "Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria," 76 FR 24787, 3 CFR, 2011 Comp., p. 236 (E.O. 13572) for having acted or purported to act for or on behalf of, directly or indirectly, the SYRIAN MILITARY INTELLIGENCE DIRECTORATE, a person whose property and interests in property are blocked pursuant to E.O. 13572.

4. QADDOUR, Khalid (a.k.a. QADDOUR, Khaled Nasser (Arabic: خالد ناصر قدور), Yaafour, Damascus, Syria; DOB 23 Apr 1970; POB Damascus, Syria; nationality Syria; Gender

Male; National ID No. 01020097227 (Syria) (individual) [SYRIA] [SYRIA-CAESAR] (Linked To: AL-ASSAD, Maher).

Designated pursuant to Section 1(b)(iii) of E.O. 13572 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, MAHER AL-ASSAD, a person whose property and interests in property are blocked pursuant to E.O. 13572. Also designated pursuant to Section 7412(a)(2)(A)(i) of the Caesar Syria Civilian Protection Act of 2019, Public Law 116-92, § 7401 et seq. (Dec. 20, 2019) (the Caesar Act), for being a foreign person that knowingly provides significant financial, material, or technological support to, or knowingly engages in a significant transaction with MAHER AL-ASSAD, a senior political figure of the Government of Syria.

5. AL-ASSAD, Samer Kamal (Arabic: سامر كمال الأسد) (a.k.a. AL-ASAD, Samer), Syria; DOB 19 May 1973; POB Qardaha, Syria; nationality Syria; Gender Male; Passport 86368 (Syria); National ID No. 06200000449 (Syria) (individual) [SYRIA] [SYRIA-CAESAR].

Designated pursuant to Section 1(b)(i) of E.O. 13582 of August 17, 2011, “Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria,” 76 FR 52209, 3 CFR, 2011 Comp., p. 264 (E.O. 13582) for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the GOVERNMENT OF SYRIA. Also designated pursuant to Section 7412(a)(2)(A)(i) of the Caesar Act, for being a foreign person that knowingly provides significant financial, material, or technological support to, or knowingly engages in a significant transaction with the GOVERNMENT OF SYRIA (including any entity owned or controlled by the GOVERNMENT OF SYRIA).

6. AL-ASSAD, Wassim (a.k.a. AL-ASSAD, Waseem; a.k.a. AL-ASSAD, Waseem Badi; a.k.a. AL-ASSAD, Wassim Badi’ (Arabic: وسيم بدیع الأسد), Syria; DOB 18 Jul 1980; POB Qardaha, Latakia Governorate, Syria; nationality Syria; Gender Male; National ID No. 06200000611 (Syria) (individual) [SYRIA] (Linked To: SYRIAN ARAB ARMY).

Designated pursuant to Section 1(b)(ii) of E.O. 13582 for having acted or purported to act for or on behalf of, directly or indirectly, the SYRIAN ARAB ARMY, a person whose property and interests in property are blocked pursuant to E.O. 13582.

Entities

1. AL-ISRAA ESTABLISHMENT FOR IMPORT AND EXPORT (a.k.a. AL ISRAA IMPORT AND EXPORT ESTABLISHMENT), No. 142 Niha-Main Road, Zahle, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 18 Jan 2014; Registration Number 4800490 (Lebanon) [SDGT] (Linked To: DAQQOU, Hassan Muhammad).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, by HASSAN MUHAMMAD DAQQOU, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. HASSAN DAQQOU TRADING (a.k.a. HASAN DEQQOU TRADING; a.k.a. HASSAN DAGO FOR TRADE), No. 142 Niha-Main Road, Zahle, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 18 Jan 2014; Registration Number 4004501 (Lebanon) [SDGT] (Linked To: DAQQOU, Hassan Muhammad).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, by HASSAN MUHAMMAD DAQQOU, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Dated: March 28, 2023.

Andrea M. Gacki,

*Director, Office of Foreign Assets Control,
U.S. Department of the Treasury.*

[FR Doc. 2023-07290 Filed 4-6-23; 8:45 am]

BILLING CODE 4810-AL-C

DEPARTMENT OF THE TREASURY

**Interest Rate Paid on Cash Deposited
To Secure U.S. Immigration and
Customs Enforcement Immigration
Bonds**

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning April 1, 2023, and ending on June 30, 2023, the U.S. Immigration and Customs Enforcement Immigration Bond interest rate is 3 per centum per annum.

DATES: Rates are applicable April 1, 2023 to June 30, 2023.

ADDRESSES: Comments or inquiries may be mailed to Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Services, Parkersburg, West Virginia 26106–1328.

You can download this notice at the following internet addresses: <http://www.treasury.gov> or <http://www.federalregister.gov>.

FOR FURTHER INFORMATION CONTACT:

Ryan Hanna, Manager, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia 261006–1328 (304) 480–5120; Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Services, Parkersburg, West Virginia 26106–1328, (304) 480–5117.

SUPPLEMENTARY INFORMATION: Federal law requires that interest payments on cash deposited to secure immigration bonds shall be “at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum.” 8 U.S.C. 1363(a). Related Federal regulations state that “Interest on cash deposited to secure immigration bonds will be at the rate as determined by the Secretary of the Treasury, but in no case will exceed 3 per centum per annum or be less than zero.” 8 CFR 293.2. Treasury has determined that interest on the bonds will vary quarterly and will accrue during each calendar quarter at a rate equal to the lesser of the average of the bond equivalent rates on 91-day Treasury bills auctioned during the preceding calendar quarter, or 3 per centum per annum, but in no case less than zero. [FR Doc. 2015–18545]. In addition to this Notice, Treasury posts the current quarterly rate in Table 2b—Interest Rates for Specific Legislation on the TreasuryDirect website.

The Deputy Assistant Secretary for Public Finance, Gary Grippo, having reviewed and approved this document, is delegating the authority to electronically sign this document to Heidi Cohen, Federal Register Liaison

for the Department, for purposes of publication in the **Federal Register**.

Heidi Cohen,

Federal Register Liaison.

[FR Doc. 2023–07287 Filed 4–6–23; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0205]

Agency Information Collection Activity Under OMB Review: Applications and Appraisals for Title 38 Health Care Positions and Trainees

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

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. Refer to “OMB Control No. 2900–0205.”

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. 2900–0205” in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–3521.

Title: Applications and Appraisals for Title 38 Health Care Positions and Trainees, VA Forms 10–2850, 10–2850a, 10–2850c, 10–2850d, and 10–2850e.

OMB Control Number: 2900–0205.

Type of Review: Extension of a currently approved collection.

Abstract: The collection of this information is authorized by title 38, United States Code (U.S.C.) 7403, (Veterans’ Benefits), which provides

that appointments of title 38 employees will be made only after qualifications have been satisfactorily verified in accordance with regulations prescribed by the Secretary. Occupations listed in 38 U.S.C. 7401(1) and 7401(3) (Appointments in Veterans Health Administration), are appointed at a grade and step rate or an assignment based on careful evaluation of their education and experience.

VA Forms 10–2850, 10–2850a, and 10–2850c are applications designed specifically to elicit appropriate information about each candidate’s qualifications for employment with Department of Veterans Affairs (VA) as well as educational and experience. To assure that a full evaluation of each candidate’s credentials can be made prior to employment, the forms require disclosure of details about all licenses ever held, Drug Enforcement Administration certification, board certification, clinical privileges, revoked certification or registration, liability insurance history, and involvement in malpractice proceedings.

Form 10–2850d is used to collect appropriate information about qualifications for each trainee participating in accredited educational programs with VA. VA Form 10–2850e is the pre-employment reference form used to elicit information concerning the prior education and/or performance of the title 38 applicant. This collection of information is necessary to determine eligibility for employment and the appropriate grade and step rate or assignment.

a. VA Form 10–2850, Application for Physicians, Dentists, Podiatrists, Optometrists, and Chiropractors, will collect information used to determine eligibility for appointment to VHA.

b. VA Form 10–2850a, Application for Nurses and Nurse Anesthetists, will collect information used to determine eligibility for appointment to VHA.

c. VA Form 10–2850c, Application for Associated Health Occupations, will collect information used to determine eligibility for appointment to VHA.

d. VA Form 10–2850d, Health Professions Trainee Data Collection Form, will collect information used to support eligibility for trainee appointment to VHA.

e. VA Form 10–2850e, Appraisal of Applicant, will collect information used to determine if applicant meets the requirements for employment.

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. The **Federal Register** notice with a 60-day comment period

soliciting comments on this collection of information was published at 88 FR 3781, 3782 on January 20, 2023.

Total Annual Number of Responses = 273,963.

Total Annual Time Burden = 136,982 hours.

VA Form 10–2850

Affected Public: Individuals and households.

Estimated Annual Burden: 8,064 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 16,128.

VA Form 10–2850a

Affected Public: Individuals and households.

Estimated Annual Burden: 32,256 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 64,511.

VA Form 10–2850c

Affected Public: Individuals and households.

Estimated Annual Burden: 10,752 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 21,504.

VA Form 10–2850d

Affected Public: Individuals and households.

Estimated Annual Burden: 60,500 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 121,000.

VA Form 10–2850e

Affected Public: Individuals and households.

Estimated Annual Burden: 25,410 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 50,820.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt.) Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–07326 Filed 4–6–23; 8:45 am]

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2024 and Updates to the IRF Quality Reporting Program; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services****42 CFR Part 412**

[CMS–1781–P]

RIN 0938–AV04

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2024 and Updates to the IRF Quality Reporting Program**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.**ACTION:** Proposed rule.

SUMMARY: This proposed rule proposes updates to the prospective payment rates for inpatient rehabilitation facilities (IRFs) for Federal fiscal year (FY) 2024. As required by statute, this proposed rule includes the proposed classification and weighting factors for the IRF prospective payment system's case-mix groups and a description of the methodologies and data used in computing the proposed prospective payment rates for FY 2024. It also proposes to rebase and revise the IRF market basket to reflect a 2021 base year. It also would modify the regulation regarding when IRF units can become excluded and paid under the IRF PPS. This proposed rule also includes updates for the IRF Quality Reporting Program (QRP).

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 2, 2023.

ADDRESSES: In commenting, please refer to file code CMS–1781–P.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the “Submit a comment” instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1781–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services,

Department of Health and Human Services, Attention: CMS–1781–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Gwendolyn Johnson, (410) 786–6954, for general information.

Catie Cooksey, (410) 786–0179, for information about the IRF payment policies and payment rates.

Kim Schwartz, (410) 786–2571, and Gwendolyn Johnson, (410) 786–6954, for information about the IRF coverage policies.

Ariel Cress, (410) 786–8571, for information about the IRF quality reporting program.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that website to view public comments. CMS will not post on [Regulations.gov](http://www.regulations.gov) public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

Availability of Certain Information Through the Internet on the CMS Website

The IRF prospective payment system (IRF PPS) Addenda along with other supporting documents and tables referenced in this proposed rule are available through the internet on the CMS website at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS>.

We note that prior to 2020, each rule or notice issued under the IRF PPS has included a detailed reiteration of the various regulatory provisions that have affected the IRF PPS over the years. That discussion, along with detailed background information for various other aspects of the IRF PPS, is now available on the CMS website at <https://www.cms.gov/Medicare/Medicare-Fee->

[for-Service-Payment/InpatientRehabFacPPS](https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS).

I. Executive Summary**A. Purpose**

This rulemaking proposes updates to the prospective payment rates for IRFs for FY 2024 (that is, for discharges occurring on or after October 1, 2023, and on or before September 30, 2024) as required under section 1886(j)(3)(C) of the Social Security Act (the Act). As required by section 1886(j)(5) of the Act, this proposed rule includes the classification and weighting factors for the IRF PPS's case-mix groups (CMGs) and a description of the methodologies and data used in computing the prospective payment rates for FY 2024. It also proposes to rebase and revise the IRF market basket to reflect a 2021 base year. It also proposes to modify the regulation governing when an IRF unit can be excluded and paid under the IRF PPS. This proposed rule includes IRF QRP proposals for the FY 2025 IRF QRP and FY 2026 IRF QRP. This proposed rule would add two new measures to the IRF QRP, remove three measures from the IRF QRP, and modify one measure in the IRF QRP. This proposed rule also proposes to begin public reporting of four measures. In addition, this proposed rule includes an update on the Centers for Medicare and Medicaid Services' (CMS') efforts to close the health equity gap and requests information on principles CMS would use to select and prioritize IRF QRP quality measures in future years.

B. Summary of Major Provisions

In this proposed rule, we use the methods described in the FY 2023 IRF PPS final rule (87 FR 47038) to update the prospective payment rates for FY 2024 using updated FY 2022 IRF claims and the most recent available IRF cost report data, which is FY 2021 IRF cost report data. It also proposes to rebase and revise the IRF market basket to reflect a 2021 base year. It also proposes to modify the regulation governing when an IRF unit can be excluded and paid under the IRF PPS.

Beginning with the FY 2025 IRF QRP, we propose to modify the COVID–19 Vaccination Coverage among Healthcare Personnel measure, adopt the Discharge Function Score measure, and remove the Application of Percent of Long-Term Care Hospital Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function measure, the IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633) and

the Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634) measures. Beginning with the FY 2026 IRF QRP, we propose to adopt the COVID-19 Vaccine: Percent of Patients/Residents Who Are Up to Date measure. This proposed rule also proposes to

begin public reporting of the Transfer of Health Information to the Patient-Post-Acute Care (PAC) and Transfer of Health Information to the Provider-PAC measures, the Discharge Function Score measure, and the COVID-19 Vaccine: Percent of Patients/Residents Who Are Up to Date measure. Finally, we are

seeking input from interested parties on principles for selecting and prioritizing IRF QRP quality measures and concepts, and we provide an update on our continued efforts to close the health equity gap.

C. Summary of Impact

TABLE 1—COST AND BENEFIT

Provision description	Transfers/costs
FY 2024 IRF PPS payment rate update	The overall economic impact of this final rule is an estimated \$335 million in increased payments from the Federal Government to IRFs during FY 2024.
FY 2025 through FY 2026 IRF QRP changes ...	The overall economic impact of this final rule is an estimated increase in cost to IRFs of \$31,412.56 beginning with the FY 2025 IRF QRP.

II. Background

A. Statutory Basis and Scope for IRF PPS Provisions

Section 1886(j) of the Act provides for the implementation of a per-discharge PPS for inpatient rehabilitation hospitals and inpatient rehabilitation units of a hospital (collectively, hereinafter referred to as IRFs). Payments under the IRF PPS encompass inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs), but not direct graduate medical education costs, costs of approved nursing and allied health education activities, bad debts, and other services or items outside the scope of the IRF PPS. A complete discussion of the IRF PPS provisions appears in the original FY 2002 IRF PPS final rule (66 FR 41316) and the FY 2006 IRF PPS final rule (70 FR 47880) and we provided a general description of the IRF PPS for FYs 2007 through 2019 in the FY 2020 IRF PPS final rule (84 FR 39055 through 39057). A general description of the IRF PPS for FYs 2020 through 2022, along with detailed background information for various other aspects of the IRF PPS, is now available on the CMS website at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS>.

Under the IRF PPS from FY 2002 through FY 2005, the prospective payment rates were computed across 100 distinct CMGs, as described in the FY 2002 IRF PPS final rule (66 FR 41316). We constructed 95 CMGs using rehabilitation impairment categories (RICs), functional status (both motor and cognitive), and age (in some cases, cognitive status and age may not be a factor in defining a CMG). In addition, we constructed five special CMGs to account for very short stays and for patients who expire in the IRF.

For each of the CMGs, we developed relative weighting factors to account for a patient's clinical characteristics and expected resource needs. Thus, the weighting factors accounted for the relative difference in resource use across all CMGs. Within each CMG, we created tiers based on the estimated effects that certain comorbidities would have on resource use.

We established the Federal PPS rates using a standardized payment conversion factor (formerly referred to as the budget-neutral conversion factor). For a detailed discussion of the budget-neutral conversion factor, please refer to our FY 2004 IRF PPS final rule (68 FR 45684 through 45685). In the FY 2006 IRF PPS final rule (70 FR 47880), we discussed in detail the methodology for determining the standard payment conversion factor.

We applied the relative weighting factors to the standard payment conversion factor to compute the unadjusted prospective payment rates under the IRF PPS from FYs 2002 through 2005. Within the structure of the payment system, we then made adjustments to account for interrupted stays, transfers, short stays, and deaths. Finally, we applied the applicable adjustments to account for geographic variations in wages (wage index), the percentage of low-income patients, location in a rural area (if applicable), and outlier payments (if applicable) to the IRFs' unadjusted prospective payment rates.

For cost reporting periods that began on or after January 1, 2002, and before October 1, 2002, we determined the final prospective payment amounts using the transition methodology prescribed in section 1886(j)(1) of the Act. Under this provision, IRFs transitioning into the PPS were paid a blend of the Federal IRF PPS rate and the payment that the IRFs would have received had the IRF PPS not been

implemented. This provision also allowed IRFs to elect to bypass this blended payment and immediately be paid 100 percent of the Federal IRF PPS rate. The transition methodology expired as of cost reporting periods beginning on or after October 1, 2002 (FY 2003), and payments for all IRFs now consist of 100 percent of the Federal IRF PPS rate.

Section 1886(j) of the Act confers broad statutory authority upon the Secretary to propose refinements to the IRF PPS. In the FY 2006 IRF PPS final rule (70 FR 47880) and in correcting amendments to the FY 2006 IRF PPS final rule (70 FR 57166), we finalized a number of refinements to the IRF PPS case-mix classification system (the CMGs and the corresponding relative weights) and the case-level and facility-level adjustments. These refinements included the adoption of the Office of Management and Budget's (OMB's) Core-Based Statistical Area (CBSA) market definitions; modifications to the CMGs, tier comorbidities; and CMG relative weights, implementation of a new teaching status adjustment for IRFs; rebasing and revising the market basket used to update IRF payments, and updates to the rural, low-income percentage (LIP), and high-cost outlier adjustments. Beginning with the FY 2006 IRF PPS final rule (70 FR 47908 through 47917), the market basket used to update IRF payments was a market basket reflecting the operating and capital cost structures for freestanding IRFs, freestanding inpatient psychiatric facilities (IPFs), and long-term care hospitals (LTCHs) (hereinafter referred to as the rehabilitation, psychiatric, and long-term care (RPL) market basket). Any reference to the FY 2006 IRF PPS final rule in this final rule also includes the provisions effective in the correcting amendments. For a detailed discussion of the final key policy changes for FY

2006, please refer to the FY 2006 IRF PPS final rule.

The regulatory history previously included in each rule or notice issued under the IRF PPS, including a general description of the IRF PPS for FYs 2007 through 2020, is available on the CMS website at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS>.

In late 2019,¹ the United States began responding to an outbreak of a virus named “SARS-CoV-2” and the disease it causes, which is named “coronavirus disease 2019” (abbreviated “COVID-19”). Due to our prioritizing efforts in support of containing and combatting the Public Health Emergency (PHE) for COVID-19, and devoting significant resources to that end, we published two interim final rules with comment period affecting IRF payment and conditions for participation. The interim final rule with comment period (IFC) entitled, “Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency,” published on April 6, 2020 (85 FR 19230) (hereinafter referred to as the April 6, 2020 IFC), included certain changes to the IRF PPS medical supervision requirements at 42 CFR 412.622(a)(3)(iv) and 412.29(e) during the PHE for COVID-19. In addition, in the April 6, 2020 IFC, we removed the post-admission physician evaluation requirement at § 412.622(a)(4)(ii) for all IRFs during the PHE for COVID-19. In the FY 2021 IRF PPS final rule, to ease documentation and administrative burden, we also removed the post-admission physician evaluation documentation requirement at 42 CFR 412.622(a)(4)(ii) permanently beginning in FY 2021.

A second IFC entitled, “Medicare and Medicaid Programs, Basic Health Program, and Exchanges; Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program” was published on May 8, 2020 (85 FR 27550) (hereinafter referred to as the May 8, 2020 IFC). Among other changes, the May 8, 2020 IFC included a waiver of the “3-hour rule” at § 412.622(a)(3)(ii) to reflect the waiver required by section 3711(a) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136, enacted on March 27, 2020). In the

May 8, 2020 IFC, we also modified certain IRF coverage and classification requirements for freestanding IRF hospitals to relieve acute care hospital capacity concerns in States (or regions, as applicable) experiencing a surge during the PHE for COVID-19. In addition to the policies adopted in our IFCs, we responded to the PHE with numerous blanket waivers² and other flexibilities,³ some of which are applicable to the IRF PPS. CMS finalized these policies in the Calendar Year 2023 Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems final rule with comment period (87 FR 71748).

B. Provisions of the Patient Protection and the Affordable Care Act and the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) Affecting the IRF PPS in FY 2012 and Beyond

The Patient Protection and the Affordable Care Act (the Affordable Care Act or ACA) (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this proposed rule, we refer to the two statutes collectively as the “Patient Protection and Affordable Care Act” or “ACA”.

The ACA included several provisions that affect the IRF PPS in FYs 2012 and beyond. In addition to what was previously discussed, section 3401(d) of the ACA also added section 1886(j)(3)(C)(ii)(I) of the Act (providing for a “productivity adjustment” for FY 2012 and each subsequent FY). The productivity adjustment for FY 2024 is discussed in section V.D. of this proposed rule. Section 1886(j)(3)(C)(ii)(II) of the Act provides that the application of the productivity adjustment to the market basket update may result in an update that is less than 0.0 for a FY and in payment rates for a FY being less than such payment rates for the preceding FY.

Sections 3004(b) of the ACA and section 411(b) of the MACRA (Pub. L. 114–10, enacted on April 16, 2015) also addressed the IRF PPS. Section 3004(b)

of ACA reassigned the previously designated section 1886(j)(7) of the Act to section 1886(j)(8) of the Act and inserted a new section 1886(j)(7) of the Act, which contains requirements for the Secretary to establish a QRP for IRFs. Under that program, data must be submitted in a form and manner and at a time specified by the Secretary. Beginning in FY 2014, section 1886(j)(7)(A)(i) of the Act requires the application of a 2-percentage point reduction to the market basket increase factor otherwise applicable to an IRF (after application of paragraphs (C)(iii) and (D) of section 1886(j)(3) of the Act) for a FY if the IRF does not comply with the requirements of the IRF QRP for that FY. Application of the 2-percentage point reduction may result in an update that is less than 0.0 for a FY and in payment rates for a FY being less than such payment rates for the preceding FY. Reporting-based reductions to the market basket increase factor are not cumulative; they only apply for the FY involved. Section 411(b) of the MACRA amended section 1886(j)(3)(C) of the Act by adding paragraph (iii), which required us to apply for FY 2018, after the application of section 1886(j)(3)(C)(ii) of the Act, an increase factor of 1.0 percent to update the IRF prospective payment rates.

C. Operational Overview of the Current IRF PPS

As described in the FY 2002 IRF PPS final rule (66 FR 41316), upon the admission and discharge of a Medicare Part A fee-for-service (FFS) patient, the IRF is required to complete the appropriate sections of a Patient Assessment Instrument (PAI), designated as the IRF–PAI. In addition, beginning with IRF discharges occurring on or after October 1, 2009, the IRF is also required to complete the appropriate sections of the IRF–PAI upon the admission and discharge of each Medicare Advantage (MA) patient, as described in the FY 2010 IRF PPS final rule (74 FR 39762 and 74 FR 50712). All required data must be electronically encoded into the IRF–PAI software product. Generally, the software product includes patient classification programming called the Grouper software. The Grouper software uses specific IRF–PAI data elements to classify (or group) patients into distinct CMGs and account for the existence of any relevant comorbidities.

The Grouper software produces a five-character CMG number. The first character is an alphabetic character that indicates the comorbidity tier. The last four characters are numeric characters that represent the distinct CMG number.

¹ Patel A, Jernigan DB. Initial Public Health Response and Interim Clinical Guidance for the 2019 Novel Coronavirus Outbreak—United States, December 31, 2019–February 4, 2020. *MMWR Morb Mortal Wkly Rep* 2020;69:140–146. DOI <https://dx.doi.org/10.15585/mmwr.mm6905e1>.

² CMS, “COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers,” (updated Feb. 19 2021) (available at <https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>).

³ CMS, “COVID-19 Frequently Asked Questions (FAQs) on Medicare Fee-for-Service (FFS) Billing,” (updated March 5, 2021) (available at <https://www.cms.gov/files/document/03092020-covid-19-faqs-508.pdf>).

A free download of the Grouper software is available on the CMS website at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Software.html>. The Grouper software is also embedded in the internet Quality Improvement and Evaluation System (iQIES) User tool available in iQIES at <https://www.cms.gov/medicare/quality-safety-oversight-general-information/iqies>.

Once a Medicare Part A FFS patient is discharged, the IRF submits a Medicare claim as a Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191, enacted on August 21, 1996)—compliant electronic claim or, if the Administrative Simplification Compliance Act of 2002 (ASCA) (Pub. L. 107–105, enacted on December 27, 2002) permits, a paper claim (a UB–04 or a CMS–1450 as appropriate) using the five-character CMG number and sends it to the appropriate Medicare Administrative Contractor (MAC). In addition, once a MA patient is discharged, in accordance with the Medicare Claims Processing Manual, chapter 3, section 20.3 (Pub. 100–04), hospitals (including IRFs) must submit an informational-only bill (type of bill (TOB) 111), which includes Condition Code 04 to their MAC. This will ensure that the MA days are included in the hospital's Supplemental Security Income (SSI) ratio (used in calculating the IRF LIP adjustment) for FY 2007 and beyond. Claims submitted to Medicare must comply with both ASCA and HIPAA.

Section 3 of the ASCA amended section 1862(a) of the Act by adding paragraph (22), which requires the Medicare program, subject to section 1862(h) of the Act, to deny payment under Part A or Part B for any expenses for items or services for which a claim is submitted other than in an electronic form specified by the Secretary. Section 1862(h) of the Act, in turn, provides that the Secretary shall waive such denial in situations in which there is no method available for the submission of claims in an electronic form or the entity submitting the claim is a small provider. In addition, the Secretary also has the authority to waive such denial in such unusual cases as the Secretary finds appropriate. For more information, see the “Medicare Program; Electronic Submission of Medicare Claims” final rule (70 FR 71008). Our instructions for the limited number of Medicare claims submitted on paper are available at <http://www.cms.gov/manuals/downloads/clm104c25.pdf>.

Section 3 of the ASCA operates in the context of the administrative simplification provisions of HIPAA, which include, among others, the requirements for transaction standards and code sets codified in 45 CFR part 160 and part 162, subparts A and I through R (generally known as the Transactions Rule). The Transactions Rule requires covered entities, including covered healthcare providers, to conduct covered electronic transactions according to the applicable transaction standards. (See the CMS program claim memoranda at <http://www.cms.gov/ElectronicBillingEDITrans/> and listed in the addenda to the Medicare Intermediary Manual, Part 3, section 3600).

The MAC processes the claim through its software system. This software system includes pricing programming called the “Pricer” software. The Pricer software uses the CMG number, along with other specific claim data elements and provider-specific data, to adjust the IRF's prospective payment for interrupted stays, transfers, short stays, and deaths, and then applies the applicable adjustments to account for the IRF's wage index, percentage of low-income patients, rural location, and outlier payments. For discharges occurring on or after October 1, 2005, the IRF PPS payment also reflects the teaching status adjustment that became effective as of FY 2006, as discussed in the FY 2006 IRF PPS final rule (70 FR 47880).

D. Advancing Health Information Exchange

The Department of Health and Human Services (HHS) has a number of initiatives designed to encourage and support the adoption of interoperable health information technology and to promote nationwide health information exchange to improve health care and patient access to their digital health information.

To further interoperability in post-acute care settings, CMS and the Office of the National Coordinator for Health Information Technology (ONC) participate in the Post-Acute Care Interoperability Workgroup (PACIO) to facilitate collaboration with interested parties to develop Health Level Seven International® (HL7) Fast Healthcare Interoperability Resource® (FHIR) standards. These standards could support the exchange and reuse of patient assessment data derived from the post-acute care (PAC) setting assessment tools, such as the minimum data set (MDS), inpatient rehabilitation facility-patient assessment instrument (IRF–PAI), Long-Term Care Hospital

(LTCH) continuity assessment record and evaluation (CARE) Data Set (LCDS), outcome and assessment information set (OASIS), and other sources.^{4,5} The PACIO Project has focused on HL7 FHIR implementation guides for: functional status, cognitive status and new use cases on advance directives, re-assessment timepoints, and Speech, language, swallowing, cognitive communication and hearing (SPLASCH) pathology.⁶ We encourage PAC provider and health IT vendor participation as the efforts advance.

The CMS Data Element Library (DEL) continues to be updated and serves as a resource for PAC assessment data elements and their associated mappings to health IT standards such as Logical Observation Identifiers Names and Codes (LOINC) and Systematized Nomenclature of Medicine Clinical Terms (SNOMED).⁷ The DEL furthers CMS' goal of data standardization and interoperability. Standards in the DEL can be referenced on the CMS website and in the ONC Interoperability Standards Advisory (ISA). The 2023 ISA is available at https://www.healthit.gov/sites/isa/files/inline-files/2023%20Reference%20Edition_ISA_508.pdf.

We are also working with ONC to advance the United States Core Data for Interoperability (USCDI), a standardized set of health data classes and constituent data elements for nationwide, interoperable health information exchange.⁸ We are collaborating with ONC and other federal agencies to define and prioritize additional data standardization needs and develop consensus on recommendations for future versions of the USCDI. We are also directly collaborating with ONC to build requirements to support data standardization and alignment with requirements for quality measurement. ONC has launched the USCDI+ initiative to support the identification and establishment of domain specific datasets that build on the core USCDI foundation.⁹ The USCDI+ quality

⁴ HL7 FHIR Release 4. Available at <https://www.hl7.org/fhir/>.

⁵ HL7 FHIR. PACIO Functional Status Implementation Guide. Available at <https://paciowg.github.io/functional-status-ig/>.

⁶ PACIO Project. Available at <http://pacioproject.org/about/>.

⁷ Centers for Medicare & Medicaid Services. Newsroom. Fact sheet: CMS Data Element Library Fact Sheet. June 21, 2018. Available at <https://www.cms.gov/newsroom/fact-sheets/cms-data-element-library-fact-sheet>.

⁸ USCDI. Available at <https://www.healthit.gov/isa/united-states-core-data-interoperability-uscdi>.

⁹ USCDI+. Available at <https://www.healthit.gov/topic/interoperability/uscdi-plus>.

measurement domain currently being developed aims to support defining additional data specifications for quality measurement that harmonize, where possible, with other Federal agency data needs and inform supplemental standards necessary to support quality measurement, including the needs of programs supporting quality measurement for long-term and post-acute care.

The 21st Century Cures Act (Cures Act) (Pub. L. 114–255, enacted December 13, 2016) required HHS and ONC to take steps to promote adoption and use of electronic health record (EHR) technology.¹⁰ Specifically, section 4003(b) of the Cures Act required ONC to take steps to advance interoperability through the development of a Trusted Exchange Framework and Common Agreement aimed at establishing full network-to-network exchange of health information nationally. On January 18, 2022, ONC announced a significant milestone by releasing the Trusted Exchange Framework¹¹ and Common Agreement Version 1.¹² The Trusted Exchange Framework is a set of non-binding principles for health information exchange, and the Common Agreement is a contract that advances those principles. The Common Agreement and the Qualified Health Information Network Technical Framework Version 1 (incorporated by reference into the Common Agreement) establish the technical infrastructure model and governing approach for different health information networks and their users to securely share clinical information with each other, all under commonly agreed to terms. The technical and policy architecture of how exchange occurs under the Common Agreement follows a network-of-networks structure, which allows for connections at different levels and is inclusive of many different types of entities at those different levels, such as health information networks, healthcare practices, hospitals, public health agencies, and Individual Access Services (IAS) Providers.¹³ On February

13, 2023, HHS marked a new milestone during an event at HHS headquarters,¹⁴ which recognized the first set of applicants accepted for onboarding to the Common Agreement as Qualified Health Information Networks (QHINs). QHINs will be entities that will connect directly to each other to serve as the core for nationwide interoperability.¹⁵ For more information, we refer readers to <https://www.healthit.gov/topic/interoperability/trusted-exchange-framework-and-common-agreement>.

We invite providers to learn more about these important developments and how they are likely to affect IRFs.

III. Summary of Provisions of the Proposed Rule

In this proposed rule, we are proposing to update the IRF PPS for FY 2024 and the IRF QRP for FY 2025 and FY 2026.

The proposed policy changes and updates to the IRF prospective payment rates for FY 2024 are as follows:

- Update the CMG relative weights and average length of stay values for FY 2024, in a budget neutral manner, as discussed in section IV. of this proposed rule.
- Update the IRF PPS payment rates for FY 2024 by the market basket increase factor, based upon the most current data available, with a productivity adjustment required by section 1886(j)(3)(C)(ii)(I) of the Act, as described in section V. of this proposed rule.
- Rebase and revise the IRF market basket to reflect a 2021 base year, as

Exchange Purposes definition, the services provided utilizing the Connectivity Services, to the extent consistent with Applicable Law, to an Individual with whom the QHIN, Participant, or Subparticipant has a Direct Relationship to satisfy that Individual's ability to access, inspect, or obtain a copy of that Individual's Required Information that is then maintained by or for any QHIN, Participant, or Subparticipant." The Common Agreement defines "IAS Provider" as: "Each QHIN, Participant, and Subparticipant that offers Individual Access Services." See Common Agreement for Nationwide Health Information Interoperability Version 1, at 7 (Jan. 2022), https://www.healthit.gov/sites/default/files/page/2022-01/Common_Agreement_for_Nationwide_Health_Information_Interoperability_Version_1.pdf.

¹⁴ "Building TEFCA," Micky Tripathi and Mariann Yeager, Health IT Buzz Blog, February 13, 2023. <https://www.healthit.gov/buzz-blog/electronic-health-and-medical-records/interoperability-electronic-health-and-medical-records/building-tefca>.

¹⁵ The Common Agreement defines a QHIN as "to the extent permitted by applicable SOP(s), a Health Information Network that is a U.S. Entity that has been Designated by the RCE and is a party to the Common Agreement countersigned by the RCE." See Common Agreement for Nationwide Health Information Interoperability Version 1, at 10 (Jan. 2022), https://www.healthit.gov/sites/default/files/page/2022-01/Common_Agreement_for_Nationwide_Health_Information_Interoperability_Version_1.pdf.

discussed in section V. of this proposed rule.

- Update the FY 2024 IRF PPS payment rates by the FY 2024 wage index and the labor-related share in a budget-neutral manner, as discussed in section V. of this proposed rule.
- Describe the calculation of the IRF standard payment conversion factor for FY 2024, as discussed in section V. of this proposed rule.
- Update the outlier threshold amount for FY 2024, as discussed in section VI. of this proposed rule.
- Update the cost-to-charge ratio (CCR) ceiling and urban/rural average CCRs for FY 2024, as discussed in section VI. of this proposed rule.
- Describe the proposed modification to the regulation for IRF units to become excluded and paid under the IRF PPS as discussed in section VII. of this proposed rule.

We also propose updates to the IRF QRP and request information in section VIII. of the proposed rule as follows:

- Modify the COVID–19 Vaccination Coverage among Healthcare Personnel measure beginning with the FY 2025 IRF QRP.
- Adopt the Discharge Function Score measure beginning with the FY 2025 IRF QRP.
- Remove the Application of Percent of Long-Term Care Hospital Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function measure beginning with the FY 2025 IRF QRP.
- Remove the IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (NQF #2633) measure beginning with the FY 2025 IRF QRP.
- Remove the IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (NQF #2634) measure beginning with the FY 2025 IRF QRP.
- Adopt the COVID–19 Vaccine: Percent of Patients/Residents Who Are Up to Date measure beginning with the FY 2026 IRF QRP.
- Request information on principles for selecting and prioritizing IRF QRP quality measures and concepts.
- Provide an update on our continued efforts to close the health equity gap.

IV. Proposed Update to the Case-Mix Group (CMG) Relative Weights and Average Length of Stay (ALOS) Values for FY 2024

As specified in § 412.620(b)(1), we calculate a relative weight for each CMG that is proportional to the resources needed by an average inpatient rehabilitation case in that CMG. For example, cases in a CMG with a relative

¹⁰ Sections 4001 through 4008 of Public Law 114–255. Available at <https://www.govinfo.gov/content/pkg/PLAW-114publ255/html/PLAW-114publ255.htm>.

¹¹ The Trusted Exchange Framework (TEF): Principles for Trusted Exchange (Jan. 2022). Available at https://www.healthit.gov/sites/default/files/page/2022-01/Trusted_Exchange_Framework_0122.pdf.

¹² Common Agreement for Nationwide Health Information Interoperability Version 1 (Jan. 2022). Available at https://www.healthit.gov/sites/default/files/page/2022-01/Common_Agreement_for_Nationwide_Health_Information_Interoperability_Version_1.pdf.

¹³ The Common Agreement defines Individual Access Services (IAS) as "with respect to the

weight of 2, on average, will cost twice as much as cases in a CMG with a relative weight of 1. Relative weights account for the variance in cost per discharge due to the variance in resource utilization among the payment groups, and their use helps to ensure that IRF PPS payments support beneficiary access to care, as well as provider efficiency.

In this proposed rule, we propose to update the CMG relative weights and ALOS values for FY 2024. Typically, we use the most recent available data to update the CMG relative weights and average lengths of stay. For FY 2024, we are proposing to use the FY 2022 IRF claims and FY 2021 IRF cost report data. These data are the most current and complete data available at this time. Currently, only a small portion of the FY 2022 IRF cost report data are available for analysis, but the majority of the FY 2022 IRF claims data are available for analysis. We are proposing that if more recent data became available after the publication of this proposed rule and before the publication of the final rule, we would use such data to determine the FY 2024 CMG relative weights and ALOS values in the final rule.

We are proposing to apply these data using the same methodologies that we have used to update the CMG relative weights and ALOS values each FY since we implemented an update to the methodology. The detailed CCR data from the cost reports of IRF provider units of primary acute care hospitals is used for this methodology, instead of

CCR data from the associated primary care hospitals, to calculate IRFs' average costs per case, as discussed in the FY 2009 IRF PPS final rule (73 FR 46372). In calculating the CMG relative weights, we use a hospital-specific relative value method to estimate operating (routine and ancillary services) and capital costs of IRFs. The process to calculate the CMG relative weights for this proposed rule is as follows:

Step 1. We estimate the effects that comorbidities have on costs.

Step 2. We adjust the cost of each Medicare discharge (case) to reflect the effects found in the first step.

Step 3. We use the adjusted costs from the second step to calculate CMG relative weights, using the hospital-specific relative value method.

Step 4. We normalize the FY 2024 CMG relative weights to the same average CMG relative weight from the CMG relative weights implemented in the FY 2023 IRF PPS final rule (87 FR 47038).

Consistent with the methodology that we have used to update the IRF classification system in each instance in the past, we are proposing to update the CMG relative weights for FY 2024 in such a way that total estimated aggregate payments to IRFs for FY 2024 are the same with or without the changes (that is, in a budget-neutral manner) by applying a budget neutrality factor to the standard payment amount. To calculate the appropriate budget neutrality factor for use in updating the FY 2024 CMG relative weights, we use the following steps:

Step 1. Calculate the estimated total amount of IRF PPS payments for FY 2024 (with no changes to the CMG relative weights).

Step 2. Calculate the estimated total amount of IRF PPS payments for FY 2024 by applying the proposed changes to the CMG relative weights (as discussed in this proposed rule).

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2 to determine the budget neutrality factor of 0.9999 that would maintain the same total estimated aggregate payments in FY 2024 with and without the proposed changes to the CMG relative weights.

Step 4. Apply the budget neutrality factor from step 3 to the FY 2024 IRF PPS standard payment amount after the application of the budget-neutral wage adjustment factor.

In section V.G. of this proposed rule, we discuss the proposed use of the existing methodology to calculate the proposed standard payment conversion factor for FY 2024.

In Table 2, "Proposed Relative Weights and Average Length of Stay Values for Case-Mix Groups," we present the proposed CMGs, the comorbidity tiers, the corresponding relative weights, and the ALOS values for each CMG and tier for FY 2024. The ALOS for each CMG is used to determine when an IRF discharge meets the definition of a short-stay transfer, which results in a per diem case level adjustment.

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TABLE 2: Proposed Relative Weights and Average Length of Stay Values for the Case-Mix Groups

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comor-bidity Tier	Tier 1	Tier 2	Tier 3	No Comor-bidity Tier
0101	Stroke M >=72.50	0.9656	0.8476	0.7733	0.7328	9	10	9	9
0102	Stroke M >=63.50 and M <72.50	1.2352	1.0842	0.9891	0.9374	12	12	11	10
0103	Stroke M >=50.50 and M <63.50	1.6010	1.4054	1.2821	1.2150	14	15	14	13
0104	Stroke M >=41.50 and M <50.50	2.0596	1.8079	1.6494	1.5630	17	18	17	17
0105	Stroke M <41.50 and A >=84.50	2.5147	2.2074	2.0138	1.9084	23	22	20	20
0106	Stroke M <41.50 and A <84.50	2.8694	2.5187	2.2978	2.1775	25	25	23	22
0201	Traumatic brain injury M >=73.50	1.0595	0.8552	0.7815	0.7335	10	10	9	9
0202	Traumatic brain injury M >=61.50 and M <73.50	1.3581	1.0963	1.0018	0.9403	12	12	11	11
0203	Traumatic brain injury M >=49.50 and M <61.50	1.6862	1.3611	1.2438	1.1674	14	15	13	13
0204	Traumatic brain injury M >=35.50 and M <49.50	2.0989	1.6943	1.5482	1.4532	19	17	16	16
0205	Traumatic brain injury M <35.50	2.6987	2.1784	1.9906	1.8684	30	23	19	18
0301	Non-traumatic brain injury M >=65.50	1.1828	0.9400	0.8776	0.8242	10	10	10	9
0302	Non-traumatic brain injury M >=52.50 and M <65.50	1.5284	1.2147	1.1341	1.0650	13	13	12	12
0303	Non-traumatic brain injury M >=42.50 and M <52.50	1.8323	1.4562	1.3595	1.2767	15	15	14	14
0304	Non-traumatic brain injury M <42.50 and A >=78.50	2.1764	1.7296	1.6148	1.5165	19	17	16	15
0305	Non-traumatic brain injury M <42.50 and A <78.50	2.3751	1.8875	1.7623	1.6549	20	20	17	17
0401	Traumatic spinal cord injury M >=56.50	1.3027	1.0657	1.0325	0.9572	12	11	11	11
0402	Traumatic spinal cord injury M >=47.50 and M <56.50	1.6673	1.3640	1.3215	1.2251	16	15	14	13
0403	Traumatic spinal cord injury M >=41.50 and M <47.50	2.0112	1.6453	1.5940	1.4778	19	18	16	16
0404	Traumatic spinal cord injury M <31.50 and A <61.50	3.2713	2.6761	2.5927	2.4037	43	25	28	21
0405	Traumatic spinal cord injury M >=31.50 and M <41.50	2.5849	2.1146	2.0487	1.8994	21	23	22	20
0406	Traumatic spinal cord injury M >=24.50 and M <31.50 and A >=61.50	3.2457	2.6552	2.5724	2.3849	24	28	26	25
0407	Traumatic spinal cord injury M <24.50 and A >=61.50	4.4319	3.6256	3.5125	3.2565	44	37	33	36
0501	Non-traumatic spinal cord injury M >=60.50	1.2262	1.0040	0.9419	0.8625	11	11	10	10
0502	Non-traumatic spinal cord injury M >=53.50 and M <60.50	1.5019	1.2297	1.1536	1.0563	14	13	12	12
0503	Non-traumatic spinal cord injury M >=48.50 and M <53.50	1.7258	1.4131	1.3256	1.2138	15	14	14	13
0504	Non-traumatic spinal cord injury M >=39.50 and M <48.50	2.0726	1.6970	1.5919	1.4577	18	16	17	16
0505	Non-traumatic spinal cord injury M <39.50	2.9263	2.3960	2.2477	2.0581	27	24	23	21
0601	Neurological M >=64.50	1.3095	1.0078	0.9480	0.8523	11	10	10	9
0602	Neurological M >=52.50 and M <64.50	1.6290	1.2537	1.1793	1.0603	13	12	12	11
0603	Neurological M >=43.50 and M <52.50	1.9389	1.4923	1.4037	1.2620	15	14	14	13

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comor- bidity Tier	Tier 1	Tier 2	Tier 3	No Comor- bidity Tier
0604	Neurological M <43.50	2.4274	1.8682	1.7573	1.5800	20	18	17	16
0701	Fracture of lower extremity M >=61.50	1.1893	0.9594	0.9132	0.8356	12	11	10	10
0702	Fracture of lower extremity M >=52.50 and M <61.50	1.4717	1.1871	1.1299	1.0339	13	13	12	12
0703	Fracture of lower extremity M >=41.50 and M <52.50	1.8119	1.4616	1.3912	1.2730	16	15	15	14
0704	Fracture of lower extremity M <41.50	2.2543	1.8184	1.7309	1.5838	18	18	18	16
0801	Replacement of lower-extremity joint M >=63.50	1.1601	0.9333	0.8700	0.8026	10	10	9	9
0802	Replacement of lower-extremity joint M >=57.50 and M <63.50	1.3370	1.0756	1.0026	0.9250	11	11	10	10
0803	Replacement of lower-extremity joint M >=51.50 and M <57.50	1.4725	1.1846	1.1043	1.0188	13	12	11	11
0804	Replacement of lower-extremity joint M >=42.50 and M <51.50	1.6670	1.3410	1.2501	1.1533	14	14	13	12
0805	Replacement of lower-extremity joint M <42.50	2.0828	1.6755	1.5619	1.4410	17	17	16	15
0901	Other orthopedic M >=63.50	1.2134	0.9405	0.8889	0.8105	11	10	10	9
0902	Other orthopedic M >=51.50 and M <63.50	1.5409	1.1944	1.1288	1.0292	14	12	12	11
0903	Other orthopedic M >=44.50 and M <51.50	1.8065	1.4003	1.3234	1.2066	15	14	14	13
0904	Other orthopedic M <44.5	2.1728	1.6842	1.5917	1.4513	19	17	16	15
1001	Amputation lower extremity M >=64.50	1.1951	1.0034	0.9075	0.8306	11	11	10	10
1002	Amputation lower extremity M >=55.50 and M <64.50	1.5114	1.2689	1.1476	1.0504	14	13	12	12
1003	Amputation lower extremity M >=47.50 and M <55.50	1.7846	1.4983	1.3551	1.2403	15	16	14	13
1004	Amputation lower extremity M <47.50	2.3159	1.9444	1.7585	1.6096	19	19	18	17
1101	Amputation non-lower extremity M >=58.50	1.2333	1.2333	0.9902	0.9916	11	14	11	10
1102	Amputation non-lower extremity M >=52.50 and M <58.50	1.5030	1.5030	1.2067	1.2084	12	15	12	12
1103	Amputation non-lower extremity M <52.50	1.9885	1.9885	1.5966	1.5988	17	18	16	14
1201	Osteoarthritis M >=61.50	1.2317	1.0037	0.9210	0.8404	12	11	10	10
1202	Osteoarthritis M >=49.50 and M <61.50	1.5792	1.2868	1.1808	1.0775	14	14	12	11
1203	Osteoarthritis M <49.50 and A >=74.50	2.0035	1.6325	1.4980	1.3669	17	16	16	14
1204	Osteoarthritis M <49.50 and A <74.50	2.0643	1.6820	1.5435	1.4084	18	17	16	15
1301	Rheumatoid other arthritis M >=62.50	1.3826	1.0982	0.9814	0.9110	10	11	10	10
1302	Rheumatoid other arthritis M >=51.50 and M <62.50	1.6669	1.3240	1.1833	1.0984	12	13	12	11
1303	Rheumatoid other arthritis M >=44.50 and M <51.50 and A >=64.50	1.8530	1.4718	1.3153	1.2210	13	12	14	11
1304	Rheumatoid other arthritis M <44.50 and A >=64.50	2.2665	1.8003	1.6089	1.4935	15	17	16	16
1305	Rheumatoid other arthritis M <51.50 and A <64.50	2.2551	1.7912	1.6008	1.4859	14	16	18	14
1401	Cardiac M >=68.50	1.1130	0.9095	0.8359	0.7708	10	10	9	9
1402	Cardiac M >=55.50 and M <68.50	1.3944	1.1395	1.0472	0.9657	12	12	11	11
1403	Cardiac M >=45.50 and M <55.50	1.6914	1.3821	1.2702	1.1714	15	14	13	12
1404	Cardiac M <45.50	2.1133	1.7269	1.5871	1.4636	18	17	16	15

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comor-bidity Tier	Tier 1	Tier 2	Tier 3	No Comor-bidity Tier
1501	Pulmonary M >=68.50	1.2635	1.0418	0.9944	0.9446	12	10	10	10
1502	Pulmonary M >=56.50 and M <68.50	1.5016	1.2382	1.1818	1.1226	12	12	12	11
1503	Pulmonary M >=45.50 and M <56.50	1.7919	1.4776	1.4103	1.3397	15	14	13	13
1504	Pulmonary M <45.50	2.1991	1.8134	1.7307	1.6441	22	17	16	16
1601	Pain syndrome M >=65.50	1.1819	0.8577	0.8577	0.8181	9	9	9	10
1602	Pain syndrome M >=58.50 and M <65.50	1.4869	1.0790	1.0790	1.0292	8	10	12	11
1603	Pain syndrome M >=43.50 and M <58.50	1.7315	1.2566	1.2566	1.1986	10	12	13	12
1604	Pain syndrome M <43.50	2.1388	1.5521	1.5521	1.4805	11	14	17	15
1701	Major multiple trauma without brain or spinal cord injury M >=57.50	1.3458	1.0421	0.9889	0.9026	11	11	10	10
1702	Major multiple trauma without brain or spinal cord injury M >=50.50 and M <57.50	1.6178	1.2527	1.1888	1.0851	15	13	13	12
1703	Major multiple trauma without brain or spinal cord injury M >=41.50 and M <50.50	1.9176	1.4849	1.4091	1.2861	16	16	15	14
1704	Major multiple trauma without brain or spinal cord injury M >=36.50 and M <41.50	2.2048	1.7073	1.6201	1.4788	19	18	16	16
1705	Major multiple trauma without brain or spinal cord injury M <36.50	2.5315	1.9602	1.8601	1.6979	21	20	19	18
1801	Major multiple trauma with brain or spinal cord injury M >=67.50	1.0786	0.9313	0.8444	0.7725	11	11	10	9
1802	Major multiple trauma with brain or spinal cord injury M >=55.50 and M <67.50	1.3676	1.1809	1.0706	0.9795	13	13	11	11
1803	Major multiple trauma with brain or spinal cord injury M >=45.50 and M <55.50	1.7180	1.4834	1.3449	1.2305	13	16	14	14
1804	Major multiple trauma with brain or spinal cord injury M >=40.50 and M <45.50	1.9778	1.7077	1.5483	1.4166	18	18	15	15
1805	Major multiple trauma with brain or spinal cord injury M >=30.50 and M <40.50	2.3844	2.0588	1.8666	1.7078	21	23	19	18
1806	Major multiple trauma with brain or spinal cord injury M <30.50	3.4984	3.0207	2.7386	2.5057	36	32	28	24
1901	Guillain-Barré M >=66.50	1.2412	0.8921	0.8618	0.8354	11	11	11	10
1902	Guillain-Barré M >=51.50 and M <66.50	1.7514	1.2587	1.2160	1.1788	19	14	13	14
1903	Guillain-Barré M >=38.50 and M <51.50	2.4939	1.7923	1.7315	1.6786	25	19	19	19
1904	Guillain-Barré M <38.50	4.0556	2.9147	2.8158	2.7297	38	31	29	26
2001	Miscellaneous M >=66.50	1.1788	0.9552	0.8888	0.8058	11	10	9	9
2002	Miscellaneous M >=55.50 and M <66.50	1.4655	1.1874	1.1049	1.0017	13	12	11	11
2003	Miscellaneous M >=46.50 and M <55.50	1.7432	1.4125	1.3144	1.1916	15	14	13	13
2004	Miscellaneous M <46.50 and A >=77.50	2.0813	1.6864	1.5692	1.4226	18	17	16	15
2005	Miscellaneous M <46.50 and A <77.50	2.2249	1.8028	1.6776	1.5208	19	18	16	15
2101	Burns M >=52.50	1.5384	1.2124	1.1224	1.0599	15	14	12	12

Generally, updates to the CMG relative weights result in some increases and some decreases to the CMG relative weight values. Table 3 shows how we estimate that the application of the proposed revisions for FY 2024 would affect particular CMG relative weight

values, which would affect the overall distribution of payments within CMGs and tiers. We note that, because we propose to implement the CMG relative weight revisions in a budget-neutral manner (as previously described), total estimated aggregate payments to IRFs

for FY 2024 would not be affected as a result of the proposed CMG relative weight revisions. However, the proposed revisions would affect the distribution of payments within CMGs and tiers.

TABLE 3—DISTRIBUTIONAL EFFECTS OF THE CHANGES TO THE CMG RELATIVE WEIGHTS

Percentage change in CMG relative weights	Number of cases affected	Percentage of cases affected (percent)
Increased by 15% or more	81	0.0
Increased by between 5% and 15%	1,263	0.3
Changed by less than 5%	375,622	99.4
Decreased by between 5% and 15%	843	0.2
Decreased by 15% or more	0	0.0

As shown in Table 3, 99.4 percent of all IRF cases are in CMGs and tiers that would experience less than a 5 percent change (either increase or decrease) in the CMG relative weight value as a result of the proposed revisions for FY 2024. The proposed changes in the ALOS values for FY 2024, compared with the FY 2023 ALOS values, are small and do not show any particular trends in IRF length of stay patterns.

We invite public comment on our proposed updates to the CMG relative weights and ALOS values for FY 2024.

V. Proposed FY 2024 IRF PPS Payment Update

A. Background

Section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services for which payment is made under the IRF PPS. According to section 1886(j)(3)(A)(i) of the Act, the increase factor shall be used to update the IRF prospective payment rates for each FY. Section 1886(j)(3)(C)(ii)(I) of the Act requires the application of a productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Thus, we propose to update the IRF PPS payments for FY 2024 by a market basket increase factor as required by section 1886(j)(3)(C) of the Act based upon the most current data available, with a productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act.

We have utilized various market baskets through the years in the IRF PPS. For a discussion of these market baskets, we refer readers to the FY 2016 IRF PPS final rule (80 FR 47046).

In FY 2016, we finalized the use of a 2012-based IRF market basket, using Medicare cost report data for both freestanding and hospital-based IRFs (80

FR 47049 through 47068). In FY 2020, we finalized a rebased and revised IRF market basket to reflect a 2016 base year. The FY 2020 IRF PPS final rule (84 FR 39071 through 39086) contains a complete discussion of the development of the 2016-based IRF market basket. Beginning with FY 2024, we are proposing to rebase and revise the IRF market basket to reflect a 2021 base year. In the following discussion, we provide an overview of the proposed market basket and describe the methodologies used to determine the operating and capital portions of the proposed 2021-based IRF market basket.

B. Overview of the Proposed 2021-Based IRF Market Basket

The proposed 2021-based IRF market basket is a fixed-weight, Laspeyres-type price index. A Laspeyres price index measures the change in price, over time, of the same mix of goods and services purchased in the base period. Any changes in the quantity or mix of goods and services (that is, intensity) purchased over time relative to the base period are not measured.

The index itself is constructed in three steps. First, a base period is selected (for the proposed IRF market basket in this proposed rule, we propose to use 2021 as the base period) and total base period costs are estimated for a set of mutually exclusive and exhaustive cost categories. Each category is calculated as a proportion of total costs. These proportions are called cost weights. Second, each cost category is matched to an appropriate price or wage variable, referred to as a price proxy. In almost every instance, these price proxies are derived from publicly available statistical series that are published on a consistent schedule (preferably at least on a quarterly basis). Finally, the cost weight for each cost category is multiplied by the level of its

respective price proxy. The sum of these products (that is, the cost weights multiplied by their price index levels) for all cost categories yields the composite index level of the market basket in a given time period. Repeating this step for other periods produces a series of market basket levels over time. Dividing an index level for a given period by an index level for an earlier period produces a rate of growth in the input price index over that timeframe.

As noted, the market basket is described as a fixed-weight index because it represents the change in price over time of a constant mix (quantity and intensity) of goods and services needed to provide IRF services. The effects on total costs resulting from changes in the mix of goods and services purchased subsequent to the base period are not measured. For example, an IRF hiring more nurses after the base period to accommodate the needs of patients would increase the volume of goods and services purchased by the IRF, but would not be factored into the price change measured by a fixed-weight IRF market basket. Only when the index is rebased would changes in the quantity and intensity be captured, with those changes being reflected in the cost weights. Therefore, we rebase the market basket periodically so that the cost weights reflect recent changes in the mix of goods and services that IRFs purchase to furnish inpatient care between base periods.

C. Proposed Rebasing and Revising of the IRF PPS Market Basket

As discussed in the FY 2020 IRF PPS final rule (84 FR 39071 through 39086), the 2016-based IRF market basket cost weights reflect the 2016 Medicare cost report data submitted by both freestanding and hospital-based facilities.

Beginning with FY 2024, we are proposing to rebase and revise the 2016-based IRF market basket cost weights to a 2021 base year reflecting the 2021 Medicare cost report data submitted by both freestanding and hospital-based IRFs. Below we provide a detailed description of our methodology used to develop the proposed 2021-based IRF market basket. This proposed methodology is generally similar to the methodology used to develop the 2016-based IRF market basket.

We invite public comment on our proposed methodology for developing the 2021-based IRF market basket.

1. Development of Cost Categories and Weights for the Proposed 2021-Based IRF Market Basket

a. Use of Medicare Cost Report Data

We are proposing a 2021-based IRF market basket that consists of seven major cost categories and a residual derived from the 2021 Medicare cost reports (CMS Form 2552–10, OMB No. 0938–0050) for freestanding and hospital-based IRFs. The seven major cost categories are Wages and Salaries, Employee Benefits, Contract Labor, Pharmaceuticals, Professional Liability Insurance (PLI), Home Office/Related Organization Contract Labor, and Capital. The residual category reflects all remaining costs not captured in the seven cost categories. The 2021 cost reports include providers whose cost reporting period began on or after October 1, 2020, and before October 1, 2021. As noted previously, the current IRF market basket is based on 2016 Medicare cost reports and, therefore, reflects the 2016 cost structure for IRFs. As described in the FY 2023 IRF PPS final rule (87 FR 47049 through 47050), we received comments on the FY 2023 IRF PPS proposed rule where stakeholders expressed concern that the proposed market basket update was inadequate relative to input price inflation experienced by IRFs, particularly as a result of the COVID–19 PHE. These commenters stated that the PHE, along with inflation, has significantly driven up operating costs. Specifically, some commenters noted changes to the labor markets that led to the use of more contract labor, a trend that we verified in analyzing the Medicare cost reports through 2021. Therefore, we believe it is appropriate to incorporate more recent data to reflect updated cost structures for IRFs and so we are proposing to use 2021 as the base year because we believe that the Medicare cost reports for this year represent the most recent, complete set of Medicare cost report data available

for developing the proposed IRF market basket at the time of this rulemaking. Given the potential impact of the PHE on the Medicare cost report data, we will continue to monitor these data going forward and any changes to the IRF market basket will be proposed in future rulemaking.

Since our goal is to establish cost weights that are reflective of case mix and practice patterns associated with the services IRFs provide to Medicare beneficiaries, as we did for the 2016-based IRF market basket, we are proposing to limit the cost reports used to establish the 2021-based IRF market basket to those from facilities that had a Medicare average length of stay (LOS) that was relatively similar to their facility average LOS. We believe that this requirement eliminates statistical outliers and ensures a more accurate market basket that reflects the costs generally incurred during a Medicare-covered stay. The Medicare average LOS for freestanding IRFs is calculated from data reported on line 14 of Worksheet S–3, part I. The Medicare average LOS for hospital-based IRFs is calculated from data reported on line 17 of Worksheet S–3, part I. We propose to include the cost report data from IRFs with a Medicare average LOS within 15 percent (that is, 15 percent higher or lower) of the facility average LOS to establish the sample of providers used to estimate the 2021-based IRF market basket cost weights. We are proposing to apply this LOS edit to the data for IRFs to exclude providers that serve a population whose LOS would indicate that the patients served are not consistent with a LOS of a typical Medicare patient. We note that this is the same LOS edit that we applied to develop the 2016-based IRF market basket. This process resulted in the exclusion of about nine percent of the freestanding and hospital-based IRF Medicare cost reports. Of those excluded, about 15 percent were freestanding IRFs and 85 percent were hospital-based IRFs. This ratio is relatively consistent with the universe of freestanding and hospital-based IRF cost reports where freestanding IRFs represent about 30 percent of the total.

We then propose to use the cost reports for IRFs that met this LOS edit requirement to calculate the costs for the seven major cost categories (Wages and Salaries, Employee Benefits, Contract Labor, Professional Liability Insurance, Pharmaceuticals, Home Office/Related Organization Contract Labor, and Capital) for the market basket. These are the same categories used for the 2016-based IRF market basket. Also, as described in section

V.C.1.d. of this proposed rule, and as done for the 2016-based IRF market basket, we are also proposing to use the Medicare cost report data to calculate the detailed capital cost weights for the Depreciation, Interest, Lease, and Other Capital-related cost categories. We note that we are proposing to rename the Home Office Contract Labor cost category to the Home Office/Related Organization Contract Labor cost category to be more consistent with the Medicare cost report instructions.

Similar to the 2016-based IRF market basket major cost weights, for the majority of the proposed 2021-based IRF market basket cost weights, we are proposing to divide the 2021 costs for each cost category by the 2021 total Medicare allowable costs (routine, ancillary and capital) that are eligible for reimbursement through the IRF PPS (we note that we use total facility medical care costs as the denominator to derive both the PLI and Home Office/Related Organization Contract Labor cost weights). We next describe our proposed methodology for deriving the cost levels used to derive the proposed 2021-based IRF market basket.

(1) Total Medicare Allowable Costs

For freestanding IRFs, we propose that total Medicare allowable costs would be equal to the sum of total costs for the Medicare allowable cost centers as reported on Worksheet B, part I, column 26, lines 30 through 35, 50 through 76 (excluding 52 and 75), 90 through 91, and 93.

For hospital-based IRFs, we propose that total Medicare allowable costs would be equal to the total costs for the IRF inpatient unit after the allocation of overhead costs (Worksheet B, part I, column 26, line 41) and a proportion of total ancillary costs reported on Worksheet B, part I, column 26, lines 50 through 76 (excluding 52 and 75), 90 through 91, and 93.

We propose to calculate total ancillary costs attributable to the hospital-based IRF by first deriving an “IRF ancillary ratio” for each ancillary cost center. The IRF ancillary ratio is defined as the ratio of IRF Medicare ancillary costs for the cost center (as reported on Worksheet D–3, column 3 for hospital-based IRFs) to total Medicare ancillary costs for the cost center (equal to the sum of Worksheet D–3, column 3 for all relevant PPSs [that is, inpatient prospective payment system (IPPS), IRF, IPF and skilled nursing facility (SNF)]). For example, if hospital-based IRF Medicare physical therapy costs represent about 30 percent of the total Medicare physical therapy costs for the entire facility, then the IRF ancillary

ratio for physical therapy costs would be 30 percent. We believe it is appropriate to use only a portion of the ancillary costs in the market basket cost weight calculations since the hospital-based IRF only utilizes a portion of the facility's ancillary services. We believe the ratio of reported IRF Medicare costs to reported total Medicare costs provides a reasonable estimate of the ancillary services utilized, and costs incurred, by the hospital-based IRF. We propose that this IRF ancillary ratio for each cost center is also used to calculate Wages and Salaries and Capital costs as described below.

Then for each ancillary cost center, we propose to multiply the IRF ancillary ratio for the given cost center by the total facility ancillary costs for that specific cost center (as reported on Worksheet B, part I, column 26) to derive IRF ancillary costs. For example, the 30 percent IRF ancillary ratio for physical therapy cost center would be multiplied by the total ancillary costs for physical therapy (Worksheet B, part I, column 26, line 66). The IRF ancillary costs for each cost center are then added to total costs for the IRF inpatient unit after the allocation of overhead costs (Worksheet B, part I, column 26, line 41) to derive total Medicare allowable costs.

We propose to use these methods to derive levels of total Medicare allowable costs for IRF providers. This is the same methodology used for the 2016-based IRF market basket. We propose that these total Medicare allowable costs for the IRF will be the denominator for the cost weight calculations for the Wages and Salaries, Employee Benefits, Contract Labor, Pharmaceuticals, and Capital cost weights. With this work complete, we then set about deriving cost levels for the seven major cost categories and then derive a residual cost weight reflecting all other costs not classified.

(2) Wages and Salaries Costs

For freestanding IRFs, we are proposing to derive Wages and Salaries costs as the sum of routine inpatient salaries (Worksheet A, column 1, lines 30 through 35), ancillary salaries (Worksheet A, column 1, lines 50 through 76 (excluding 52 and 75), 90 through 91, and 93), and a proportion of overhead (or general service cost centers in the Medicare cost reports) salaries. Since overhead salary costs are attributable to the entire IRF, we only include the proportion attributable to the Medicare allowable cost centers. We are proposing to estimate the proportion of overhead salaries that are attributed to Medicare allowable cost centers by multiplying the ratio of Medicare

allowable area salaries (Worksheet A, column 1, lines 30 through 35, 50 through 76 (excluding 52 and 75), 90 through 91, and 93) to total non-overhead salaries (Worksheet A, column 1, line 200 less Worksheet A, column 1, lines 4 through 18) times total overhead salaries (Worksheet A, column 1, lines 4 through 18). This is a similar methodology as used in the 2016-based IRF market basket.

For hospital-based IRFs, we are proposing to derive Wages and Salaries costs as the sum of the following salaries attributable to the hospital-based IRF: inpatient routine salary costs (Worksheet A, column 1, line 41); overhead salary costs; ancillary salary costs; and a portion of overhead salary costs attributable to the ancillary departments.

(a) Overhead Salary Costs

We are proposing to calculate the portion of overhead salary costs attributable to hospital-based IRFs by first calculating an IRF overhead salary ratio, which is equal to the ratio of total facility overhead salaries (as reported on Worksheet A, column 1, lines 4–18) to total facility noncapital overhead costs (as reported on Worksheet A, column 1 and 2, lines 4–18). We then are proposing to multiply this IRF overhead salary ratio by total noncapital overhead costs (sum of Worksheet B, part I, columns 4 through 18, line 41, less Worksheet B, part II, columns 4 through 18, line 41). This methodology assumes the proportion of total costs related to salaries for the overhead cost center is similar for all inpatient units (that is, acute inpatient or inpatient rehabilitation).

(b) Ancillary Salary Costs

We are proposing to calculate hospital-based IRF ancillary salary costs for a specific cost center (Worksheet A, column 1, lines 50 through 76 (excluding 52 and 75), 90 through 91, and 93) as salary costs from Worksheet A, column 1, multiplied by the IRF ancillary ratio for each cost center as described in section V.C.1.a.(1) of this proposed rule. The sum of these costs represents hospital-based IRF ancillary salary costs.

(c) Overhead Salary Costs for Ancillary Cost Centers

We are proposing to calculate the portion of overhead salaries attributable to each ancillary department (lines 50 through 76 (excluding 52 and 75), 90 through 91, and 93) by first calculating total noncapital overhead costs attributable to each specific ancillary department (sum of Worksheet B, part I,

columns 4–18 less, Worksheet B, part II, column 26). We then identify the portion of these total noncapital overhead costs for each ancillary department that is attributable to the hospital-based IRF by multiplying these costs by the IRF ancillary ratio as described in section V.C.1.a.(1) of this proposed rule. We then sum these estimated IRF Medicare allowable noncapital overhead costs for all ancillary departments (cost centers 50 through 76, 90 through 91, and 93). Finally, we then identify the portion of these IRF Medicare allowable noncapital overhead costs that are attributable to Wages and Salaries by multiplying these costs by the IRF overhead salary ratio as described in section V.C.1.a.(2)(a) of this proposed rule. This is the same methodology used to derive the 2016-based IRF market basket.

(3) Employee Benefits Costs

Effective with the implementation of CMS Form 2552–10, we began collecting Employee Benefits and Contract Labor data on Worksheet S–3, part V.

For the 2021 Medicare cost report data, 54 percent of providers reported Employee Benefits data on Worksheet S–3, part V; particularly, approximately 57 percent of freestanding IRFs and 53 percent of hospital-based IRFs reported Employee Benefits data on Worksheet S–3, part V. For comparison, for 2016, about 45 percent of providers reported Employee Benefits data on Worksheet S–3, part V. Again, we continue to encourage all providers to report these data on the Medicare cost report.

For freestanding IRFs, we are proposing Employee Benefits costs would be equal to the data reported on Worksheet S–3, part V, column 2, line 2. We note that while not required to do so, freestanding IRFs also may report Employee Benefits data on Worksheet S–3, part II, which is applicable to only IPPS providers. Similar to the method for the 2016-based IRF market basket, for those freestanding IRFs that report Worksheet S–3, part II, data, but not Worksheet S–3, part V, we are proposing to use the sum of Worksheet S–3, part II, lines 17, 18, 20, and 22, to derive Employee Benefits costs.

For hospital-based IRFs, we are proposing to calculate total benefit costs as the sum of inpatient unit benefit costs, a portion of ancillary departments benefit costs, and a portion of overhead benefits attributable to both the routine inpatient unit and the ancillary departments. For those hospital-based IRFs that report Worksheet S–3, part V data, we are proposing inpatient unit

benefit costs be equal to Worksheet S–3, part V, column 2, line 4. Given the limited reporting on Worksheet S–3, part V, we are proposing that for those hospital-based IRFs that do not report these data, we calculate inpatient unit benefits costs using a portion of benefits costs reported for Excluded areas on Worksheet S–3, part II. We are proposing to calculate the ratio of inpatient unit salaries (Worksheet A, column 1, line 41) to total excluded area salaries (sum of Worksheet A, column 1, lines 20, 23, 40 through 42, 44, 45, 46, 94, 95, 98 through 101, 105 through 112, 114, 115 through 117, 190 through 194). We then propose to apply this ratio to Excluded area benefits (Worksheet S–3, part II, column 4, line 19) to derive inpatient unit benefits costs for those providers that do not report benefit costs on Worksheet S–3, part V.

We are proposing the ancillary departments benefits and overhead benefits (attributable to both the inpatient unit and ancillary departments) costs are derived by first calculating the sum of hospital-based IRF overhead salaries as described in section V.C.1.a.(2)(a) of this proposed rule, hospital-based IRF ancillary salaries as described in section V.C.1.a.(2)(b) of this proposed rule and hospital-based IRF overhead salaries for ancillary cost centers as described in section V.C.1.a.(2)(c) of this proposed rule. This sum is then multiplied by the ratio of total facility benefits to total facility salaries, where total facility benefits is equal to the sum of Worksheet S–3, part II, column 4, lines 17–25, and total facility salaries is equal to Worksheet S–3, part II, column 4, line 1.

(4) Contract Labor Costs

Contract Labor costs are primarily associated with direct patient care services. Contract labor costs for other services such as accounting, billing, and legal are calculated separately using other government data sources as described in section V.C.1.c. of this proposed rule. To derive contract labor costs using Worksheet S–3, part V, data, for freestanding IRFs, we are proposing Contract Labor costs be equal to Worksheet S–3, part V, column 1, line 2. As we noted for Employee Benefits, freestanding IRFs also may report Contract Labor data on Worksheet S–3, part II, which is applicable to only IPPS providers. For those freestanding IRFs that report Worksheet S–3, part II data, but not Worksheet S–3, part V, we are proposing to use the sum of Worksheet S–3, part II, column 4, lines 11 and 13, to derive Contract Labor costs.

For hospital-based IRFs, we are proposing that Contract Labor costs would be equal to Worksheet S–3, part V, column 1, line 4. For 2021 Medicare cost report data, 30 percent of providers reported Contract Labor data on Worksheet S–3, part V; particularly, approximately 56 percent of freestanding IRFs and 18 percent of hospital-based IRFs reported data on Worksheet S–3, part V. For comparison, for the 2016-based IRF market basket, about 26 percent of providers reported Contract Labor data on Worksheet S–3, part V. We continue to encourage all providers to report these data on the Medicare cost report.

Given the limited reporting on Worksheet S–3, part V, we are proposing that for those hospital-based IRFs that do not report these data, we calculate Contract Labor costs using a portion of contract labor costs reported on Worksheet S–3, part II. We are proposing to calculate the ratio of contract labor costs (Worksheet S–3, part II, column 4, lines 11 and 13) to PPS salaries (Worksheet S–3, part II, column 4, line 1 less the sum of Worksheet S–3, part II, column 4, lines 3, 401, 5, 6, 7, 701, 8, 9, 10 less Worksheet A, column 1, line 20 and 23). We then propose to apply this ratio to total inpatient routine salary costs (Worksheet A, column 1, line 41) to derive contract labor costs for those providers that do not report contract labor costs on Worksheet S–3, part V.

(5) Pharmaceuticals Costs

For freestanding IRFs, we are proposing to calculate pharmaceuticals costs using non-salary costs reported on Worksheet A, column 7, less Worksheet A, column 1, for the pharmacy cost center (line 15) and drugs charged to patients cost center (line 73).

For hospital-based IRFs, we are proposing to calculate pharmaceuticals costs as the sum of a portion of the non-salary pharmacy costs and a portion of the non-salary drugs charged to patient costs reported for the total facility. We propose that non-salary pharmacy costs attributable to the hospital-based IRF would be calculated by multiplying total pharmacy costs attributable to the hospital-based IRF (as reported on Worksheet B, part I, column 15, line 41) by the ratio of total non-salary pharmacy costs (Worksheet A, column 2, line 15) to total pharmacy costs (sum of Worksheet A, columns 1 and 2 for line 15) for the total facility. We propose that non-salary drugs charged to patient costs attributable to the hospital-based IRF would be calculated by multiplying total non-salary drugs charged to patient costs (Worksheet B, part I, column 0,

line 73 plus Worksheet B, part I, column 15, line 73 less Worksheet A, column 1, line 73) for the total facility by the ratio of Medicare drugs charged to patient ancillary costs for the IRF unit (as reported on Worksheet D–3 for hospital-based IRFs, column 3, line 73) to total Medicare drugs charged to patient ancillary costs for the total facility (equal to the sum of Worksheet D–3, column 3, line 73 for all relevant PPS (that is, IPPS, IRF, IPF and SNF).

(6) Professional Liability Insurance Costs

For freestanding and hospital-based IRFs, we are proposing that Professional Liability Insurance (PLI) costs (often referred to as malpractice costs) would be equal to premiums, paid losses and self-insurance costs reported on Worksheet S–2, columns 1 through 3, line 118—the same data used for the 2016-based IRF market basket. For hospital-based IRFs, we are proposing to assume that the PLI weight for the total facility is similar to the hospital-based IRF unit since the only data reported on this worksheet is for the entire facility, as we currently have no means to identify the proportion of total PLI costs that are only attributable to the hospital-based IRF. However, when we derive the cost weight for PLI for both hospital-based and freestanding IRFs, we use the total facility medical care costs as the denominator as opposed to total Medicare allowable costs. For freestanding IRFs and hospital-based IRFs, we are proposing to derive total facility medical care costs as the sum of total costs (Worksheet B, part I, column 26, line 202) less non-reimbursable costs (Worksheet B, part I, column 26, lines 190 through 201).

(7) Home Office/Related Organization Contract Labor Costs

For freestanding and hospital-based IRFs, we are proposing to calculate the home office/related organization contract labor costs using data reported on Worksheet S–3, part II, column 4, lines 1401, 1402, 2550, and 2551. Similar to the PLI costs, these costs are for the entire facility. Therefore, when we derive the cost weight for Home Office/Related Organization Contract Labor costs, we use the total facility medical care costs as the denominator (reflecting the total facility costs less the non-reimbursable costs reported on lines 190 through 201). Our assumption is that the same proportion of expenses are used among each unit of the hospital.

(8) Capital Costs

For freestanding IRFs, we are proposing that capital costs would be equal to Medicare allowable capital costs as reported on Worksheet B, part II, column 26, lines 30 through 35, 50 through 76 (excluding 52 and 75), 90 through 91, and 93.

For hospital-based IRFs, we are proposing that capital costs would be equal to IRF inpatient capital costs (as reported on Worksheet B, part II, column 26, line 41) and a portion of IRF ancillary capital costs. We calculate the portion of ancillary capital costs attributable to the hospital-based IRF for a given cost center by multiplying total facility ancillary capital costs for the specific ancillary cost center (as reported on Worksheet B, part II, column 26) by the IRF ancillary ratio as described in section V.C.1.a.(1) of this proposed rule. For example, if hospital-based IRF Medicare physical therapy costs represent 30 percent of the total Medicare physical therapy costs for the entire facility, then 30 percent of total facility physical therapy capital costs (as reported in Worksheet B, part II, column 26, line 66) would be attributable to the hospital-based IRF.

b. Final Major Cost Category Computation

After we derive costs for each of the major cost categories and total Medicare allowable costs for each provider using the Medicare cost report data as previously described, we propose to address data outliers using the following steps. First, for the Wages and Salaries, Employee Benefits, Contract Labor, Pharmaceuticals, and Capital cost weights, we first divide the costs for each of these five categories by total Medicare allowable costs calculated for the provider to obtain cost weights for the universe of IRF providers. We then propose to trim the data to remove outliers (a standard statistical process) by: (1) requiring that major expenses (such as Wages and Salaries costs) and total Medicare allowable operating costs be greater than zero; and (2) excluding the top and bottom five percent of the

major cost weight (for example, Wages and Salaries costs as a percent of total Medicare allowable operating costs). We note that missing values are assumed to be zero consistent with the methodology for how missing values were treated in the 2016-based IRF market basket. After these outliers have been excluded, we sum the costs for each category across all remaining providers. We then divide this by the sum of total Medicare allowable costs across all remaining providers to obtain a cost weight for the proposed 2021-based IRF market basket for the given category.

The proposed trimming methodology for the Home Office/Related Organization Contract Labor and PLI cost weights is slightly different than the proposed trimming methodology for the other five cost categories as described above. For these cost weights, since we are using total facility medical care costs rather than Medicare allowable costs associated with IRF services, we are proposing to trim the freestanding and hospital-based IRF cost weights separately.

For the PLI cost weight, for each of the providers, we first divide the PLI costs by total facility medical care costs to obtain a PLI cost weight for the universe of IRF providers. We then propose to trim the data to remove outliers by: (1) requiring that PLI costs are greater than zero and are less than total facility medical care costs; and (2) excluding the top and bottom five percent of the major cost weight trimming freestanding and hospital-based providers separately. After removing these outliers, we are left with a trimmed data set for both freestanding and hospital-based providers. We are then proposing to separately sum the costs for each category (freestanding and hospital-based) across all remaining providers. We next divide this by the sum of total facility medical care costs across all remaining providers to obtain both a freestanding cost weight and hospital-based cost weight. Lastly, we are proposing to weight these two cost weights together using the Medicare allowable costs from the sample of

freestanding and hospital-based IRFs that passed the PLI trim (59 percent for hospital-based and 41 percent for freestanding IRFs) to derive a PLI cost weight for the proposed 2021-based IRF market basket.

For the Home Office/Related Organization Contract Labor cost weight, for each of the providers, we first divide the home office/related organization contract labor costs by total facility medical care costs to obtain a Home Office/Related Organization Contract Labor cost weight for the universe of IRF providers. We are then proposing to trim only the top 1 percent of providers to exclude outliers while also allowing providers who have reported zero home office costs to remain in the Home Office/Related Organization Contract Labor cost weight calculations as not all providers will incur home office/related organization contract labor costs. After removing these outliers, we are left with a trimmed data set for both freestanding and hospital-based providers. We are then proposing to separately sum the costs for each category (freestanding and hospital-based) across all remaining providers. We next divide this by the sum of total facility medical care costs across all remaining providers to obtain a freestanding cost weight and hospital-based cost weight. Lastly, we are proposing to weight these two cost weights together using the Medicare allowable costs from the sample of freestanding and hospital-based IRFs that passed the Home Office/Related Organization Contract Labor cost weight trim (68 percent for hospital-based and 32 percent for freestanding IRFs) to derive a Home Office/Related Organization Contract Labor cost weight for the proposed 2021-based IRF market basket.

Finally, we propose to calculate the residual "All Other" cost weight that reflects all remaining costs that are not captured in the seven cost categories listed. See Table 4 for the resulting cost weights for these major cost categories that we obtain from the Medicare cost reports.

TABLE 4—MAJOR COST CATEGORIES AS DERIVED FROM MEDICARE COST REPORTS

Major cost categories	Proposed 2021-based IRF market basket (percent)	2016-based IRF market basket (percent)
Wages and Salaries	46.6	47.1
Employee Benefits	11.6	11.3
Contract Labor	2.0	1.0
Professional Liability Insurance (Malpractice)	0.8	0.7
Pharmaceuticals	4.7	5.1
Home Office/Related Organization Contract Labor	5.4	3.7
Capital	8.6	9.0
All Other	20.4	22.2

* Total may not sum to 100 due to rounding.

As we did for the 2016-based IRF market basket, we are proposing to allocate the Contract Labor cost weight to the Wages and Salaries and Employee Benefits cost weights based on their relative proportions under the assumption that contract labor costs are comprised of both wages and salaries and employee benefits. The Contract Labor allocation proportion for Wages

and Salaries is equal to the Wages and Salaries cost weight as a percent of the sum of the Wages and Salaries cost weight and the Employee Benefits cost weight. For this proposed rule, this rounded percentage is 80 percent; therefore, we are proposing to allocate 80 percent of the Contract Labor cost weight to the Wages and Salaries cost weight and 20 percent to the Employee

Benefits cost weight. This allocation was 81/19 in the 2016-based IRF market basket (84 FR 39076). Table 5 shows the Wages and Salaries and Employee Benefit cost weights after Contract Labor cost weight allocation for both the proposed 2021-based IRF market basket and 2016-based IRF market basket.

TABLE 5—WAGES AND SALARIES AND EMPLOYEE BENEFITS COST WEIGHTS AFTER CONTRACT LABOR ALLOCATION

Major cost categories	Proposed 2021-based IRF market basket	2016-based IRF market basket
Wages and Salaries	48.2	47.9
Employee Benefits	11.9	11.4

c. Derivation of the Detailed Operating Cost Weights

To further divide the “All Other” residual cost weight estimated from the 2021 Medicare cost report data into more detailed cost categories, we propose to use the 2012 Benchmark Input-Output (I-O) “Use Tables/Before Redefinitions/Purchaser Value” for North American Industry Classification System (NAICS) 622000, Hospitals, published by the Bureau of Economic Analysis (BEA). This data is publicly available at http://www.bea.gov/industry/io_annual.htm. For the 2016-based IRF market basket, we also used the 2012 Benchmark I-O data, the most recent data available at the time (84 FR 39076).

The BEA Benchmark I-O data are scheduled for publication every 5 years with the most recent data available for 2012. The 2012 Benchmark I-O data are derived from the 2012 Economic Census and are the building blocks for BEA’s economic accounts. Thus, they represent the most comprehensive and complete set of data on the economic processes or mechanisms by which

output is produced and distributed.¹⁶ BEA also produces Annual I-O estimates; however, while based on a similar methodology, these estimates reflect less comprehensive and less detailed data sources and are subject to revision when benchmark data becomes available. Instead of using the less detailed Annual I-O data, we propose to inflate the 2012 Benchmark I-O data forward to 2021 by applying the annual price changes from the respective price proxies to the appropriate market basket cost categories that are obtained from the 2012 Benchmark I-O data. We repeat this practice for each year. We then propose to calculate the cost shares that each cost category represents of the inflated 2012 data. These resulting 2021 cost shares are applied to the All Other residual cost weight to obtain the detailed cost weights for the proposed 2021-based IRF market basket. For example, the cost for Food: Direct Purchases represents 5.0 percent of the sum of the “All Other” 2012 Benchmark I-O Hospital Expenditures inflated to

¹⁶ http://www.bea.gov/papers/pdf/IOmanual_092906.pdf.

2021; therefore, the Food: Direct Purchases cost weight represents 5.0 percent of the 2021-based IRF market basket’s “All Other” cost category (20.4 percent), yielding a “final” Food: Direct Purchases cost weight of 1.0 percent in the proposed 2021-based IRF market basket ($0.05 \times 20.4 \text{ percent} = 1.0 \text{ percent}$).

Using this methodology, we propose to derive seventeen detailed IRF market basket cost category weights from the proposed 2021-based IRF market basket residual cost weight (20.4 percent). These categories are: (1) Electricity and Other Non-Fuel Utilities, (2) Fuel: Oil and Gas (3) Food: Direct Purchases, (4) Food: Contract Services, (5) Chemicals, (6) Medical Instruments, (7) Rubber and Plastics, (8) Paper and Printing Products, (9) Miscellaneous Products, (10) Professional Fees: Labor-related, (11) Administrative and Facilities Support Services, (12) Installation, Maintenance, and Repair Services, (13) All Other Labor-related Services, (14) Professional Fees: Nonlabor-related, (15) Financial Services, (16) Telephone Services, and (17) All Other Nonlabor-related Services.

d. Derivation of the Detailed Capital Cost Weights

As described in section V.C.1.b. of this proposed rule, we are proposing a Capital-Related cost weight of 8.6 percent as obtained from the 2021 Medicare cost reports for freestanding and hospital-based IRF providers. We are proposing to then separate this total Capital-Related cost weight into more detailed cost categories.

Using 2021 Medicare cost reports, we are able to group Capital-Related costs into the following categories: Depreciation, Interest, Lease, and Other Capital-Related costs. For each of these categories, we are proposing to determine separately for hospital-based IRFs and freestanding IRFs what proportion of total capital-related costs the category represents.

For freestanding IRFs, using Medicare cost report data on Worksheet A–7 part III, we are proposing to derive the proportions for Depreciation (column 9), Interest (column 11), Lease (column 10), and Other Capital-related costs (column 12 through 14), which is similar to the methodology used for the 2016-based IRF market basket.

For hospital-based IRFs, data for these four categories are not reported separately for the hospital-based IRF; therefore, we are proposing to derive these proportions using data reported on Worksheet A–7 for the total facility. We are assuming the cost shares for the overall hospital are representative for the hospital-based IRF unit. For example, if depreciation costs make up 60 percent of total capital costs for the entire facility, we believe it is reasonable to assume that the hospital-based IRF would also have a 60 percent proportion because it is a unit contained within the total facility. This is the same methodology used for the 2016-based IRF market basket (84 FR 39077).

To combine each detailed capital cost weight for freestanding and hospital-based IRFs into a single capital cost weight for the proposed 2021-based IRF market basket, we are proposing to weight together the shares for each of the categories (Depreciation, Interest, Lease, and Other Capital-related costs) based on the share of total capital costs each provider type represents of the total capital costs for all IRFs for 2021. Applying this methodology results in proportions of total capital-related costs for Depreciation, Interest, Lease and Other Capital-related costs that are representative of the universe of IRF providers. This is the same methodology used for the 2016-based IRF market basket (84 FR 39077).

Lease costs are unique in that they are not broken out as a separate cost category in the proposed 2021-based IRF market basket. Rather, we are proposing to proportionally distribute these costs among the cost categories of Depreciation, Interest, and Other Capital-Related costs, reflecting the assumption that the underlying cost structure of leases is similar to that of capital-related costs in general. As was done under the 2016-based IRF market basket, we are proposing to assume that 10 percent of the lease costs as a proportion of total capital-related costs represents overhead and assign those costs to the Other Capital-Related cost category accordingly. We propose to distribute the remaining lease costs proportionally across the three cost categories (Depreciation, Interest, and Other Capital-Related) based on the proportion that these categories comprise of the sum of the Depreciation, Interest, and Other Capital-related cost categories (excluding lease expenses). This would result in three primary capital-related cost categories in the proposed 2021-based IRF market basket: Depreciation, Interest, and Other Capital-Related costs. This is the same methodology used for the 2016-based IRF market basket (84 FR 39077). The allocation of these lease expenses is shown in Table 6.

Finally, we are proposing to further divide the Depreciation and Interest cost categories. We are proposing to separate Depreciation into the following two categories: (1) Building and Fixed Equipment and (2) Movable Equipment. We are proposing to separate Interest into the following two categories: (1) Government/Nonprofit and (2) For-profit.

To disaggregate the Depreciation cost weight, we need to determine the percent of total Depreciation costs for IRFs that is attributable to Building and Fixed Equipment, which we hereafter refer to as the “fixed percentage.” For the proposed 2021-based IRF market basket, we are proposing to use slightly different methods to obtain the fixed percentages for hospital-based IRFs compared to freestanding IRFs.

For freestanding IRFs, we are proposing to use depreciation data from Worksheet A–7 of the 2021 Medicare cost reports. However, for hospital-based IRFs, we determined that the fixed percentage for the entire facility may not be representative of the hospital-based IRF unit due to the entire facility likely employing more sophisticated movable assets that are not utilized by the hospital-based IRF.

Therefore, for hospital-based IRFs, we are proposing to calculate a fixed percentage using: (1) building and fixture capital costs allocated to the hospital-based IRF unit as reported on Worksheet B, part I, column 1, line 41, and (2) building and fixture capital costs for the top five ancillary cost centers utilized by hospital-based IRFs accounting for 78 percent of hospital-based IRF ancillary total costs: Physical Therapy (Worksheet B, part I, column 1, line 66), Drugs Charged to Patients (Worksheet B, part I, column 1, line 73), Occupational Therapy (Worksheet B, part I, column 1, line 67), Laboratory (Worksheet B, part I, column 1, line 60) and Clinic (Worksheet B, part I, column 1, line 90). We propose to weight these two fixed percentages (inpatient and ancillary) using the proportion that each capital cost type represents of total capital costs in the proposed 2021-based IRF market basket. We are proposing to then weight the fixed percentages for hospital-based and freestanding IRFs together using the proportion of total capital costs each provider type represents. For both freestanding and hospital-based IRFs, this is the same methodology used for the 2016-based IRF market basket (84 FR 39077).

To disaggregate the Interest cost weight, we determined the percent of total interest costs for IRFs that are attributable to government and nonprofit facilities, which is hereafter referred to as the “nonprofit percentage,” as price pressures associated with these types of interest costs tend to differ from those for for-profit facilities. For the 2021-based IRF market basket, we are proposing to use interest costs data from Worksheet A–7 of the 2021 Medicare cost reports for both freestanding and hospital-based IRFs. We are proposing to determine the percent of total interest costs that are attributed to government and nonprofit IRFs separately for hospital-based and freestanding IRFs. We then are proposing to weight the nonprofit percentages for hospital-based and freestanding IRFs together using the proportion of total capital costs that each provider type represents.

Table 6 provides the proposed detailed capital cost share composition estimated from the 2021 IRF Medicare cost reports. These detailed capital cost share composition percentages are applied to the total Capital-Related cost weight of 8.6 percent calculated using the methodology described in section V.C.1.a.(8) of this proposed rule.

TABLE 6—CAPITAL COST SHARE COMPOSITION FOR THE PROPOSED 2021-BASED IRF MARKET BASKET

	Capital cost share composition before lease expense allocation (percent)	Capital cost share composition after lease expense allocation (percent)
Depreciation	48	70
Building and Fixed Equipment	30	44
Movable Equipment	18	26
Interest	10	14
Government/Nonprofit	5	7
For Profit	5	7
Lease	34	.....
Other Capital-related costs	8	16

* Detail may not add to total due to rounding.

e. Proposed 2021-Based IRF Market
Basket Cost Categories and Weights

Table 7 compares the cost categories
and weights for the proposed 2021-

based IRF market basket compared to
the 2016-based IRF market basket.

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TABLE 7: Proposed 2021-based IRF Market Basket Cost Weights Compared to 2016-based IRF Market Basket Cost Weights

Cost Category	Proposed 2021-based IRF Market Basket Cost Weight	2016-based IRF Market Basket Cost Weight
Total	100.0	100.0
Compensation	60.1	59.4
Wages and Salaries	48.2	47.9
Employee Benefits	11.9	11.4
Utilities	1.4	1.4
Electricity and Other Non-Fuel Utilities	0.9	1.0
Fuel: Oil and Gas	0.5	0.4
Professional Liability Insurance	0.8	0.7
All Other Products and Services	29.1	29.5
All Other Products	11.4	12.5
Pharmaceuticals	4.7	5.1
Food: Direct Purchases	1.0	1.1
Food: Contract Services	1.2	1.2
Chemicals	0.4	0.4
Medical Instruments	2.5	2.9
Rubber and Plastics	0.4	0.4
Paper and Printing Products	0.6	0.6
Miscellaneous Products	0.8	0.8
All Other Services	17.7	17.0
Labor-Related Services	9.5	9.2
Professional Fees: Labor-related	5.6	5.0
Administrative and Facilities Support Services	0.7	0.7
Installation, Maintenance, and Repair Services	1.5	1.6
All Other: Labor-related Services	1.7	1.8
Nonlabor-Related Services	8.2	7.9
Professional Fees: Nonlabor-related	5.9	5.4
Financial Services	0.9	0.9
Telephone Services	0.3	0.3
All Other: Nonlabor-related Services	1.1	1.3
Capital-Related Costs	8.6	9.0
Depreciation	6.0	6.5
Building and Fixed Equipment	3.8	4.1
Movable Equipment	2.3	2.5
Interest Costs	1.2	1.5
Government/Nonprofit	0.6	0.9
For Profit	0.6	0.6
Other Capital-Related Costs	1.3	1.0

*Detail may not add to total due to rounding.

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2. Selection of Price Proxies

After developing the cost weights for the proposed 2021-based IRF market basket, we select the most appropriate wage and price proxies currently available to represent the rate of price change for each expenditure category. For the majority of the cost weights, we base the price proxies on U.S. Bureau of Labor Statistics (BLS) data and group them into one of the following BLS categories:

- *Employment Cost Indexes.* Employment Cost Indexes (ECIs) measure the rate of change in employment wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. ECIs are superior to Average Hourly Earnings (AHE) as price proxies for input price indexes because they are not affected by shifts in occupation or industry mix, and because they measure pure price change and are available by both occupational group and by industry. The industry ECIs are based on the NAICS and the occupational ECIs are based on the Standard Occupational Classification System (SOC).

- *Producer Price Indexes.* Producer Price Indexes (PPIs) measure the average change over time in the selling prices received by domestic producers for their output. The prices included in the PPI are from the first commercial transaction for many products and some services (<https://www.bls.gov/ppi/>).

- *Consumer Price Indexes.* Consumer Price Indexes (CPIs) measure the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services (<https://www.bls.gov/cpi/>). CPIs are only used when the purchases are similar to those of retail consumers rather than purchases at the producer level, or if no appropriate PPIs are available.

We evaluate the price proxies using the criteria of reliability, timeliness, availability, and relevance:

- *Reliability.* Reliability indicates that the index is based on valid statistical methods and has low sampling variability. Widely accepted statistical methods ensure that the data were collected and aggregated in a way that can be replicated. Low sampling variability is desirable because it indicates that the sample reflects the typical members of the population. (Sampling variability is variation that occurs by chance because only a sample was surveyed rather than the entire population.)

- *Timeliness.* Timeliness implies that the proxy is published regularly, preferably at least once a quarter. The market baskets are updated quarterly, and therefore, it is important for the underlying price proxies to be up-to-date, reflecting the most recent data available. We believe that using proxies that are published regularly (at least quarterly, whenever possible) helps to ensure that we are using the most recent data available to update the market basket. We strive to use publications that are disseminated frequently, because we believe that this is an optimal way to stay abreast of the most current data available.

- *Availability.* Availability means that the proxy is publicly available. We prefer that our proxies are publicly available because this will help ensure that our market basket updates are as transparent to the public as possible. In addition, this enables the public to be able to obtain the price proxy data on a regular basis.

- *Relevance.* Relevance means that the proxy is applicable and representative of the cost category weight to which it is applied. The CPIs, PPIs, and ECIs that we have selected to propose in this regulation meet these criteria. Therefore, we believe that they continue to be the best measure of price changes for the cost categories to which they would be applied.

Table 11 lists all price proxies that we propose to use for the proposed 2021-based IRF market basket. Below is a detailed explanation of the price proxies we are proposing for each cost category weight.

a. Price Proxies for the Operating Portion of the Proposed 2021-Based IRF Market Basket

(1) Wages and Salaries

We are proposing to continue to use the ECI for Wages and Salaries for All Civilian workers in Hospitals (BLS series code CIU1026220000000I) to measure the wage rate growth of this cost category. This is the same price proxy used in the 2016-based IRF market basket (84 FR 39080).

(2) Benefits

We are proposing to continue to use the ECI for Total Benefits for All Civilian workers in Hospitals to measure price growth of this category. This ECI is calculated using the ECI for Total Compensation for All Civilian workers in Hospitals (BLS series code CIU1016220000000I) and the relative importance of wages and salaries within total compensation. This is the same price proxy used in the 2016-based IRF market basket (84 FR 39080).

(3) Electricity and Other Non-Fuel Utilities

We are proposing to continue to use the PPI Commodity Index for Commercial Electric Power (BLS series code WPU0542) to measure the price growth of this cost category (which we are proposing to rename from Electricity to Electricity and Other Non-Fuel Utilities). This is the same price proxy used in the 2016-based IRF market basket (84 FR 39080).

(4) Fuel: Oil and Gas

Similar to the 2016-based IRF market basket, for the 2021-based IRF market basket, we are proposing to use a blend of the PPI for Petroleum Refineries and the PPI Commodity for Natural Gas. Our analysis of the Bureau of Economic Analysis' 2012 Benchmark Input-Output data (use table before redefinitions, purchaser's value for NAICS 622000 [Hospitals]), shows that Petroleum Refineries expenses account for approximately 90 percent and Natural Gas expenses account for approximately 10 percent of Hospitals' (NAICS 622000) total Fuel: Oil and Gas expenses. Therefore, we propose to use a blend of 90 percent of the PPI for Petroleum Refineries (BLS series code PCU324110324110) and 10 percent of the PPI Commodity Index for Natural Gas (BLS series code WPU0531) as the price proxy for this cost category. This is the same blend that was used for the 2016-based IRF market basket (84 FR 39080).

(5) Professional Liability Insurance

We are proposing to continue to use the CMS Hospital Professional Liability Index to measure changes in PLI premiums. To generate this index, we collect commercial insurance premiums for a fixed level of coverage while holding non-price factors constant (such as a change in the level of coverage). This is the same proxy used in the 2016-based IRF market basket (84 FR 39080).

(6) Pharmaceuticals

We are proposing to continue to use the PPI for Pharmaceuticals for Human Use, Prescription (BLS series code WPUS107003) to measure the price growth of this cost category. This is the same proxy used in the 2016-based IRF market basket (84 FR 39080).

(7) Food: Direct Purchases

We are proposing to continue to use the PPI for Processed Foods and Feeds (BLS series code WPU02) to measure the price growth of this cost category. This is the same proxy used in the 2016-based IRF market basket (84 FR 39080).

(8) Food: Contract Purchases

We are proposing to continue to use the CPI for Food Away From Home (BLS series code CUUR0000SEFV) to measure the price growth of this cost category. This is the same proxy used in the 2016-based IRF market basket (84 FR 39080).

(9) Chemicals

Similar to the 2016-based IRF market basket, we are proposing to use a four-part blended PPI as the proxy for the

chemical cost category in the proposed 2021-based IRF market basket. The proposed blend is composed of the PPI for Industrial Gas Manufacturing, Primary Products (BLS series code PCU325120325120P), the PPI for Other Basic Inorganic Chemical Manufacturing (BLS series code PCU32518–32518–), the PPI for Other Basic Organic Chemical Manufacturing (BLS series code PCU32519–32519–), and the PPI for Other Miscellaneous Chemical Product Manufacturing (BLS

series code PCU325998325998). For the proposed 2021-based IRF market basket, we are proposing to derive the weights for the PPIs using the 2012 Benchmark I–O data.

Table 8 shows the weights for each of the four PPIs used to create the proposed blended Chemical proxy for the proposed 2021 IRF market basket. This is the same blend that was used for the 2016-based IRF market basket (84 FR 39080).

TABLE 8—BLENDED CHEMICAL PPI WEIGHTS

Name	Proposed 2021-based IRF weights (percent)	NAICS
PPI for Industrial Gas Manufacturing	19	325120
PPI for Other Basic Inorganic Chemical Manufacturing	13	325180
PPI for Other Basic Organic Chemical Manufacturing	60	325190
PPI for Other Miscellaneous Chemical Product Manufacturing	8	325998

(10) Medical Instruments

We are proposing to use a blended price proxy for the Medical Instruments category, as shown in Table 9. The 2012 Benchmark I–O data shows the majority of medical instruments and supply costs are for NAICS 339112—Surgical and medical instrument manufacturing costs (approximately 56 percent) and NAICS 339113—Surgical appliance and supplies manufacturing costs (approximately 43 percent). Therefore,

we are proposing to use a blend of these two price proxies. To proxy the price changes associated with NAICS 339112, we are proposing using the PPI for Surgical and medical instruments (BLS series code WPU1562). This is the same price proxy we used in the 2016-based IRF market basket. To proxy the price changes associated with NAICS 339113, we are proposing to use a 50/50 blend of the PPI for Medical and surgical appliances and supplies (BLS series code WPU1563) and the PPI for

Miscellaneous products, Personal safety equipment and clothing (BLS series code WPU1571). We are proposing to include the latter price proxy as it would reflect personal protective equipment including but not limited to face shields and protective clothing. The 2012 Benchmark I–O data does not provide specific expenses for these products; however, we recognize that this category reflects costs faced by IRFs.

TABLE 9—BLENDED MEDICAL INSTRUMENTS PPI WEIGHTS

Name	Proposed 2021-based IRF weights (percent)	NAICS
PPI—Commodity—Surgical and medical instruments	56	339112
PPI—Commodity—Medical and surgical appliances and supplies	22	339113
PPI—Commodity—Miscellaneous products—Personal safety equipment and clothing	22	

(11) Rubber and Plastics

We are proposing to continue to use the PPI for Rubber and Plastic Products (BLS series code WPU07) to measure price growth of this cost category. This is the same proxy used in the 2016-based IRF market basket (84 FR 39081).

(12) Paper and Printing Products

We are proposing to continue to use the PPI for Converted Paper and Paperboard Products (BLS series code WPU0915) to measure the price growth of this cost category. This is the same proxy used in the 2016-based IRF market basket (84 FR 39081).

(13) Miscellaneous Products

We are proposing to continue to use the PPI for Finished Goods Less Food and Energy (BLS series code WPUFD4131) to measure the price growth of this cost category. This is the same proxy used in the 2016-based IRF market basket (84 FR 39081).

(14) Professional Fees: Labor-Related

We are proposing to continue to use the ECI for Total Compensation for Private Industry workers in Professional and Related (BLS series code CIU2010000120000I) to measure the price growth of this category. This is the

same proxy used in the 2016-based IRF market basket (84 FR 39081).

(15) Administrative and Facilities Support Services

We are proposing to continue to use the ECI for Total Compensation for Private Industry workers in Office and Administrative Support (BLS series code CIU2010000220000I) to measure the price growth of this category. This is the same proxy used in the 2016-based IRF market basket (84 FR 39081).

(16) Installation, Maintenance, and Repair Services

We are proposing to continue to use the ECI for Total Compensation for

Civilian workers in Installation, Maintenance, and Repair (BLS series code CIU1010000430000I) to measure the price growth of this cost category. This is the same proxy used in the 2016-based IRF market basket (84 FR 39081).

(17) All Other: Labor-Related Services

We are proposing to continue to use the ECI for Total Compensation for Private Industry workers in Service Occupations (BLS series code CIU2010000300000I) to measure the price growth of this cost category. This is the same proxy used in the 2016-based IRF market basket (84 FR 39081).

(18) Professional Fees: Nonlabor-Related

We are proposing to continue to use the ECI for Total Compensation for Private Industry workers in Professional and Related (BLS series code CIU2010000120000I) to measure the price growth of this category. This is the same proxy used in the 2016-based IRF market basket (84 FR 39081).

(19) Financial Services

We are proposing to continue to use the ECI for Total Compensation for Private Industry workers in Financial Activities (BLS series code CIU201520A000000I) to measure the price growth of this cost category. This is the same proxy used in the 2016-based IRF market basket (84 FR 39081).

(20) Telephone Services

We are proposing to continue to use the CPI for Telephone Services (BLS series code CUUR0000SEED) to measure the price growth of this cost category. This is the same proxy used in the 2016-based IRF market basket (84 FR 39081).

(21) All Other: Nonlabor-Related Services

We are proposing to continue to use the CPI for All Items Less Food and Energy (BLS series code CUUR0000SA0L1E) to measure the price growth of this cost category. This is the same proxy used in the 2016-based IRF market basket (84 FR 39081).

b. Price Proxies for the Capital Portion of the Proposed 2021-Based IRF Market Basket

(1) Capital Price Proxies Prior to Vintage Weighting

We are proposing to continue to use the same price proxies for the capital-related cost categories in the proposed 2021-based IRF market basket as were used in the 2016-based IRF market basket, which are provided in Table 11 and described below. Specifically, we are proposing to proxy:

- Depreciation: Building and Fixed Equipment cost category by BEA's Chained Price Index for Nonresidential Construction for Hospitals and Special Care Facilities (BEA Table 5.4.4. Price Indexes for Private Fixed Investment in Structures by Type).

- Depreciation: Movable Equipment cost category by the PPI for Machinery and Equipment (BLS series code WPU11).

- Nonprofit Interest cost category by the average yield on domestic municipal bonds (Bond Buyer 20-bond index).

- For-profit Interest cost category by the iBoxx AAA Corporate Bond Yield index.

- Other Capital-Related cost category by the CPI-U for Rent of Primary Residence (BLS series code CUUS0000SEHA).

We believe these are the most appropriate proxies for IRF capital-related costs that meet our selection criteria of relevance, timeliness, availability, and reliability. We are also proposing to continue to vintage weight the capital price proxies for Depreciation and Interest to capture the long-term consumption of capital. This vintage weighting method is similar to the method used for the 2016-based IRF market basket (84 FR 39082) and is described below.

(2) Vintage Weights for Price Proxies

Because capital is acquired and paid for over time, capital-related expenses in any given year are determined by both past and present purchases of physical and financial capital. The vintage-weighted capital-related portion of the proposed 2021-based IRF market basket is intended to capture the long-term consumption of capital, using vintage weights for depreciation (physical capital) and interest (financial capital). These vintage weights reflect the proportion of capital-related purchases attributable to each year of the expected life of building and fixed equipment, movable equipment, and interest. We are proposing to use vintage weights to compute vintage-weighted price changes associated with depreciation and interest expenses.

Capital-related costs are inherently complicated and are determined by complex capital-related purchasing decisions, over time, based on such factors as interest rates and debt financing. In addition, capital is depreciated over time instead of being consumed in the same period it is purchased. By accounting for the vintage nature of capital, we are able to provide an accurate and stable annual measure of price changes. Annual non-vintage price changes for capital are

unstable due to the volatility of interest rate changes, and therefore, do not reflect the actual annual price changes for IRF capital-related costs. The capital-related component of the proposed 2021-based IRF market basket reflects the underlying stability of the capital-related acquisition process.

The methodology used to calculate the vintage weights for the proposed 2021-based IRF market basket is the same as that used for the 2016-based IRF market basket (84 FR 39082 through 39083) with the only difference being the inclusion of more recent data. To calculate the vintage weights for depreciation and interest expenses, we first need a time series of capital-related purchases for building and fixed equipment and movable equipment. We found no single source that provides an appropriate time series of capital-related purchases by hospitals for all of the above components of capital purchases. The early Medicare cost reports did not have sufficient capital-related data to meet this need. Data we obtained from the American Hospital Association (AHA) do not include annual capital-related purchases. However, we are able to obtain data on total expenses back to 1963 from the AHA. Consequently, we are proposing to use data from the AHA Panel Survey and the AHA Annual Survey to obtain a time series of total expenses for hospitals. We are then proposing to use data from the AHA Panel Survey supplemented with the ratio of depreciation to total hospital expenses obtained from the Medicare cost reports to derive a trend of annual depreciation expenses for 1963 through 2020, which is the latest year of AHA data available. We propose to separate these depreciation expenses into annual amounts of building and fixed equipment depreciation and movable equipment depreciation as determined earlier. From these annual depreciation amounts, we derive annual end-of-year book values for building and fixed equipment and movable equipment using the expected life for each type of asset category. While data is not available that is specific to IRFs, we believe this information for all hospitals serves as a reasonable alternative for the pattern of depreciation for IRFs.

To continue to calculate the vintage weights for depreciation and interest expenses, we also need to account for the expected lives for Building and Fixed Equipment, Movable Equipment, and Interest for the proposed 2021-based IRF market basket. We are proposing to calculate the expected lives using Medicare cost report data from Worksheet A-7 part III for freestanding and hospital-based IRFs.

The expected life of any asset can be determined by dividing the value of the asset (excluding fully depreciated assets) by its current year depreciation amount. This calculation yields the estimated expected life of an asset if the rates of depreciation were to continue at current year levels, assuming straight-line depreciation. We are proposing to determine the expected life of building and fixed equipment separately for hospital-based IRFs and freestanding IRFs, and then weight these expected lives using the percent of total capital costs each provider type represents. We are proposing to apply a similar method for movable equipment. Using these proposed methods, we determined the average expected life of building and fixed equipment to be equal to 25 years, and the average expected life of movable equipment to be equal to 12 years. For the expected life of interest, we believe vintage weights for interest should represent the average expected life of building and fixed equipment because, based on previous research described in the FY 1997 IPPS final rule (61 FR 46198), the expected life of hospital debt instruments and the expected life of buildings and fixed equipment are similar. We note that for the 2016-based IRF market basket, the expected life of building and fixed equipment is 22 years, and the expected life of movable equipment is 11 years (84 FR 39082)

using the 2016 Medicare cost report data for freestanding and hospital-based IRFs.

Multiplying these expected lives by the annual depreciation amounts results in annual year-end asset costs for building and fixed equipment and movable equipment. We then calculate a time series, beginning in 1964, of annual capital purchases by subtracting the previous year's asset costs from the current year's asset costs.

For the building and fixed equipment and movable equipment vintage weights, we are proposing to use the real annual capital-related purchase amounts for each asset type to capture the actual amount of the physical acquisition, net of the effect of price inflation. These real annual capital-related purchase amounts are produced by deflating the nominal annual purchase amount by the associated price proxy as provided earlier in this proposed rule. For the interest vintage weights, we are proposing to use the total nominal annual capital-related purchase amounts to capture the value of the debt instrument (including, but not limited to, mortgages and bonds). Using these capital-related purchase time series specific to each asset type, we are proposing to calculate the vintage weights for building and fixed equipment, for movable equipment, and for interest.

The vintage weights for each asset type are deemed to represent the average purchase pattern of the asset over its expected life (in the case of building and fixed equipment and interest, 25 years, and in the case of movable equipment, 12 years). For each asset type, we used the time series of annual capital-related purchase amounts available from 2020 back to 1964. These data allow us to derive thirty-three 25-year periods of capital-related purchases for building and fixed equipment and interest, and forty-six 12-year periods of capital-related purchases for movable equipment. For each 25-year period for building and fixed equipment and interest, or 12-year period for movable equipment, we calculate annual vintage weights by dividing the capital-related purchase amount in any given year by the total amount of purchases over the entire 25-year or 12-year period. This calculation is done for each year in the 25-year or 12-year period and for each of the periods for which we have data. We then calculate the average vintage weight for a given year of the expected life by taking the average of these vintage weights across the multiple periods of data. The vintage weights for the capital-related portion of the proposed 2021-based IRF market basket and the 2016-based IRF market basket are presented in Table 10.

TABLE 10: Proposed 2021-Based IRF Market Basket and 2016-based IRF Market Basket Vintage Weights for Capital-Related Price Proxies

Year*	Building and Fixed Equipment		Movable Equipment		Interest	
	2021-based 25 years	2016-based 22 years	2021 based 12 years	2016-based 11 years	2021 based 25 years	2016 based 22 years
1	0.031	0.035	0.066	0.071	0.018	0.021
2	0.032	0.036	0.068	0.075	0.019	0.023
3	0.033	0.038	0.071	0.080	0.021	0.025
4	0.034	0.038	0.076	0.085	0.023	0.026
5	0.035	0.040	0.080	0.087	0.024	0.029
6	0.036	0.042	0.082	0.091	0.026	0.031
7	0.035	0.042	0.084	0.095	0.026	0.033
8	0.036	0.041	0.088	0.099	0.028	0.033
9	0.036	0.042	0.091	0.102	0.029	0.036
10	0.039	0.043	0.094	0.105	0.033	0.038
11	0.040	0.046	0.098	0.110	0.035	0.042
12	0.040	0.047	0.101	--	0.037	0.045
13	0.042	0.048	--	--	0.040	0.048
14	0.042	0.049	--	--	0.042	0.052
15	0.042	0.050	--	--	0.044	0.055
16	0.043	0.050	--	--	0.046	0.057
17	0.044	0.051	--	--	0.049	0.060
18	0.045	0.053	--	--	0.052	0.065
19	0.045	0.053	--	--	0.054	0.068
20	0.045	0.053	--	--	0.055	0.069
21	0.045	0.052	--	--	0.057	0.070
22	0.045	0.052	--	--	0.058	0.072
23	0.045	--	--	--	0.060	
24	0.045	--	--	--	0.061	
25	0.044	--	--	--	0.062	
Total	1.000	1.000	1.000	1.000	1.000	1.000

Note: Numbers may not add to total due to rounding.

* Year 25 is applied to the most recent data point when creating the vintage-weighted price proxies.

The process of creating vintage-weighted price proxies requires applying the vintage weights to the price proxy index where the last applied vintage weight in Table 10 is applied to the most recent data point. We have provided on the CMS website an example of how the vintage weighting price proxies are calculated, using

example vintage weights and example price indices. The example can be found at <http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketResearch.html> in the zip file titled "Weight Calculations as described in the IPPS FY 2010 Proposed Rule."

c. Summary of Price Proxies of the Proposed 2021-Based IRF Market Basket

Table 11 shows both the operating and capital price proxies for the proposed 2021-based IRF market base.

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TABLE 11: Proposed Price Proxies and Cost Share Weights for use in the 2021-based IRF Market Basket

Cost Description	Price Proxies	Weight
Total		100.0
Compensation		60.1
Wages and Salaries	ECI for Wages and Salaries for All Civilian workers in Hospitals	48.2
Employee Benefits	ECI for Total Benefits for All Civilian workers in Hospitals	11.9
Utilities		1.4
Electricity and Other Non-Fuel Utilities	PPI for Commercial Electric Power	0.9
Fuel: Oil and Gas	Blend of PPIs*	0.5
Professional Liability Insurance		0.8
Malpractice	CMS Hospital Professional Liability Insurance Premium Index	0.8
All Other Products and Services		29.1
All Other Products		11.4
Pharmaceuticals	PPI for Pharmaceuticals for Human Use, Prescription	4.7
Food: Direct Purchases	PPI for Processed Foods and Feeds	1.0
Food: Contract Services	CPI-U for Food Away From Home	1.2
Chemicals	Blend of PPIs*	0.4
Medical Instruments	Blend of PPIs*	2.5
Rubber and Plastics	PPI for Rubber and Plastic Products	0.4
Paper and Printing Products	PPI for Converted Paper and Paperboard Products	0.6
Miscellaneous Products	PPI for Finished Goods Less Food and Energy	0.8
All Other Services		17.7
Labor-Related Services		9.5
Professional Fees: Labor-related	ECI for Total compensation for Private industry workers in Professional and related	5.6
Administrative and Facilities Support Services	ECI for Total compensation for Private industry workers in Office and administrative support	0.7
Installation, Maintenance & Repair Services	ECI for Total compensation for Civilian workers in Installation, maintenance, and repair	1.5
All Other: Labor-related Services	ECI for Total compensation for Private industry workers in Service occupations	1.7
Nonlabor-Related Services		8.2
Professional Fees: Nonlabor-related	ECI for Total compensation for Private industry workers in Professional and related	5.9
Financial services	ECI for Total compensation for Private industry workers in Financial activities	0.9
Telephone Services	CPI-U for Telephone Services	0.3
All Other: Nonlabor-related Services	CPI-U for All Items Less Food and Energy	1.1
Capital-Related Costs		8.6
Depreciation		6.0
Fixed Assets	BEA chained price index for nonresidential construction for hospitals and special care facilities - vintage weighted (25 years)	3.8
Movable Equipment	PPI for machinery and equipment - vintage weighted (12 years)	2.3
Interest Costs		1.2
Government/Nonprofit	Average yield on domestic municipal bonds (Bond Buyer 20 bonds) - vintage weighted (25 years)	0.6
For Profit	Average Yield on iBoxx AAA Corporate Bonds – vintage weighted (25 years)	0.6
Other Capital-Related Costs	CPI-U for Rent of primary residence	1.3

Note: Totals may not sum to 100.0 percent due to rounding.

* Details on the series and weight for each price proxy used in the PPI blends is provided in section V.C.2. of this proposed rule.

D. Proposed FY 2024 Market Basket Update and Productivity Adjustment

1. Proposed FY 2024 Market Basket Update

For FY 2024 (that is, beginning October 1, 2023 and ending September 30, 2024), we are proposing to use an estimate of the proposed 2021-based IRF market basket increase factor to update the IRF PPS base payment rate as required by section 1886(j)(3)(C)(i) of the Act. Consistent with historical practice, we are proposing to estimate the market basket update for the IRF PPS based on IHS Global Inc.'s (IGI's) forecast using the most recent available data. IGI is a nationally recognized

economic and financial forecasting firm with which CMS contracts to forecast the components of the market baskets.

Based on IGI's fourth quarter 2022 forecast with historical data through the third quarter of 2022, the proposed 2021-based IRF market basket increase factor for FY 2024 is 3.2 percent. Therefore, consistent with our historical practice of estimating market basket increases based on the best available data, we are proposing a market basket increase factor of 3.2 percent for FY 2024. We are also proposing that if more recent data are subsequently available (for example, a more recent estimate of the market basket) we would use such

data, if appropriate, to determine the FY 2024 update in the final rule. For comparison, the current 2016-based IRF market basket is also projected to increase by 3.2 percent in FY 2024 based on IGI's fourth quarter 2022 forecast. Table 12 compares the proposed 2021-based IRF market basket and the 2016-based IRF market basket percent changes. On average, the two indexes produce similar updates to one another, with the 4-year average historical growth rates (for FY 2019–FY 2022) of the proposed 2021-based IRF market basket being equal to 3.2 percent compared to the 2016-based IRF market basket with 3.1 percent.

TABLE 12—PROPOSED 2021-BASED IRF MARKET BASKET AND 2016-BASED IRF MARKET BASKET PERCENT CHANGES, FY 2019 THROUGH FY 2026

Fiscal year (FY)	Proposed 2021-based IRF market basket index percent change	2016-based IRF market basket index percent change
Historical data		
FY 2019	2.4	2.3
FY 2020	2.1	2.1
FY 2021	2.8	2.7
FY 2022	5.3	5.3
Average 2019–2022	3.2	3.1
Forecast		
FY 2023	4.6	4.6
FY 2024	3.2	3.2
FY 2025	2.9	2.9
FY 2026	2.8	2.8
Average 2023–2026	3.4	3.4

Note that these market basket percent changes do not include any further adjustments as may be statutorily required.

Source: IHS Global Inc. 4th quarter 2022 forecast.

2. Proposed Productivity Adjustment

According to section 1886(j)(3)(C)(i) of the Act, the Secretary shall establish an increase factor based on an appropriate percentage increase in a market basket of goods and services. Section 1886(j)(3)(C)(ii) of the Act then requires that, after establishing the increase factor for a FY, the Secretary shall reduce such increase factor for FY 2012 and each subsequent FY, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Section 1886(b)(3)(B)(xi)(II) of the Act sets forth the definition of this productivity adjustment. The statute defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide, private nonfarm business multifactor productivity (as projected by the

Secretary for the 10-year period ending with the applicable FY, year, cost reporting period, or other annual period) (the “productivity adjustment”). The U.S. Department of Labor's Bureau of Labor Statistics (BLS) publishes the official measures of productivity for the U.S. economy. We note that previously the productivity measure referenced in section 1886(b)(3)(B)(xi)(II) of the Act, was published by BLS as private nonfarm business multifactor productivity. Beginning with the November 18, 2021 release of productivity data, BLS replaced the term multifactor productivity (MFP) with total factor productivity (TFP). BLS noted that this is a change in terminology only and will not affect the data or methodology. As a result of the BLS name change, the productivity measure referenced in section

1886(b)(3)(B)(xi)(II) is now published by BLS as private nonfarm business total factor productivity. However, as mentioned above, the data and methods are unchanged. Please see www.bls.gov for the BLS historical published TFP data. A complete description of IGI's TFP projection methodology is available on the CMS website at <https://www.cms.gov/Research-Statistics-Dataand-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketResearch>. In addition, in the FY 2022 IRF final rule (86 FR 42374), we noted that effective with FY 2022 and forward, CMS changed the name of this adjustment to refer to it as the productivity adjustment rather than the MFP adjustment.

Using IGI's fourth quarter 2022 forecast, the 10-year moving average growth of TFP for FY 2024 is projected

to be 0.2 percent. Thus, in accordance with section 1886(j)(3)(C) of the Act, we are proposing to calculate the FY 2024 market basket update, which is used to determine the applicable percentage increase for the IRF payments, using IGI's fourth quarter 2022 forecast of the proposed 2021-based IRF market basket. We are proposing to then reduce this percentage increase by the estimated productivity adjustment for FY 2024 of 0.2 percentage point (the 10-year moving average growth of TFP for the period ending FY 2024 based on IGI's fourth quarter 2022 forecast). Therefore, the proposed FY 2024 IRF update is equal to 3.0 percent (3.2 percent market basket update reduced by the 0.2 percentage point productivity adjustment). Furthermore, we are proposing that if more recent data become available after the publication of the proposed rule and before the publication of the final rule (for example, a more recent estimate of the market basket and/or productivity adjustment), we would use such data, if appropriate, to determine the FY 2024 market basket update and productivity adjustment in the final rule.

For FY 2024, the Medicare Payment Advisory Commission (MedPAC) recommends that we reduce IRF PPS payment rates by 5 percent. As discussed, and in accordance with sections 1886(j)(3)(C) and 1886(j)(3)(D) of the Act, the Secretary is proposing to update the IRF PPS payment rates for FY 2024 by a productivity-adjusted IRF market basket increase factor of 3.0 percent. Section 1886(j)(3)(C) of the Act does not provide the Secretary with the authority to apply a different update factor to IRF PPS payment rates for FY 2024.

We invite public comment on our proposals for the FY 2024 market basket update and productivity adjustment.

E. Proposed Labor-Related Share for FY 2024

Section 1886(j)(6) of the Act specifies that the Secretary is to adjust the proportion (as estimated by the Secretary from time to time) of inpatient rehabilitation facilities' costs that are attributable to wages and wage-related costs, of the prospective payment rates computed under section 1886(j)(3) of the Act for area differences in wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for such facilities. The labor-related share is determined by identifying the national average proportion of total costs that are related to, influenced by, or vary with

the local labor market. We propose to continue to classify a cost category as labor-related if the costs are labor-intensive and vary with the local labor market. As stated in the FY 2020 IRF PPS final rule (84 FR 39087), the labor-related share was defined as the sum of the relative importance of Wages and Salaries, Employee Benefits, Professional Fees: Labor-related Services, Administrative and Facilities Support Services, Installation, Maintenance, and Repair Services, All Other: Labor-related Services, and a portion of the Capital Costs from the 2016-based IRF market basket.

Based on our definition of the labor-related share and the cost categories in the proposed 2021-based IRF market basket, we are proposing to include in the labor-related share for FY 2024 the sum of the FY 2024 relative importance of Wages and Salaries, Employee Benefits, Professional Fees: Labor-related, Administrative and Facilities Support Services, Installation, Maintenance, and Repair Services, All Other: Labor-related Services, and a portion of the Capital-Related cost weight from the proposed 2021-based IRF market basket.

Similar to the 2016-based IRF market basket (84 FR 39087), the proposed 2021-based IRF market basket includes two cost categories for nonmedical Professional Fees (including, but not limited to, expenses for legal, accounting, and engineering services). These are Professional Fees: Labor-related and Professional Fees: Nonlabor-related. For the proposed 2021-based IRF market basket, we propose to estimate the labor-related percentage of non-medical professional fees (and assign these expenses to the Professional Fees: Labor-related services cost category) based on the same method that was used to determine the labor-related percentage of professional fees in the 2016-based IRF market basket.

As was done in the 2016-based IRF market basket (84 FR 39087), we propose to determine the proportion of legal, accounting and auditing, engineering, and management consulting services that meet our definition of labor-related services based on a survey of hospitals conducted by us in 2008, a discussion of which can be found in the FY 2010 IPPS/LTCH PPS final rule (74 FR 43850 through 43856). Based on the weighted results of the survey, we determined that hospitals purchase, on average, the following portions of contracted professional services outside of their local labor market:

- 34 percent of accounting and auditing services.
- 30 percent of engineering services.
- 33 percent of legal services.
- 42 percent of management consulting services.

We are proposing to apply each of these percentages to the respective Benchmark I–O cost category underlying the professional fees cost category to determine the Professional Fees: Nonlabor-related costs. The Professional Fees: Labor-related costs were determined to be the difference between the total costs for each Benchmark I–O category and the Professional Fees: Nonlabor-related costs. This is the same methodology that we used to separate the 2016-based IRF market basket professional fees category into Professional Fees: Labor-related and Professional Fees: Nonlabor-related cost categories (84 FR 39087).

Effective for transmittal 18 (<https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/Transmittals/r18p240i>), the hospital Medicare Cost Report (CMS Form 2552–10, OMB No. 0938–0050) is collecting information on whether a hospital purchased professional services (for example, legal, accounting, tax preparation, bookkeeping, payroll, advertising, and/or management/consulting services) from an unrelated organization and if the majority of these expenses were purchased from unrelated organizations located outside of the main hospital's local area labor market. We encourage all providers to provide this information so we can potentially use in future rulemaking to determine the labor-related share.

In the proposed 2021-based IRF market basket, nonmedical professional fees that are subject to allocation based on these survey results represent 4.0 percent of total costs (and are limited to those fees related to Accounting & Auditing, Legal, Engineering, and Management Consulting services). Based on our survey results, we propose to apportion approximately 2.6 percentage points of the 4.0 percentage point figure into the Professional Fees: Labor-related share cost category and designate the remaining 1.4 percentage point into the Professional Fees: Nonlabor-related cost category.

In addition to the professional services listed, for the 2021-based IRF market basket, we are proposing to allocate a proportion of the Home Office/Related Organization Contract Labor cost weight, calculated using the Medicare cost reports as stated above, into the Professional Fees: Labor-related and Professional Fees: Nonlabor-related cost categories. We are proposing to

classify these expenses as labor-related and nonlabor-related as many facilities are not located in the same geographic area as their home office, and therefore, do not meet our definition for the labor-related share that requires the services to be purchased in the local labor market.

Similar to the 2016-based IRF market basket, we are proposing for the 2021-based IRF market basket to use the Medicare cost reports for both freestanding IRF providers and hospital-based IRF providers to determine the home office labor-related percentages. The Medicare cost report requires a hospital to report information regarding their home office provider. For the proposed 2021-based IRF market basket, we are proposing to start with the sample of IRF providers that passed the top 1 percent trim used to derive the Home Office/Related Organization Contract Labor cost weight as described in section V.C.1.b. of this proposed rule. Using information on the Medicare cost report, for freestanding and hospital-based providers separately, we first compare the location of the IRF with the location of the IRF's home office and classify an IRF based on whether their home office is located in the hospital facility's same Metropolitan Statistical Area. For both freestanding and hospital-based providers, we are proposing to multiply each provider's Home Office/Related Organization Contract Labor cost weight (calculated using data from the total facility) by Medicare allowable total costs. We then calculate the proportion of Medicare allowable home office compensation costs that these IRFs represent of total

Medicare allowable home office compensation costs. We propose to multiply this percentage (45 percent) by the Home Office/Related Organization Contract Labor cost weight (5.4 percent) to determine the proportion of costs that should be allocated to the labor-related share. Therefore, we are allocating 2.4 percentage points of the Home Office/Related Organization Contract Labor cost weight (5.4 percent times 45 percent) to the Professional Fees: Labor-related cost weight and 3.0 percentage points of the Home Office/Related Organization Contract Labor cost weight to the Professional Fees: Nonlabor-related cost weight (5.4 percent times 55 percent). For the 2016-based IRF market basket, we used a similar methodology (84 FR 39088) and determined that 42 percent of the 2016-based Home Office/Related Organization Contract Labor cost weight should be allocated to the labor-related share.

In summary, we apportioned 2.6 percentage points of the non-medical professional fees and 2.4 percentage points of the Home Office/Related Organization Contract Labor cost weight into the Professional Fees: Labor-related cost category. This amount was added to the portion of professional fees that was identified to be labor-related using the I-O data such as contracted advertising and marketing costs (approximately 0.6 percentage point of total costs) resulting in a Professional Fees: Labor-related cost weight of 5.6 percent.

As stated previously, we are proposing to include in the labor-related share the sum of the relative importance of Wages and Salaries, Employee Benefits, Professional Fees: Labor-

Related, Administrative and Facilities Support Services, Installation, Maintenance, and Repair Services, All Other: Labor-related Services, and a portion of the Capital-Related cost weight from the proposed 2021-based IRF market basket. The relative importance reflects the different rates of price change for these cost categories between the base year (2021) and FY 2024. Based on IGI's fourth quarter 2022 forecast for the proposed 2021-based IRF market basket, the sum of the FY 2024 relative importance for Wages and Salaries, Employee Benefits, Professional Fees: Labor-related, Administrative and Facilities Support Services, Installation Maintenance & Repair Services, and All Other: Labor-related Services is 70.3 percent. The portion of Capital costs that is influenced by the local labor market is estimated to be 46 percent, which is the same percentage applied to the 2016-based IRF market basket (84 FR 39088 through 39089). Since the relative importance for Capital is 8.2 percent of the proposed 2021-based IRF market basket in FY 2024, we took 46 percent of 8.2 percent to determine the proposed labor-related share of Capital for FY 2024 of 3.8 percent. Therefore, we are proposing a total labor-related share for FY 2024 of 74.1 percent (the sum of 70.3 percent for the operating costs and 3.8 percent for the labor-related share of Capital). Table 13 shows the FY 2024 labor-related share using the proposed 2021-based IRF market basket relative importance and the FY 2023 labor-related share using the 2016-based IRF market basket relative importance.

TABLE 13—PROPOSED FY 2024 IRF LABOR-RELATED SHARE AND FY 2023 IRF LABOR-RELATED SHARE

	FY 2024 proposed labor-related share ¹	FY 2023 final labor related share ²
Wages and Salaries	48.9	48.7
Employee Benefits	11.9	11.3
Professional Fees: Labor-related ³	5.5	4.9
Administrative and Facilities Support Services	0.7	0.8
Installation, Maintenance, and Repair Services	1.5	1.6
All Other: Labor-related Services	1.8	1.9
Subtotal	70.3	69.2
Labor-related portion of capital (46%)	3.8	3.7
Total Labor-Related Share	74.1	72.9

¹ Based on the proposed 2021-based IRF Market Basket, IHS Global, Inc. 4th quarter 2022 forecast.

² Based on the 2016-based IRF market basket as published in the **Federal Register** (87 FR 47052).

³ Includes all contract advertising and marketing costs and a portion of accounting, architectural, engineering, legal, management consulting, and home office/related organization contract labor costs.

The FY 2024 labor-related share using the proposed 2021-based IRF market

basket is 1.2 percentage point higher than the FY 2023 labor-related share

using the 2016-based IRF market basket. This higher labor-related share is

primarily due to the incorporation of the 2021 Medicare cost report data, which increased the Compensation cost weight by approximately 0.8 percentage point compared to the 2016-based IRF market basket as shown in Table 4 and Table 5 in section V.C.1.b. of this proposed rule.

We invite public comment on the proposed labor-related share for FY 2024.

F. Proposed Wage Adjustment for FY 2024

1. Background

Section 1886(j)(6) of the Act requires the Secretary to adjust the proportion of rehabilitation facilities' costs attributable to wages and wage-related costs (as estimated by the Secretary from time to time) by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for those facilities. The Secretary is required to update the IRF PPS wage index on the basis of information available to the Secretary on the wages and wage-related costs to furnish rehabilitation services. Any adjustment or updates made under section 1886(j)(6) of the Act for a FY are made in a budget-neutral manner.

In the FY 2023 IRF PPS final rule (87 FR 47054 through 47056) we finalized a policy to apply a 5-percent cap on any decrease to a provider's wage index from its wage index in the prior year, regardless of the circumstances causing the decline. Additionally, we finalized a policy that a new IRF would be paid the wage index for the area in which it is geographically located for its first full or partial FY with no cap applied because a new IRF would not have a wage index in the prior FY. Also, in the FY 2023 IRF PPS final rule, we amended the regulations at § 412.624(e)(1)(ii) to reflect this permanent cap on wage index decreases. A full discussion of the adoption of this policy is found in the FY 2023 IRF PPS final rule.

For FY 2024, we propose to maintain the policies and methodologies described in the FY 2023 IRF PPS final rule (87 FR 47038) related to the labor market area definitions and the wage index methodology for areas with wage data. Thus, we propose to use the core based statistical areas (CBSAs) labor market area definitions and the FY 2024 pre-reclassification and pre-floor hospital wage index data. In accordance with section 1886(d)(3)(E) of the Act, the FY 2024 pre-reclassification and pre-floor hospital wage index is based on data submitted for hospital cost

reporting periods beginning on or after October 1, 2019, and before October 1, 2020 (that is, FY 2020 cost report data).

The labor market designations made by the OMB include some geographic areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculation of the IRF PPS wage index. We propose to continue to use the same methodology discussed in the FY 2008 IRF PPS final rule (72 FR 44299) to address those geographic areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculation for the FY 2024 IRF PPS wage index.

We invite public comment on our proposals regarding the Wage Adjustment for FY 2024.

2. Core-Based Statistical Areas (CBSAs) for the FY 2024 IRF Wage Index

The wage index used for the IRF PPS is calculated using the pre-reclassification and pre-floor inpatient PPS (IPPS) wage index data and is assigned to the IRF on the basis of the labor market area in which the IRF is geographically located. IRF labor market areas are delineated based on the CBSAs established by the OMB. The CBSA delineations (which were implemented for the IRF PPS beginning with FY 2016) are based on revised OMB delineations issued on February 28, 2013, in OMB Bulletin No. 13–01. OMB Bulletin No. 13–01 established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas in the United States and Puerto Rico based on the 2010 Census, and provided guidance on the use of the delineations of these statistical areas using standards published in the June 28, 2010 **Federal Register** (75 FR 37246 through 37252). We refer readers to the FY 2016 IRF PPS final rule (80 FR 47068 through 47076) for a full discussion of our implementation of the OMB labor market area delineations beginning with the FY 2016 wage index.

Generally, OMB issues major revisions to statistical areas every 10 years, based on the results of the decennial census. Additionally, OMB occasionally issues updates and revisions to the statistical areas in between decennial censuses to reflect the recognition of new areas or the addition of counties to existing areas. In some instances, these updates merge formerly separate areas, transfer components of an area from one area to another, or drop components from an area. On July 15, 2015, OMB issued OMB Bulletin No. 15–01, which provides minor updates to and

supersedes OMB Bulletin No. 13–01 that was issued on February 28, 2013. The attachment to OMB Bulletin No. 15–01 provides detailed information on the update to statistical areas since February 28, 2013. The updates provided in OMB Bulletin No. 15–01 are based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2012 and July 1, 2013.

In the FY 2018 IRF PPS final rule (82 FR 36250 through 36251), we adopted the updates set forth in OMB Bulletin No. 15–01 effective October 1, 2017, beginning with the FY 2018 IRF wage index. For a complete discussion of the adoption of the updates set forth in OMB Bulletin No. 15–01, we refer readers to the FY 2018 IRF PPS final rule. In the FY 2019 IRF PPS final rule (83 FR 38527), we continued to use the OMB delineations that were adopted beginning with FY 2016 to calculate the area wage indexes, with updates set forth in OMB Bulletin No. 15–01 that we adopted beginning with the FY 2018 wage index.

On August 15, 2017, OMB issued OMB Bulletin No. 17–01, which provided updates to and superseded OMB Bulletin No. 15–01 that was issued on July 15, 2015. The attachments to OMB Bulletin No. 17–01 provide detailed information on the update to statistical areas since July 15, 2015, and are based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2014 and July 1, 2015. In the FY 2020 IRF PPS final rule (84 FR 39090 through 39091), we adopted the updates set forth in OMB Bulletin No. 17–01 effective October 1, 2019, beginning with the FY 2020 IRF wage index.

On April 10, 2018, OMB issued OMB Bulletin No. 18–03, which superseded the August 15, 2017 OMB Bulletin No. 17–01, and on September 14, 2018, OMB issued OMB Bulletin No. 18–04, which superseded the April 10, 2018 OMB Bulletin No. 18–03. These bulletins established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and provided guidance on the use of the delineations of these statistical areas. A copy of this bulletin may be obtained at <https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf>.

To this end, as discussed in the FY 2021 IRF PPS proposed (85 FR 22075 through 22079) and final (85 FR 48434 through 48440) rules, we adopted the revised OMB delineations identified in

OMB Bulletin No. 18–04 (available at <https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf>) beginning October 1, 2020, including a 1-year transition for FY 2021 under which we applied a 5 percent cap on any decrease in an IRF's wage index compared to its wage index for the prior fiscal year (FY 2020). The updated OMB delineations more accurately reflect the contemporary urban and rural nature of areas across the country, and the use of such delineations allows us to determine more accurately the appropriate wage index and rate tables to apply under the IRF PPS. OMB issued further revised CBSA delineations in OMB Bulletin No. 20–01, on March 6, 2020 (available on the web at <https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf>). However, we determined that the changes in OMB Bulletin No. 20–01 do not impact the CBSA-based labor market area delineations adopted in FY 2021. Therefore, CMS did not propose to adopt the revised OMB delineations identified in OMB Bulletin No. 20–01 for FY 2022 or 2023, and for these reasons CMS is likewise not making such a proposal for FY 2024.

3. IRF Budget-Neutral Wage Adjustment Factor Methodology

To calculate the wage-adjusted facility payment for the payment rates set forth in this proposed rule, we multiply the proposed unadjusted Federal payment rate for IRFs by the FY 2024 labor-related share based on the proposed 2021-based IRF market basket relative importance (74.1 percent) to determine the labor-related portion of the standard payment amount. A full discussion of the calculation of the labor-related share

is located in section V.E. of this proposed rule. We would then multiply the labor-related portion by the applicable IRF wage index. The wage index tables are available on the CMS website at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/IRF-Rules-and-Related-Files.html>.

Adjustments or updates to the IRF wage index made under section 1886(j)(6) of the Act must be made in a budget-neutral manner. We propose to calculate a budget-neutral wage adjustment factor as established in the FY 2004 IRF PPS final rule (68 FR 45689) and codified at § 412.624(e)(1), as described in the steps below. We propose to use the listed steps to ensure that the FY 2024 IRF standard payment conversion factor reflects the proposed update to the wage indexes (based on the FY 2020 hospital cost report data) and the proposed update to the labor-related share, in a budget-neutral manner:

Step 1. Calculate the total amount of estimated IRF PPS payments using the labor-related share and the wage indexes from FY 2023 (as published in the FY 2023 IRF PPS final rule (87 FR 47038)).

Step 2. Calculate the total amount of estimated IRF PPS payments using the FY 2024 wage index values (based on updated hospital wage data and considering the permanent cap on wage index decreases policy) and the proposed FY 2024 labor-related share of 74.1 percent.

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2. The resulting quotient is the proposed FY 2024 budget-neutral wage adjustment factor of 1.0032.

Step 4. Apply the budget neutrality factor from step 3 to the FY 2024 IRF PPS standard payment amount after the application of the increase factor to determine the proposed FY 2024 standard payment conversion factor.

We discuss the calculation of the standard payment conversion factor for FY 2024 in section V.G. of this proposed rule.

We invite public comment on the proposed IRF wage adjustment for FY 2024.

G. Description of the Proposed IRF Standard Payment Conversion Factor and Payment Rates for FY 2024

To calculate the proposed standard payment conversion factor for FY 2024, as illustrated in Table 14, we begin by applying the proposed increase factor for FY 2024, as adjusted in accordance with sections 1886(j)(3)(C) of the Act, to the standard payment conversion factor for FY 2023 (\$17,878). Applying the proposed 3.0 percent increase factor for FY 2024 to the standard payment conversion factor for FY 2023 of \$17,878 yields a standard payment amount of \$18,414. Then, we apply the proposed budget neutrality factor for the FY 2024 wage index (taking into account the permanent cap on wage index decreases policy), and labor-related share of 1.0032, which results in a standard payment amount of \$18,473. We next apply the proposed budget neutrality factor for the CMG relative weights of 0.9999, which results in the standard payment conversion factor of \$18,471 for FY 2024.

We invite public comment on the proposed FY 2024 standard payment conversion factor.

TABLE 14—CALCULATIONS TO DETERMINE THE PROPOSED FY 2024 STANDARD PAYMENT CONVERSION FACTOR

Explanation for adjustment	Calculations
Standard Payment Conversion Factor for FY 2023	\$17,878
Proposed Market Basket Increase Factor for FY 2024 (3.2%), reduced by 0.2 percentage point for the productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act	× 1.030
Budget Neutrality Factor for the Updates to the Wage Index and Labor-Related Share	× 1.0032
Budget Neutrality Factor for the Revisions to the CMG Relative Weights	× 0.9999
Proposed FY 2024 Standard Payment Conversion Factor	= 18,471

After the application of the proposed CMG relative weights described in section IV. of this proposed rule to the

FY 2024 standard payment conversion factor (\$18,471), the resulting

unadjusted IRF prospective payment rates for FY 2024 are shown in Table 15.

TABLE 15: FY 2024 Payment Rates

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
0101	\$ 17,835.60	\$ 15,656.02	\$ 14,283.62	\$ 13,535.55
0102	\$ 22,815.38	\$ 20,026.26	\$ 18,269.67	\$ 17,314.72
0103	\$ 29,572.07	\$ 25,959.14	\$ 23,681.67	\$ 22,442.27
0104	\$ 38,042.87	\$ 33,393.72	\$ 30,466.07	\$ 28,870.17
0105	\$ 46,449.02	\$ 40,772.89	\$ 37,196.90	\$ 35,250.06
0106	\$ 53,000.69	\$ 46,522.91	\$ 42,442.66	\$ 40,220.60
0201	\$ 19,570.02	\$ 15,796.40	\$ 14,435.09	\$ 13,548.48
0202	\$ 25,085.47	\$ 20,249.76	\$ 18,504.25	\$ 17,368.28
0203	\$ 31,145.80	\$ 25,140.88	\$ 22,974.23	\$ 21,563.05
0204	\$ 38,768.78	\$ 31,295.42	\$ 28,596.80	\$ 26,842.06
0205	\$ 49,847.69	\$ 40,237.23	\$ 36,768.37	\$ 34,511.22
0301	\$ 21,847.50	\$ 17,362.74	\$ 16,210.15	\$ 15,223.80
0302	\$ 28,231.08	\$ 22,436.72	\$ 20,947.96	\$ 19,671.62
0303	\$ 33,844.41	\$ 26,897.47	\$ 25,111.32	\$ 23,581.93
0304	\$ 40,200.28	\$ 31,947.44	\$ 29,826.97	\$ 28,011.27
0305	\$ 43,870.47	\$ 34,864.01	\$ 32,551.44	\$ 30,567.66
0401	\$ 24,062.17	\$ 19,684.54	\$ 19,071.31	\$ 17,680.44
0402	\$ 30,796.70	\$ 25,194.44	\$ 24,409.43	\$ 22,628.82
0403	\$ 37,148.88	\$ 30,390.34	\$ 29,442.77	\$ 27,296.44
0404	\$ 60,424.18	\$ 49,430.24	\$ 47,889.76	\$ 44,398.74
0405	\$ 47,745.69	\$ 39,058.78	\$ 37,841.54	\$ 35,083.82
0406	\$ 59,951.32	\$ 49,044.20	\$ 47,514.80	\$ 44,051.49
0407	\$ 81,861.62	\$ 66,968.46	\$ 64,879.39	\$ 60,150.81
0501	\$ 22,649.14	\$ 18,544.88	\$ 17,397.83	\$ 15,931.24
0502	\$ 27,741.59	\$ 22,713.79	\$ 21,308.15	\$ 19,510.92
0503	\$ 31,877.25	\$ 26,101.37	\$ 24,485.16	\$ 22,420.10
0504	\$ 38,282.99	\$ 31,345.29	\$ 29,403.98	\$ 26,925.18
0505	\$ 54,051.69	\$ 44,256.52	\$ 41,517.27	\$ 38,015.17
0601	\$ 24,187.77	\$ 18,615.07	\$ 17,510.51	\$ 15,742.83
0602	\$ 30,089.26	\$ 23,157.09	\$ 21,782.85	\$ 19,584.80
0603	\$ 35,813.42	\$ 27,564.27	\$ 25,927.74	\$ 23,310.40
0604	\$ 44,836.51	\$ 34,507.52	\$ 32,459.09	\$ 29,184.18
0701	\$ 21,967.56	\$ 17,721.08	\$ 16,867.72	\$ 15,434.37
0702	\$ 27,183.77	\$ 21,926.92	\$ 20,870.38	\$ 19,097.17
0703	\$ 33,467.60	\$ 26,997.21	\$ 25,696.86	\$ 23,513.58
0704	\$ 41,639.18	\$ 33,587.67	\$ 31,971.45	\$ 29,254.37
0801	\$ 21,428.21	\$ 17,238.98	\$ 16,069.77	\$ 14,824.82
0802	\$ 24,695.73	\$ 19,867.41	\$ 18,519.02	\$ 17,085.68
0803	\$ 27,198.55	\$ 21,880.75	\$ 20,397.53	\$ 18,818.25
0804	\$ 30,791.16	\$ 24,769.61	\$ 23,090.60	\$ 21,302.60
0805	\$ 38,471.40	\$ 30,948.16	\$ 28,849.85	\$ 26,616.71
0901	\$ 22,412.71	\$ 17,371.98	\$ 16,418.87	\$ 14,970.75
0902	\$ 28,461.96	\$ 22,061.76	\$ 20,850.06	\$ 19,010.35
0903	\$ 33,367.86	\$ 25,864.94	\$ 24,444.52	\$ 22,287.11
0904	\$ 40,133.79	\$ 31,108.86	\$ 29,400.29	\$ 26,806.96
1001	\$ 22,074.69	\$ 18,533.80	\$ 16,762.43	\$ 15,342.01
1002	\$ 27,917.07	\$ 23,437.85	\$ 21,197.32	\$ 19,401.94
1003	\$ 32,963.35	\$ 27,675.10	\$ 25,030.05	\$ 22,909.58
1004	\$ 42,776.99	\$ 35,915.01	\$ 32,481.25	\$ 29,730.92
1101	\$ 22,780.28	\$ 22,780.28	\$ 18,289.98	\$ 18,315.84
1102	\$ 27,761.91	\$ 27,761.91	\$ 22,288.96	\$ 22,320.36
1103	\$ 36,729.58	\$ 36,729.58	\$ 29,490.80	\$ 29,531.43
1201	\$ 22,750.73	\$ 18,539.34	\$ 17,011.79	\$ 15,523.03
1202	\$ 29,169.40	\$ 23,768.48	\$ 21,810.56	\$ 19,902.50

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
1203	\$ 37,006.65	\$ 30,153.91	\$ 27,669.56	\$ 25,248.01
1204	\$ 38,129.69	\$ 31,068.22	\$ 28,509.99	\$ 26,014.56
1301	\$ 25,538.00	\$ 20,284.85	\$ 18,127.44	\$ 16,827.08
1302	\$ 30,789.31	\$ 24,455.60	\$ 21,856.73	\$ 20,288.55
1303	\$ 34,226.76	\$ 27,185.62	\$ 24,294.91	\$ 22,553.09
1304	\$ 41,864.52	\$ 33,253.34	\$ 29,717.99	\$ 27,586.44
1305	\$ 41,653.95	\$ 33,085.26	\$ 29,568.38	\$ 27,446.06
1401	\$ 20,558.22	\$ 16,799.37	\$ 15,439.91	\$ 14,237.45
1402	\$ 25,755.96	\$ 21,047.70	\$ 19,342.83	\$ 17,837.44
1403	\$ 31,241.85	\$ 25,528.77	\$ 23,461.86	\$ 21,636.93
1404	\$ 39,034.76	\$ 31,897.57	\$ 29,315.32	\$ 27,034.16
1501	\$ 23,338.11	\$ 19,243.09	\$ 18,367.56	\$ 17,447.71
1502	\$ 27,736.05	\$ 22,870.79	\$ 21,829.03	\$ 20,735.54
1503	\$ 33,098.18	\$ 27,292.75	\$ 26,049.65	\$ 24,745.60
1504	\$ 40,619.58	\$ 33,495.31	\$ 31,967.76	\$ 30,368.17
1601	\$ 21,830.87	\$ 15,842.58	\$ 15,842.58	\$ 15,111.13
1602	\$ 27,464.53	\$ 19,930.21	\$ 19,930.21	\$ 19,010.35
1603	\$ 31,982.54	\$ 23,210.66	\$ 23,210.66	\$ 22,139.34
1604	\$ 39,505.77	\$ 28,668.84	\$ 28,668.84	\$ 27,346.32
1701	\$ 24,858.27	\$ 19,248.63	\$ 18,265.97	\$ 16,671.92
1702	\$ 29,882.38	\$ 23,138.62	\$ 21,958.32	\$ 20,042.88
1703	\$ 35,419.99	\$ 27,427.59	\$ 26,027.49	\$ 23,755.55
1704	\$ 40,724.86	\$ 31,535.54	\$ 29,924.87	\$ 27,314.91
1705	\$ 46,759.34	\$ 36,206.85	\$ 34,357.91	\$ 31,361.91
1801	\$ 19,922.82	\$ 17,202.04	\$ 15,596.91	\$ 14,268.85
1802	\$ 25,260.94	\$ 21,812.40	\$ 19,775.05	\$ 18,092.34
1803	\$ 31,733.18	\$ 27,399.88	\$ 24,841.65	\$ 22,728.57
1804	\$ 36,531.94	\$ 31,542.93	\$ 28,598.65	\$ 26,166.02
1805	\$ 44,042.25	\$ 38,028.09	\$ 34,477.97	\$ 31,544.77
1806	\$ 64,618.95	\$ 55,795.35	\$ 50,584.68	\$ 46,282.78
1901	\$ 22,926.21	\$ 16,477.98	\$ 15,918.31	\$ 15,430.67
1902	\$ 32,350.11	\$ 23,249.45	\$ 22,460.74	\$ 21,773.61
1903	\$ 46,064.83	\$ 33,105.57	\$ 31,982.54	\$ 31,005.42
1904	\$ 74,910.99	\$ 53,837.42	\$ 52,010.64	\$ 50,420.29
2001	\$ 21,773.61	\$ 17,643.50	\$ 16,417.02	\$ 14,883.93
2002	\$ 27,069.25	\$ 21,932.47	\$ 20,408.61	\$ 18,502.40
2003	\$ 32,198.65	\$ 26,090.29	\$ 24,278.28	\$ 22,010.04
2004	\$ 38,443.69	\$ 31,149.49	\$ 28,984.69	\$ 26,276.84
2005	\$ 41,096.13	\$ 33,299.52	\$ 30,986.95	\$ 28,090.70
2101	\$ 28,415.79	\$ 22,394.24	\$ 20,731.85	\$ 19,577.41
2102	\$ 45,699.10	\$ 36,012.91	\$ 33,342.00	\$ 31,483.82
5001	\$ -	\$ -	\$ -	\$ 3,165.93
5101	\$ -	\$ -	\$ -	\$ 14,566.23
5102	\$ -	\$ -	\$ -	\$ 34,991.46
5103	\$ -	\$ -	\$ -	\$ 16,285.88
5104	\$ -	\$ -	\$ -	\$ 41,984.58

BILLING CODE 4120-01-C*H. Example of the Methodology for Adjusting the Proposed Prospective Payment Rates*

Table 16 illustrates the methodology for adjusting the proposed prospective payments (as described in section V. of this proposed rule). The following examples are based on two hypothetical

Medicare beneficiaries, both classified into CMG 0104 (without comorbidities). The proposed unadjusted prospective payment rate for CMG 0104 (without comorbidities) appears in Table 16.

Example: One beneficiary is in Facility A, an IRF located in rural Spencer County, Indiana, and another beneficiary is in Facility B, an IRF

located in urban Harrison County, Indiana. Facility A, a rural non-teaching hospital has a Disproportionate Share Hospital (DSH) percentage of 5 percent (which would result in a LIP adjustment of 1.0156), a wage index of 0.8353, and a rural adjustment of 14.9 percent. Facility B, an urban teaching hospital, has a DSH percentage of 15 percent

(which would result in a LIP adjustment of 1.0454 percent), a wage index of 0.8804, and a teaching status adjustment of 0.0784.

To calculate each IRF's labor and non-labor portion of the proposed prospective payment, we begin by taking the unadjusted prospective payment rate for CMG 0104 (without comorbidities) from Table 16. Then, we multiply the proposed labor-related share for FY 2024 (74.1 percent) described in section V.E. of this proposed rule by the unadjusted prospective payment rate. To determine the non-labor portion of the proposed prospective payment rate, we subtract the labor portion of the Federal payment from the proposed unadjusted prospective payment.

To compute the proposed wage-adjusted prospective payment, we multiply the labor portion of the proposed Federal payment by the appropriate wage index located in the applicable wage index table. This table is available on the CMS website at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/IRF-Rules-and-Related-Files.html>.

The resulting figure is the wage-adjusted labor amount. Next, we compute the proposed wage-adjusted Federal payment by adding the wage-adjusted labor amount to the non-labor portion of the proposed Federal payment.

Adjusting the proposed wage-adjusted Federal payment by the facility-level

adjustments involves several steps. First, we take the wage-adjusted prospective payment and multiply it by the appropriate rural and LIP adjustments (if applicable). Second, to determine the appropriate amount of additional payment for the teaching status adjustment (if applicable), we multiply the teaching status adjustment (0.0784, in this example) by the wage-adjusted and rural-adjusted amount (if applicable). Finally, we add the additional teaching status payments (if applicable) to the wage, rural, and LIP-adjusted prospective payment rates. Table 16 illustrates the components of the adjusted payment calculation.

TABLE 16—EXAMPLE OF COMPUTING THE FY 2024 IRF PROSPECTIVE PAYMENT

Steps		Rural Facility A (Spencer Co., IN)		Urban Facility B (Harrison Co., IN)
1 Unadjusted Payment		\$28,870.17		\$28,870.17
2 Labor-Related Share	×	0.741	×	0.741
3 Labor Portion of Payment	=	\$21,392.80	=	\$21,392.80
4 CBSA-Based Wage Index	×	0.8353	×	0.8804
5 Wage-Adjusted Amount	=	\$17,869.40	=	\$18,834.22
6 Non-Labor Amount	+	\$7,477.37	+	\$7,477.37
7 Wage-Adjusted Payment	=	\$25,346.78	=	\$26,311.59
8 Rural Adjustment	×	1.149	×	1.000
9 Wage- and Rural-Adjusted Payment	=	\$29,123.45	=	\$26,311.59
10 LIP Adjustment	×	1.0156	×	1.0454
11 Wage-, Rural- and LIP-Adjusted Payment	=	\$29,577.77	=	\$27,506.14
12 Wage- and Rural-Adjusted Payment		\$29,123.45		\$26,311.59
13 Teaching Status Adjustment	×	0	×	0.0784
14 Teaching Status Adjustment Amount	=	\$0.00	=	\$2,062.83
15 Wage-, Rural-, and LIP-Adjusted Payment	+	\$29,577.77	+	\$27,506.14
16 Total Adjusted Payment	=	\$29,577.77	=	\$29,568.97

Thus, the proposed adjusted payment for Facility A would be \$29,577.77, and the proposed adjusted payment for Facility B would be \$29,568.97.

VI. Proposed Update to Payments for High-Cost Outliers Under the IRF PPS for FY 2024

A. Update to the Outlier Threshold Amount for FY 2024

Section 1886(j)(4) of the Act provides the Secretary with the authority to make payments in addition to the basic IRF prospective payments for cases incurring extraordinarily high costs. A case qualifies for an outlier payment if the estimated cost of the case exceeds the adjusted outlier threshold. We calculate the adjusted outlier threshold by adding the IRF PPS payment for the case (that is, the CMG payment adjusted by all of the relevant facility-level adjustments) and the adjusted threshold amount (also adjusted by all of the relevant facility-level adjustments). Then, we calculate the estimated cost of a case by multiplying the IRF's overall

CCR by the Medicare allowable covered charge. If the estimated cost of the case is higher than the adjusted outlier threshold, we make an outlier payment for the case equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold.

In the FY 2002 IRF PPS final rule (66 FR 41362 through 41363), we discussed our rationale for setting the outlier threshold amount for the IRF PPS so that estimated outlier payments would equal 3 percent of total estimated payments. For the FY 2002 IRF PPS final rule, we analyzed various outlier policies using 3, 4, and 5 percent of the total estimated payments, and we concluded that an outlier policy set at 3 percent of total estimated payments would optimize the extent to which we could reduce the financial risk to IRFs of caring for high-cost patients, while still providing for adequate payments for all other (non-high cost outlier) cases.

Subsequently, we updated the IRF outlier threshold amount in the FYs

2006 through 2023 IRF PPS final rules and the FY 2011 and FY 2013 notices (70 FR 47880, 71 FR 48354, 72 FR 44284, 73 FR 46370, 74 FR 39762, 75 FR 42836, 76 FR 47836, 76 FR 59256, 77 FR 44618, 78 FR 47860, 79 FR 45872, 80 FR 47036, 81 FR 52056, 82 FR 36238, 83 FR 38514, 84 FR 39054, 85 FR 48444, 86 FR 42362, and 87 FR 47038, respectively) to maintain estimated outlier payments at 3 percent of total estimated payments. We also stated in the FY 2009 final rule (73 FR 46370 at 46385) that we would continue to analyze the estimated outlier payments for subsequent years and adjust the outlier threshold amount as appropriate to maintain the 3 percent target.

To update the IRF outlier threshold amount for FY 2024, we propose to use FY 2022 claims data and the same methodology that we used to set the initial outlier threshold amount in the FY 2002 IRF PPS final rule (66 FR 41362 through 41363), which is also the same methodology that we used to update the outlier threshold amounts for FYs 2006

through 2023. The outlier threshold is calculated by simulating aggregate payments and using an iterative process to determine a threshold that results in outlier payments being equal to 3 percent of total payments under the simulation. To determine the outlier threshold for FY 2024, we estimated the amount of FY 2024 IRF PPS aggregate and outlier payments using the most recent claims available (FY 2022) and the proposed FY 2024 standard payment conversion factor, labor-related share, and wage indexes, incorporating any applicable budget-neutrality adjustment factors. The outlier threshold is adjusted either up or down in this simulation until the estimated outlier payments equal 3 percent of the estimated aggregate payments. Based on an analysis of the preliminary data used for the proposed rule, we estimated that IRF outlier payments as a percentage of total estimated payments would be approximately 2.3 percent in FY 2023. Therefore, we propose to update the outlier threshold amount from \$12,526 for FY 2023 to \$9,690 for FY 2024 to maintain estimated outlier payments at approximately 3 percent of total estimated aggregate IRF payments for FY 2024. Furthermore, we are proposing that if more recent data become available after the publication of the proposed rule and before the publication of the final rule, we would use such data, if appropriate, to determine the FY 2024 outlier threshold amount in the final rule.

B. Proposed Update to the IRF Cost-to-Charge Ratio Ceiling and Urban/Rural Averages for FY 2024

CCRs are used to adjust charges from Medicare claims to costs and are computed annually from facility-specific data obtained from MCRs. IRF specific CCRs are used in the development of the CMG relative weights and the calculation of outlier payments under the IRF PPS. In accordance with the methodology stated in the FY 2004 IRF PPS final rule (68 FR45692 through 45694), we propose to apply a ceiling to IRFs' CCRs. Using the methodology described in that final rule, we propose to update the national urban and rural CCRs for IRFs, as well as the national CCR ceiling for FY 2024, based on analysis of the most recent data available. We apply the national urban and rural CCRs in the following situations:

- New IRFs that have not yet submitted their first MCR.
- IRFs whose overall CCR is in excess of the national CCR ceiling for FY 2024, as discussed below in this section.

- Other IRFs for which accurate data to calculate an overall CCR are not available.

Specifically, for FY 2024, we propose to estimate a national average CCR of 0.487 for rural IRFs, which we calculated by taking an average of the CCRs for all rural IRFs using their most recently submitted cost report data. Similarly, we propose to estimate a national average CCR of 0.398 for urban IRFs, which we calculated by taking an average of the CCRs for all urban IRFs using their most recently submitted cost report data. We apply weights to both of these averages using the IRFs' estimated costs, meaning that the CCRs of IRFs with higher total costs factor more heavily into the averages than the CCRs of IRFs with lower total costs. For this proposed rule, we have used the most recent available cost report data (FY 2021). This includes all IRFs whose cost reporting periods begin on or after October 1, 2020, and before October 1, 2021. If, for any IRF, the FY 2021 cost report was missing or had an "as submitted" status, we used data from a previous FY's (that is, FY 2004 through FY 2020) settled cost report for that IRF. We do not use cost report data from before FY 2004 for any IRF because changes in IRF utilization since FY 2004 resulting from the 60 percent rule and IRF medical review activities suggest that these older data do not adequately reflect the current cost of care. Using updated FY 2021 cost report data for this proposed rule, we estimate a national average CCR of 0.487 for rural IRFs, and a national average CCR of 0.398 for urban IRFs.

In accordance with past practice, we propose to set the national CCR ceiling at 3 standard deviations above the mean CCR. Using this method, we propose a national CCR ceiling of 1.45 for FY 2024. This means that, if an individual IRF's CCR were to exceed this ceiling of 1.45 for FY 2024, we will replace the IRF's CCR with the appropriate proposed national average CCR (either rural or urban, depending on the geographic location of the IRF). We calculated the proposed national CCR ceiling by:

Step 1. Taking the national average CCR (weighted by each IRF's total costs, as previously discussed) of all IRFs for which we have sufficient cost report data (both rural and urban IRFs combined).

Step 2. Estimating the standard deviation of the national average CCR computed in step 1.

Step 3. Multiplying the standard deviation of the national average CCR computed in step 2 by a factor of 3 to

compute a statistically significant reliable ceiling.

Step 4. Adding the result from step 3 to the national average CCR of all IRFs for which we have sufficient cost report data, from step 1.

We are also proposing that if more recent data become available after the publication of this proposed rule and before the publication of the final rule, we would use such data to determine the FY 2024 national average rural and urban CCRs and the national CCR ceiling in the final rule.

We invite public comment on the proposed update to the IRF CCR ceiling and the urban/rural averages for FY 2024.

VII. Proposed Modification to the Regulation for Excluded Inpatient Rehabilitation Facility Units Paid Under the IRF PPS

A. Background

Under current regulation, to be excluded from the IPPS, and to be paid under the IRF PPS or the IPF PPS, an IRF or IPF unit of a hospital must meet a number of requirements under § 412.25. Both this regulation and the policies applying to excluded units (which include excluded IRF units and excluded IPF units) have been in effect since before both the IRF PPS and IPF PPS were established, as discussed in the following paragraphs of this section. Before the IRF PPS and the IPF PPS were established, excluded units were paid based on their costs, as reported on their Medicare cost reports, subject to certain facility-specific cost limits. These cost-based payments were determined separately for operating and capital costs. Thus, under cost-based payments, the process of allocating costs to an IRF or IPF unit for reimbursement created significant administrative complexity. This administrative complexity necessitated strict regulations that allowed hospitals to open a new IPPS-excluded unit only at the start of a cost reporting period.

In the January 3, 1984 final rule (49 FR 235), CMS (then known as the Health Care Financing Administration) established policies and regulations for hospitals and units subject to and excluded from the IPPS. In that rule, we explained that section 1886(d) of the Act requires that the prospective payment system apply to inpatient hospital services furnished by all hospitals participating in the Medicare program except those hospitals or units specifically excluded by the law. We further explained our expectation that a hospital's status (that is, whether it is subject to, or excluded from, the

prospective payment system) would generally be determined at the beginning of each cost reporting period. We also stated that this status would continue throughout the period, which is normally 1 year. Accordingly, we stated that changes in a hospital's (or unit's) status that result from meeting or failing to meet the criteria for exclusion would be implemented only at the start of a cost reporting period. However, we also acknowledged that under some circumstances involving factors external to the hospital, status changes could be made at times other than the beginning of the cost reporting period. For example, a change in status could occur if a hospital is first included under the prospective payment system and, after the start of its cost reporting period, is excluded because of its participation in an approved demonstration project or State reimbursement control program that begins after the hospital's cost reporting period has begun.

In the FY 1993 IPPS final rule (57 FR 39798 through 39799), we codified our longstanding policies regarding when a hospital unit can change its status from not excluded to excluded. We explained in that final rule that since the inception of the prospective payment system for operating costs of hospital inpatient services in October 1983, certain types of specialty-care hospitals and hospital units have been excluded from that system under section 1888(d)(1)(B) of the Act. We noted that these currently include psychiatric and rehabilitation hospitals and distinct part units, children's hospitals, and long-term care hospitals. We further explained that section 6004(a)(1) of the Omnibus Budget Reconciliation Act of 1989, (Pub. L. 101–239, enacted December 19, 1989) amended section 1886(d)(1)(B) of the Act to provide that certain cancer hospitals are also excluded. We noted that the preamble to the January 3, 1984 final rule implementing the prospective payment system for operating costs (49 FR 235) stated that the status of a hospital or unit (that is, whether it is subject to, or excluded from, the prospective payment system) will be determined at the beginning of each cost reporting period. We noted that that same 1984 final rule also provided that changes in a hospital's or unit's status that result from meeting or failing to meet the criteria for exclusion will be implemented prospectively only at the start of a cost reporting period, that is, starting with the beginning date of the next cost reporting period (49 FR 243). However, we noted that this policy was not set forth in the regulations. In the FY 1993 final rule, we stated that we

proposed revising §§ 412.22 and 412.25 to specify that changes in the status of each hospital or hospital unit would be recognized only at the start of a cost reporting period. We stated that except in the case of retroactive payment adjustments for excluded rehabilitation units described in § 412.30(c), any change in a hospital's or unit's compliance with the exclusion criteria that occurs after the start of a cost reporting period would not be considered until the start of the following period. We noted that this policy would also apply to any unit that is added to a hospital during the hospital's cost reporting period. We also stated that we proposed revising § 412.25(a) to specify that as a requirement for exclusion, a hospital unit must be fully equipped and staffed, and be capable of providing inpatient psychiatric or rehabilitation care, as of the first day of the first cost reporting period for which all other exclusion requirements are met. We explained that a unit that meets this requirement would be considered open regardless of whether there are any inpatients in the unit.

In the same FY 1993 IPPS final rule, we responded to commenters who objected to this policy, stating that it unnecessarily penalizes hospitals for factors beyond their control, such as construction delays, that it discourages hospitals from making changes in their programs to meet community needs, or that it can place undue workload demands on regulatory agencies during certain time periods. In response, we explained that we believed that regulatory agencies, hospitals, and the public generally would benefit from policies that are clearly stated, can be easily understood by both hospitals and intermediaries, and can be simply administered. We stated that recognizing changes in status only at the beginning of cost reporting periods is consistent with these goals, while recognizing changes in the middle of cost reporting periods would introduce added complexity to the administration of the exclusion provisions. Therefore, we did not revise the proposed changes based on these comments.

In the FY 2000 IPPS final rule (64 FR 41531 through 41532), we amended the regulations at § 412.25(c) to allow a hospital unit to change from excluded to not excluded at any time during the cost reporting period. We explained the statutory basis and rationale for this change in the FY 2000 IPPS proposed rule (64 FR 24740), and noted that a number of hospitals suggested that we consider a change in our policy to recognize, for purposes of exclusion

from the IPPS, reductions in number of beds in, or entire closure of, units at any time during a cost reporting period. In that FY 2000 IPPS proposed rule, we explained that hospitals indicated that the bed capacity made available as a result of these changes could be used, as they need them, to provide additional services to meet patient needs in the acute care part of the hospital that is paid under the IPPS. We further explained that we evaluated the concerns of the hospitals and the effect on the administration of the Medicare program and the health care of beneficiaries of making these payment changes. As a result of that evaluation, we stated that we believed it was reasonable to adopt a more flexible policy in recognition of hospitals' changes in the use of their facilities. However, we noted that whenever a hospital establishes an excluded unit within the hospital, our Medicare fiscal intermediary would need to be able to determine costs of the unit separately from costs of the part of the hospital paid under the prospective payment system. At that time, we stated that the proper determination of costs ensured that the hospital was paid the correct amount for services in each part of the facility, and that payments under the IPPS did not duplicate payments made under the rules that were applicable to excluded hospitals and units, or vice versa. For this reason, we stated that we did not believe it would be appropriate to recognize, for purposes of exclusion from the IPPS, changes in the bed size or status of an excluded unit that are so frequent that they interfere with the ability of the intermediary to accurately determine costs. Moreover, we explained that section 1886(d)(1)(B) of the Act authorizes exclusion from the IPPS of specific types of hospitals and units, but not of specific admissions or stays, such as admissions for rehabilitation or psychiatric care, in a hospital paid under the IPPS. We stated that without limits on the frequency of changes in excluded units for purposes of proper Medicare payment, there was the potential for some hospitals to adjust the status or size of their excluded units so frequently that the units would no longer be distinct entities and the exclusion would effectively apply only to certain types of care.

In the FY 2012 IRF PPS final rule (76 FR 47870), we began further efforts to increase flexibilities for excluded IPF and IRF units. In that rule, we explained that cost-based reimbursement methodologies that were in place before the IPF PPS and IRF PPS meant that the

facilities' capital costs were determined, in part, by their bed size and square footage. Changes in the bed size and square footage would complicate the facilities' capital cost allocation. Thus, the regulations at § 412.25 limited the situations under which an IRF or IPF could change its bed size and square footage. In the FY 2012 IRF PPS final rule, we revised § 412.25(b) to enable IRFs and IPFs to more easily adjust to beneficiary changes in demand for IRF or IPF services, and improve beneficiary access to these services. We believed that the first requirement (that beds can only be added at the start of a cost reporting period) was difficult, and potentially costly, for IRFs and IPFs that were expanding through new construction because the exact timing of the end of a construction project is often difficult to predict.

In that same FY 2012 IRF PPS final rule, commenters suggested that CMS allow new IRF units or new IPF units to open and begin being paid under their respective IRF PPS or IPF PPS at any time during a cost reporting period, rather than requiring that they could only begin being paid under the IRF PPS or the IPF PPS at the start of a cost reporting period. In response, we stated that we believed that this suggestion was outside the scope of the FY 2012 IRF PPS proposed rule (76 FR 24214) because we did not propose any changes to the regulations in § 412.25(c). However, we stated that we would consider this suggestion for possible inclusion in future rulemaking. Within the FY 2018 IRF PPS proposed rule (82 FR 20690, 20742 through 20743), CMS published a request for information (RFI) on ways to reduce burden for hospitals, physicians, and patients; improve the quality of care; decrease costs; and ensure that patients and their providers and physicians are making the best health care choices possible. In response to the RFI, we received comments from IRF industry associations, state and national hospital associations, industry groups representing hospitals, and individual IRF providers. One of the comments we received in response to the RFI suggested allowing new IRF units to become excluded and be paid under the IRF PPS at any time during the cost reporting period, rather than only at the start of a cost reporting period, which the commenter believed would increase flexibility and eliminate a policy that may impose higher costs for providers while harmonizing an IRF payment system versus the IPPS payment system across all new IRF units.

B. Current Challenges Related To Excluded Hospital Units (§ 412.25(c)(1) and (c)(2))

Currently, under § 412.25(c)(1), a hospital can only start being paid under the IRF PPS or the IPF PPS for services provided in an excluded unit at the start of a cost reporting period. Specifically, § 412.25(c) limits when the status of hospital units may change for purposes of exclusion from the IPPS, as specified in § 412.25(c)(1) and § 412.25(c)(2). Section 412.25(c)(1) states that the status of a hospital unit may be changed from not excluded to excluded only at the start of the cost reporting period. If a unit is added to a hospital after the start of a cost reporting period, it cannot be excluded from the IPPS before the start of a hospital's next cost reporting period. Under § 412.25(c)(2), the status of a hospital unit may be changed from excluded to not excluded at any time during a cost reporting period, but only if the hospital notifies the fiscal intermediary and the CMS Regional Office in writing of the change at least 30 days before the date of the change, and maintains the information needed to accurately determine costs that are or are not attributable to the excluded unit. A change in the status of a unit from excluded to not excluded that is made during a cost reporting period must remain in effect for the rest of that cost reporting period.

In recent years, interested parties, such as hospitals, have written to CMS to express concerns about what they see as the unnecessary restrictiveness of the requirements of § 412.25(c). Based on this feedback, we continued to explore opportunities to reduce burden for providers and clinicians, while keeping patient-centered care a priority. For instance, we considered whether this regulation might create unnecessary burden for hospitals and could potentially delay necessary rehabilitation beds from opening and being paid under the IRF PPS. As we continued to review and reconsider regulations to identify ways to improve policy, we recognized that the requirement at § 412.25(c)(1) that hospital units can only be excluded at the start of a cost reporting period, may be challenging to meet and potentially costly for facilities under some circumstances, for example, those that are expanding through new construction. Hospitals have indicated it is often difficult to predict the exact timing of the end of a construction project and construction delays may hamper a hospital's ability to have the construction of an excluded unit completed exactly at the start of a cost

reporting period, which hospitals said can lead to significant revenue loss if they are unable to be paid under the IRF PPS or IPF PPS until the start of the next cost reporting period.

As discussed, the requirements of § 412.25(c) were established to manage the administrative complexity associated with cost-based reimbursement for excluded IRF and IPF units. Today, however, because IRF units are paid under the IRF PPS, and IPF units are paid under the IPF PPS, cost allocation is not used for payment purposes. Because advancements in technology since the inception of the IRF PPS and IPF PPS have simplified the cost reporting process and enhanced communication between providers, CMS, and Medicare contractors, we are reconsidering whether it is necessary to continue to allow hospital units to become excluded only at the start of a cost reporting period.

C. Proposed Changes To Excluded Hospital Units (§ 412.25(c)(1) and (c)(2))

We are committed to continuing to transform the health care delivery system—and the Medicare program—by putting additional focus on patient-centered care and working with providers, physicians, and patients to improve outcomes, while meeting relevant health care priorities and reducing burden.

In response to the need for availability of inpatient rehabilitation beds we are proposing changes to § 412.25(c) to allow greater flexibility for hospitals to open excluded units, while minimizing the amount of effort Medicare contractors would need to spend administering the regulatory requirements. Although we are cognizant that there is a need for rehabilitative health services and support for providers along a continuum of care, including a robust investment in community-based rehabilitative services, this rule is focused on inpatient rehabilitation facility settings.

We note that § 412.25(c) applies to both IRFs and IPFs; therefore, revisions to § 412.25(c) would also affect IPFs in similar ways. Readers should refer to the FY 2024 IPF PPS proposed rule for discussion of proposed revisions to § 412.25(c) and unique considerations applicable to IPF units.

As discussed, the current requirements of § 412.25(c)(1) were originally established to manage the administrative complexity associated with cost-based reimbursement for excluded IPF and IRF units. Because IPF and IRF units are no longer paid under cost-based reimbursement, but rather under the IPF PPS and IRF PPS

respectively, we believe that the restriction that limits an IPF or IRF unit to being excluded only at the start of a cost reporting period is no longer necessary.

We amended our regulations in the FY 2012 IRF PPS final rule to address a regulation that similarly was previously necessary for cost-based reimbursement, but was not material to payment under the IRF PPS and IPF PPS. In that final rule, we explained that under cost-based payments, the facilities' capital costs were determined, in part, by their bed size and square footage. Changes in the bed size and square footage would complicate the facilities' capital cost allocation. We explained that under the IRF PPS and IPF PPS, however, a facility's bed size and square footage were not relevant for determining the individual facility's Medicare payment. Therefore, we believed it was appropriate to modify some of the restrictions on a facility's ability to change its bed size and square footage. Accordingly, we relaxed the restrictions on a facility's ability to increase its bed size and square footage. Under the revised requirements that we adopted in the FY 2012, IRF PPS final rule in § 412.25(b), an IRF or IPF can change (either increase or decrease) its bed size or square footage one time at any point in a given cost reporting period as long as it notifies the CMS RO at least 30 days before the date of the proposed change, and maintains the information needed to accurately determine costs that are attributable to the excluded units.

Similarly, in the case of the establishment of a new excluded IPF and IRF units, we do not believe that the timing of the establishment of the new unit is material for determining the individual facility's level of Medicare payment under the IRF PPS or IPF PPS. We believe it would be appropriate to allow a unit to become excluded at any time in the cost reporting year. However, we also believe it is important to minimize the potential administrative complexity associated with units changing their excluded status.

Accordingly, we propose to amend the requirements currently in regulation

at § 412.25(c)(1) to allow a hospital to open a new IRF unit anytime within the cost reporting year, as long as the hospital notifies the CMS Regional Office and Medicare Administrative Contractor (MAC) in writing of the change at least 30 days before the date of the change. Additionally, we are proposing that if a unit becomes excluded during a cost reporting year, this change would remain in effect for the rest of that cost reporting year. We also propose to maintain the current requirements of § 412.25(c)(2), which specify that, if an excluded unit becomes not excluded during a cost reporting year, the hospital must notify the MAC and the CMS Regional Office in writing of the change at least 30 days before the change, and this change would remain in effect for the rest of that cost reporting year. Finally, we propose to consolidate the requirements for § 412.25(c)(1) and § 412.25(c)(2) into a new § 412.25(c)(1) that would apply to IRF units and specify the requirements for an IRF unit to become excluded or not excluded.

We believe this proposal would provide IRFs greater flexibility when establishing an excluded unit at a time other than the start of a cost reporting period.

As noted, we are proposing an identical policy for inpatient psychiatric units of hospitals in § 412.25(c)(2) in the FY 2024 IPF PPS proposed rule.

We are proposing discrete regulation text for each of the hospital unit types (that is, IRF units and IPF units) to solicit comment on issues that might affect one hospital unit type and not the other. However, we may consider adopting one consolidated regulation text for both IRF and IPF units in either the IRF or IPF final rules for both unit types if we finalize both of our proposals. We request public comments on finalizing a consolidated provision that would pertain to both IRF and IPF units.

VIII. Inpatient Rehabilitation Facility (IRF) Quality Reporting Program (QRP)

A. Background and Statutory Authority

The Inpatient Rehabilitation Facility Quality Reporting Program (IRF QRP) is

authorized by section 1886(j)(7) of the Act, and it applies to freestanding IRFs, as well as inpatient rehabilitation units of hospitals or Critical Access Hospitals (CAHs) paid by Medicare under the IRF PPS. Section 1886(j)(7)(A)(i) of the Act requires the Secretary to reduce by 2 percentage points the annual increase factor for discharges occurring during a fiscal year (FY) for any IRF that does not submit data in accordance with the IRF QRP requirements set forth in subparagraphs (C) and (F) of section 1886(j)(7) of the Act. Section 1890A of the Act requires that the Secretary establish and follow a pre-rulemaking process, in coordination with the consensus-based entity (CBE) with a contract under section 1890 of the Act, to solicit input from certain groups regarding the selection of quality and efficiency measures for the IRF QRP. We have codified our program requirements in our regulations at § 412.634.

In this proposed rule, we are proposing to adopt two new measures, remove three existing measures, and modify one existing measure. Second, we are seeking information on principles we could use to select and prioritize IRF QRP quality measures in future years. Third, we are providing an update on our efforts to close the health equity gap. Finally, we are proposing to begin public reporting of four measures. These proposals are further specified below.

B. General Considerations Used for the Selection of Measures for the IRF QRP

For a detailed discussion of the considerations we use for the selection of IRF QRP quality, resource use, or other measures, we refer readers to the FY 2016 IRF PPS final rule (80 FR 47083 through 47084).

1. Quality Measures Currently Adopted for the FY 2024 IRF QRP

The IRF QRP currently has 18 measures for the FY 2024 IRF QRP, which are listed in Table 17. For a discussion of the factors used to evaluate whether a measure should be removed from the IRF QRP, we refer readers to § 412.634(b)(2).

TABLE 17: Quality Measures Currently Adopted for the FY 2024 IRF QRP

Short Name	Measure Name & Data Source
IRF-PAI Assessment-Based Measures	
Pressure Ulcer/Injury	Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury
Application of Falls	Application of Percent of Residents Experiencing One or More Falls with Major Injury (Long Stay)
Application of Functional Assessment	Application of Percent of Long-Term Care Hospital (LTCH) Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function
Change in Mobility	IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients
Discharge Mobility Score	IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients
Change in Self-Care	IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients
Discharge Self-Care Score	IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients
DRR	Drug Regimen Review Conducted With Follow-Up for Identified Issues—Post Acute Care (PAC) Inpatient Rehabilitation Facility (IRF) Quality Reporting Program (QRP)
TOH-Provider	Transfer of Health Information to the Provider—Post-Acute Care (PAC)
TOH-Patient	Transfer of Health Information to the Patient—Post-Acute Care (PAC)
NHSN	
CAUTI	National Healthcare Safety Network (NHSN) Catheter-Associated Urinary Tract Infection Outcome Measure
CDI	National Healthcare Safety Network (NHSN) Facility-wide Inpatient Hospital-onset <i>Clostridium difficile</i> Infection (CDI) Outcome Measure
HCP Influenza Vaccine	Influenza Vaccination Coverage among Healthcare Personnel
HCP COVID-19 Vaccine	COVID-19 Vaccination Coverage among Healthcare Personnel (HCP)
Claims-Based	
MSPB IRF	Medicare Spending Per Beneficiary (MSPB)-Post Acute Care (PAC) IRF QRP
DTC	Discharge to Community-PAC IRF QRP
PPR 30 day	Potentially Preventable 30-Day Post-Discharge Readmission Measure for IRF QRP
PPR Within Stay	Potentially Preventable Within Stay Readmission Measure for IRFs

C. Overview of IRF QRP Quality Measure Proposals

In this proposed rule, we propose to adopt two new measures, remove three existing measures, and modify one existing measure for the FY 2025 IRF QRP and the FY 2026 IRF QRP. Beginning with the FY 2025 IRF QRP we are proposing to (1) modify the COVID-19 Vaccination Coverage among Healthcare Personnel (HCP) measure, (2) adopt the Discharge Function Score measure,¹⁷ which we are specifying under sections 1886(j)(7)(F) and 1899B(c)(1) of the Act, and (3) remove three current measures: (i) the Application of Percent of Long-Term Care Hospital (LTCH) Patients with an

Admission and Discharge Functional Assessment and a Care Plan That Addresses Function measure, (ii) IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients measure, and (iii) IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients measure.

We are proposing to add one new measure beginning with the FY 2026 IRF QRP, the COVID-19 Vaccine: Percent of Patients/Residents Who Are Up to Date measure which we are specifying under sections 1886(j)(7)(F) and 1899B(d)(1) of the Act.

1. IRF QRP Quality Measure Proposals Beginning With the FY 2025 IRF QRP

a. Proposed Modification of the COVID-19 Vaccination Coverage Among Healthcare Personnel (HCP) Measure Beginning With the FY 2025 IRF QRP

(1) Background

On January 31, 2020, the Secretary declared a public health emergency (PHE) for the United States in response to the global outbreak of SARS-CoV-2, a novel (new) coronavirus that causes “coronavirus disease 2019” (COVID-19).¹⁸ Subsequently, in the FY 2022 IRF PPS final rule (86 FR 42385 through 42396), we adopted the COVID-19

¹⁷ This measure was submitted to the Measures Under Consideration (MUC) List as the Cross-Setting Discharge Function Score. Subsequent to the MAP Workgroup meetings, the measure developer modified the name.

¹⁸ U.S. Department of Health and Human Services, Office of the Assistant Secretary for Preparedness and Response. Determination that a Public Health Emergency Exists. Available at <https://aspr.hhs.gov/legal/PHE/Pages/2019-nCoV.aspx>.

Vaccination Coverage among Healthcare Personnel (HCP COVID-19 Vaccine) measure for the IRF QRP. The HCP COVID-19 Vaccine measure requires each IRF to submit data on the number of healthcare personnel (HCP) eligible to work in the IRF for at least one day during the reporting period, excluding persons with contraindications to the COVID-19 vaccine, who have received a complete vaccination course against SARS-CoV-2 (86 FR 42389 through 42396).

Since that time, COVID-19 has continued to spread domestically and around the world with more than 103.8 million cases and 1.1 million deaths in the United States as of March 21, 2023.¹⁹ In recognition of the ongoing significance and complexity of COVID-19, the Secretary has renewed the PHE on April 21, 2020, July 23, 2020, October 2, 2020, January 7, 2021, April 15, 2021, July 19, 2021, October 15, 2021, January 14, 2022, April 12, 2022, July 15, 2022, October 13, 2022, January 11, 2023, and February 9, 2023.²⁰ The Department of Health and Human Services (HHS) announced plans to let the PHE expire on May 11, 2023 and stated that the public health response to COVID-19 remains a public health priority with a whole-of-government approach to combatting the virus, including through vaccination efforts.²¹

In the FY 2022 IRF PPS final rule (86 FR 42386 through 42396) and in the Guidance for Staff Vaccination Requirements,²² we stated that vaccination is a critical part of the nation's strategy to effectively counter the spread of COVID-19. We continue to believe it is important to incentivize and track HCP vaccination in IRFs through quality measurement in order to protect health care workers, patients, and caregivers, and to help sustain the ability of IRFs to continue serving their communities throughout the PHE and beyond. At the time we issued the FY

2022 IRF PPS final rule, the Food and Drug Administration (FDA) had issued emergency use authorizations (EUAs) for COVID-19 vaccines manufactured by Pfizer-BioNTech,²³ Moderna,²⁴ and Janssen.²⁵ On August 23, 2021, the FDA issued an approval for the Pfizer-BioNTech vaccine, marketed as Comirnaty.²⁶ The FDA issued approval for the Moderna vaccine, marketed as Spikevax, on January 31, 2022²⁷ and an EUA for the Novavax vaccine, on July 13, 2022.²⁸ The FDA also issued EUAs for single booster doses of the then authorized COVID-19 vaccines. As of November 19, 2021,²⁹ 30³¹ a single booster dose of each COVID-19 vaccine was authorized for all eligible individuals 18 years of age and older. EUAs were subsequently issued for a

²³ Food and Drug Administration. FDA Takes Key Action in Fight Against COVID-19 By Issuing Emergency Use Authorization for First COVID-19 Vaccine. December 11, 2020. <https://www.fda.gov/news-events/press-announcements/fda-takes-key-action-fight-against-covid-19-issuing-emergency-use-authorization-first-covid-19>.

²⁴ Food and Drug Administration. FDA Takes Additional Action in Fight Against COVID-19 By Issuing Emergency Use Authorization for Second COVID-19 Vaccine. December 18, 2020. <https://www.fda.gov/news-events/press-announcements/fda-takes-additional-action-fight-against-covid-19-issuing-emergency-use-authorization-second-covid-19>.

²⁵ Food and Drug Administration. FDA Issues Emergency Use Authorization for Third COVID-19 Vaccine. February 27, 2021. <https://www.fda.gov/news-events/press-announcements/fda-issues-emergency-use-authorization-third-covid-19-vaccine>.

²⁶ Food and Drug Administration. FDA Approves First COVID-19 Vaccine. August 23, 2021. <https://www.fda.gov/news-events/press-announcements/fda-approves-first-covid-19-vaccine>.

²⁷ Food and Drug Administration. Coronavirus (COVID-19) Update: FDA Takes Key Action by Approving Second COVID-19 Vaccine. January 21, 2022. <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-takes-key-action-approving-second-covid-19-vaccine>.

²⁸ Food and Drug Administration. Coronavirus (COVID-19) Update: FDA Authorizes Emergency Use of Novavax COVID-19 Vaccine. Adjuvanted. July 13, 2022. <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-emergency-use-novavax-covid-19-vaccine-adjuvanted>.

²⁹ Food and Drug Administration. FDA Authorizes Booster Dose of Pfizer-BioNTech COVID-19 Vaccine for Certain Populations. September 22, 2021. <https://www.fda.gov/news-events/press-announcements/fda-authorizes-booster-dose-pfizer-biontech-covid-19-vaccine-certain-populations>.

³⁰ Food and Drug Administration. Coronavirus (COVID-19) Update: FDA Takes Additional Actions on the Use of a Booster Dose for COVID-19 Vaccines. October 20, 2021. <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-takes-additional-actions-use-booster-dose-covid-19-vaccines>.

³¹ Food and Drug Administration. Coronavirus (COVID-19) Update: FDA Expands Eligibility for COVID-19 Vaccine Boosters. November 19, 2021. <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-expands-eligibility-covid-19-vaccine-boosters>.

second booster dose of the Pfizer-BioNTech and Moderna vaccines in certain populations in March 2022.³² FDA first authorized the use of a booster dose of bivalent or “updated” COVID-19 vaccines from Pfizer-BioNTech and Moderna in August 2022.³³

(a) Measure Importance

In the FY2022 IRF PPS final rule (86 FR 42401), we acknowledged that we were still learning how effective the vaccines were against new variants of the virus that cause COVID-19. While the impact of COVID-19 vaccines on asymptomatic infection and transmission is not yet fully known, there are now robust data available across multiple populations on COVID-19 vaccine effectiveness against severe illness, hospitalization, and death. Two-dose COVID-19 vaccines from Pfizer-BioNTech and Moderna were found to be 88 percent and 93 percent effective against hospitalization for COVID-19, respectively, over 6 months for adults over age 18 without immunocompromising conditions.³⁴ During a SARS-CoV-2 surge in the spring and summer of 2021, 92 percent of COVID-19 hospitalizations and 91 percent of COVID-19 associated deaths were reported among persons not fully vaccinated.³⁵ Real-world studies of population-level vaccine effectiveness indicated similarly high rates of efficacy in preventing SARS-CoV-2 infection among frontline workers in multiple industries, with a 90 percent effectiveness in preventing symptomatic and asymptomatic infection from

³² Food and Drug Administration. Coronavirus (COVID-19) Update: FDA Authorizes Second Booster Dose of Two COVID-19 Vaccines for Older and Immunocompromised Individuals. March 29, 2022. <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-second-booster-dose-two-covid-19-vaccines-older-and>.

³³ Food and Drug Administration. (August 2022). Coronavirus (COVID-19) Update: FDA Authorizes Moderna, Pfizer-BioNTech Bivalent COVID-19 Vaccines for Use as a Booster Dose. Available at <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-moderna-pfizer-biontech-bivalent-covid-19-vaccines-use>.

³⁴ Centers for Disease Control and Prevention. (September 24, 2021). Morbidity and Mortality Weekly Report (MMWR). Comparative Effectiveness of Moderna, Pfizer-BioNTech, and Janssen (Johnson & Johnson) Vaccines in Preventing COVID-19 Hospitalizations Among Adults Without Immunocompromising Conditions—United States, March–August 2021. Available at https://cdc.gov/mmwr/volumes/70/wr/mm7038e1.htm?s_cid=mm7038e1_w.

³⁵ Centers for Disease Control and Prevention. (September 10, 2021). Morbidity and Mortality Weekly Report (MMWR). Monitoring Incidence of COVID-19 Cases, Hospitalizations, and Deaths, by Vaccination Status—13 U.S. Jurisdictions, April 4–July 17, 2021. Available at <https://www.cdc.gov/mmwr/volumes/70/wr/mm7037e1.htm>.

¹⁹ Centers for Disease Control and Prevention. COVID Data Tracker. March 21, 2023. <https://covid.cdc.gov/covid-data-tracker/#datatracker-home>.

²⁰ U.S. Department of Health and Human Services. Office of the Assistant Secretary for Preparedness and Response. Renewal of Determination that a Public Health Emergency Exists. February 9, 2023. <https://aspr.hhs.gov/legal/PHE/Pages/COVID19-9Feb2023.aspx>.

²¹ U.S. Department of Health and Human Services. Fact Sheet: COVID-19 Public Health Emergency Transition Roadmap. February 9, 2023. <https://www.hhs.gov/about/news/2023/02/09/fact-sheet-covid-19-public-health-emergency-transition-roadmap.html>.

²² Centers for Medicare & Medicaid Services. Revised Guidance for Staff Vaccination Requirements QSO-23-02-ALL. October 26, 2022. <https://www.cms.gov/files/document/qs0-23-02-all.pdf>.

December 2020 through August 2021.³⁶ Vaccines have also been highly effective in real-world conditions at preventing COVID-19 in HCP with up to 96 percent efficacy for fully vaccinated HCP, including those at risk for severe infection and those in racial and ethnic groups disproportionately affected by COVID-19.³⁷ Overall, data demonstrate that COVID-19 vaccines are effective and prevent severe disease, hospitalization, and death.

As SARS-CoV-2 persists and evolves, our COVID-19 vaccination strategy must remain responsive. When we adopted the HCP COVID-19 Vaccine measure in the FY 2022 IRF PPS final rule, we stated that the need for booster doses of COVID-19 vaccines had not been established and no additional doses had been recommended (86 FR 42390). We also stated that we believed the numerator was sufficiently broad to include potential future boosters as part of a “complete vaccination course” and that the measure was sufficiently specified to address boosters (86 FR 42390). Since we adopted the HCP COVID-19 Vaccine measure in the FY 2022 IRF PPS final rule, new variants of SARS-CoV-2 have emerged around the world and within the United States. Specifically, the Omicron variant (and its related subvariants) is listed as a variant of concern by the Centers for Disease Control and Prevention (CDC) because it spreads more easily than earlier variants.³⁸ Vaccine manufacturers have responded to the Omicron variant by developing bivalent COVID-19 vaccines, which include a component of the original virus strain to provide broad protection against COVID-19 and a component of the Omicron variant to provide better protection against COVID-19 caused by the Omicron variant.³⁹ These booster doses of the bivalent COVID-19 vaccines have been shown to increase immune response to SARS-CoV-2

variants, including Omicron, particularly in individuals that are more than 6 months removed from receipt of their primary series.⁴⁰ The FDA issued EUAs for booster doses of two bivalent COVID-19 vaccines, one from Pfizer-BioNTech⁴¹ and one from Moderna⁴² and strongly encourages anyone who is eligible to consider receiving a booster dose with a bivalent COVID-19 vaccine to provide better protection against currently circulating variants.⁴³ COVID-19 booster doses are associated with a greater reduction in infections among HCP relative to those who only received primary series vaccination, with a rate of breakthrough infections among HCP who received only a two-dose regimen of 21.4 percent compared to a rate of 0.7 percent among HCP who received booster doses of the COVID-19 vaccine.^{44 45}

We believe that vaccination remains the most effective means to prevent the severe consequences of COVID-19, including severe illness, hospitalization, and death. Given the availability of vaccine efficacy data, EUAs issued by the FDA for bivalent boosters, the continued presence of SARS-CoV-2 in the United States, and variance among rates of booster dose vaccination, it is important to update the specifications of the HCP COVID-19 Vaccine measure to reflect most recent guidance that explicitly specifies for HCP to receive

primary series and booster vaccine doses in a timely manner. Given the persistent spread of COVID-19, we continue to believe that monitoring and surveillance is important and provides patients, beneficiaries, and their caregivers with information to support informed decision making. We propose to modify the HCP COVID-19 Vaccine measure to replace the term “complete vaccination course” with the term “up to date” in the HCP vaccination definition. We also propose to update the numerator to specify the time frames within which an HCP is considered up to date with recommended COVID-19 vaccines, including booster doses, beginning with the FY 2025 IRF QRP.

(b) Measure Testing

The CDC conducted beta testing of the proposed modified HCP COVID-19 Vaccine measure by assessing if the collection of information on additional/booster vaccine doses received by HCP was feasible, as information on receipt of booster vaccine doses is required for determining if HCP are up to date with the current COVID-19 vaccination recommendations. Feasibility was assessed by calculating the proportion of facilities that reported booster doses of the COVID-19 vaccine. The assessment was conducted in various facility types, including IRFs, using vaccine coverage data for the first quarter of calendar year (CY) 2022 (January–March), which was reported through the CDC’s National Healthcare Safety Network (NHSN). Feasibility of reporting booster doses of vaccine is evident by the fact that 63.9 percent of IRFs reported vaccination booster coverage data to the NHSN for the first quarter of 2022.⁴⁶ Additionally, HCP COVID-19 Vaccine measure scores calculated using January 1–March 31, 2022 data had a median of 20.3 percent and an interquartile range of 8.9 to 37.7 percent, indicating a measure performance gap as there are clinically significant differences in booster/additional dose vaccination coverage rates among IRFs.⁴⁷

³⁶ Centers for Disease Control and Prevention. Morbidity and Mortality Weekly Report (MMWR). Effectiveness of COVID-19 Vaccines in Preventing SARS-CoV-2 Infection Among Frontline Workers Before and During B.1.617.2 (Delta) Variant Predominance—Eight U.S. Locations, December 2020–August 2021. August 27, 2021. <https://www.cdc.gov/mmwr/volumes/70/wr/mm7034e4.htm>.

³⁷ Pilishivi, T. et al. Effectiveness of mRNA COVID-19 Vaccine among U.S. Health Care Personnel. *New England Journal of Medicine*. 2021 Dec 16;385(25):e90. December 16, 2022. <https://pubmed.ncbi.nlm.nih.gov/34551224/>.

³⁸ Centers for Disease Control and Prevention. Variants of the Virus. <https://www.cdc.gov/coronavirus/2019-ncov/variants/index.html>.

³⁹ Food and Drug Administration. COVID-19 Bivalent Vaccine Boosters. <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-bivalent-vaccine-boosters>.

⁴⁰ Chalkias S, Harper C, Vrbicky K, et al. A Bivalent Omicron-Containing Booster Vaccine Against COVID-19. *N Engl J Med*. 2022 Oct 6;387(14):1279–1291. doi: 10.1056/NEJMoa2208343. PMID: 36112399; PMCID: PMC9511634.

⁴¹ Food and Drug Administration. Pfizer-BioNTech COVID-19 Vaccines. <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/pfizer-biontech-covid-19-vaccines>.

⁴² Food and Drug Administration. Moderna COVID-19 Vaccines. <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/moderna-covid-19-vaccines>.

⁴³ Food and Drug Administration. Coronavirus (COVID-19) Update: FDA Authorizes Moderna, Pfizer-BioNTech Bivalent COVID-19 Vaccines for Use as a Booster Dose. August 31, 2022. <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-moderna-pfizer-biontech-bivalent-covid-19-vaccines-use>.

⁴⁴ Oster Y, Benenson S, Nir-Paz R, Buda I, Cohen MJ. The effect of a third BNT162b2 vaccine on breakthrough infections in health care workers: a cohort analysis. *Clin Microbiol Infect*. 2022 May;28(5):735.e1–735.e3. Available online at <https://pubmed.ncbi.nlm.nih.gov/35143997/>.

⁴⁵ Prasad N et al. (May 2022). Effectiveness of a COVID-19 Additional Primary or Booster Vaccine Dose in Preventing SARS-CoV-2 Infection Among Nursing Home Residents During Widespread Circulation of the Omicron Variant—United States, February 14–March 27, 2022. *Morbidity and Mortality Weekly Report (MMWR)*. 2022 May 6;71(18):633–637. doi: 10.1016/j.cmi.2022.01.019. PMID: 35143997; PMCID: PMC8820100.

⁴⁶ Centers for Medicare & Medicaid Services. Measure Application Partnership (MAP) Post-Acute Care/Long-Term Care: 2022–2023 Measures Under Consideration (MUC) Cycle Measure Specifications. December 1, 2022. <https://mmshub.cms.gov/sites/default/files/map-pac-muc-measure-specifications-2022-2023.pdf>.

⁴⁷ Centers for Medicare & Medicaid Services. Measure Application Partnership (MAP) Post-Acute Care/Long-Term Care: 2022–2023 Measures Under Consideration (MUC) Cycle Measure Specifications. December 1, 2022. <https://mmshub.cms.gov/sites/default/files/map-pac-muc-measure-specifications-2022-2023.pdf>.

(2) Competing and Related Measures

Section 1886(j)(7)(D)(i) of the Act and section 1899B(e)(2)(A) of the Act requires that, absent an exception under section 1886(j)(7)(D)(i) and section 1899B(e)(2)(B) of the Act, measures specified under section 1899B of the Act must be endorsed by a consensus-based entity (CBE) with a contract under section 1890(a) of the Act. In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed, section 1886(j)(7)(D)(i) of the Act and section 1899B(e)(2)(B) of the Act permit the Secretary to specify a measure that is not so endorsed, as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.

The current version of the HCP COVID-19 Vaccine (“Quarterly Reporting of COVID-19 Vaccination Coverage among Healthcare Personnel”) measure recently received endorsement by the CBE on July 26, 2022.⁴⁸ However, this measure received endorsement based on its specifications depicted in the FY 2022 IRF PPS final rule (86 FR 42386 through 42396), and does not capture information about whether HCP are “up to date” with their COVID-19 vaccinations. The proposed modification of this measure utilizes the term up to date in the HCP vaccination definition and updates the numerator to specify the time frames within which an HCP is considered up to date with recommended COVID-19 vaccines, including booster doses. We were unable to identify any CBE endorsed measures for IRFs that captured information on whether HCP are up to date with their COVID-19 vaccinations, and we found no other feasible and practical measure on this topic.

Therefore, after consideration of other available measures, we find that the exception under section 1899B(e)(2)(B) of the Act applies and are proposing the modified measure, HCP COVID-19 Vaccine beginning with the FY 2025 IRF QRP. The CDC, the measure developer, is pursuing CBE endorsement for the modified version of the measure and is considering an expedited review process as the current version of the measure has already received endorsement.

(3) Measure Application Partnership (MAP) Review

We refer readers to the FY 2022 IRF PPS final rule (86 FR 42387 through 42388) for more information on the initial review of the HCP COVID-19 Vaccine measure by the Measure Application Partnership (MAP).

The pre-rulemaking process includes making publicly available a list of quality and efficiency measures, called the Measures Under Consideration (MUC) List, that the Secretary is considering adopting for use in the Medicare program, including our quality reporting programs. This allows interested parties to provide recommendations to the Secretary on the measures included on the list. We included an updated version of the HCP COVID-19 Vaccine measure on the MUC List, entitled “List of Measures under Consideration for December 1, 2022”⁴⁹ for the 2022–2023 pre-rulemaking cycle for consideration by the MAP. Interested parties submitted three comments during the pre-rulemaking process on the proposed modifications of the HCP COVID-19 Vaccine measure, and support was mixed. One commenter noted the importance for HCP to be vaccinated against COVID-19 and supported measurement and reporting as an important strategy to help healthcare organizations assess their performance in achieving high rates of up to date vaccination of their HCP, while also noting that the measure would provide valuable information to the government as part of its ongoing response to the pandemic. This commenter also recommended the measure be used for internal quality improvement purposes rather than being publicly reported on Care Compare. Finally, this commenter also suggested that the measure should be stratified by social risk factors. However, two commenters supported less specific criteria for denominator and numerator inclusion. Specifically, one such commenter did not support the inclusion of unpaid volunteers in the measure denominator and found the measure’s denominator to be unclear. Two commenters expressed concerns regarding burden of data collection, data lag, staffing challenges, and reportedly “high rates of providers contesting penalties tied to the existing HCP COVID-19 Vaccine measure adopted in the FY 2022 IRF PPS final rule.” One commenter recommended that the

measure be recharacterized as a surveillance measure given what they referred to as a tenuous relationship between collected data and quality of care provided by IRFs. Finally, all three commenters raised concern about the difficulty of defining up to date for purposes of the measure.

Shortly after publication of the MUC List, several MAP workgroups met to provide input on the modification we are proposing for the current HCP COVID-19 Vaccine measure. First, the MAP Health Equity Advisory Group convened on December 6–7, 2022. The MAP Health Equity Advisory Group questioned whether the measure excludes patients with contraindications to FDA authorized or approved COVID-19 vaccines, and whether the measure will be stratified by demographic factors. The measure developer (that is the CDC) confirmed that HCP with contraindications to the vaccines are excluded from the measure denominator, and responded that the measure will not be stratified by demographic factors since the data are submitted at an aggregate rather than an individual level.

The MAP Rural Health Advisory Group met on December 8–9, 2022, during which a few members expressed concerns about data collection burden, given that small rural hospitals may not have employee health software. The measure developer acknowledged the challenge of getting adequate documentation and emphasized their goal is to ensure the measures do not present a burden on the provider. The measure developer also noted that the model used for the HCP COVID-19 Vaccine measure is based on the Influenza Vaccination Coverage among HCP measure (CBE #0431), and it intends to utilize a similar approach to the modified HCP COVID-19 Vaccine measure if vaccination strategy becomes seasonal. The measure developer acknowledged that if COVID-19 becomes seasonal, the measure model could evolve to capture seasonal vaccination.

Next, the MAP Post-Acute Care/Long-Term Care (PAC/LTC) workgroup met on December 12, 2022 and provided input on the modification we are proposing for the HCP COVID-19 Vaccine measure. The MAP noted that the previous version of the measure received endorsement from the CBE (CBE #3636),⁵⁰ and that the CDC intends to submit the updated measure for

⁴⁸ National Quality Forum. 3636 Quarterly Reporting of COVID-19 Vaccination Coverage among Healthcare Personnel. Accessed February 6, 2023. Available at <https://www.qualityforum.org/QPS/3636>.

⁴⁹ Centers for Medicare & Medicaid Services. Overview of the List of Measures Under Consideration for December 1, 2022. *CMS.gov*. <https://mmshub.cms.gov/sites/default/files/2022-MUC-List-Overview.pdf>.

⁵⁰ National Quality Forum. 3636 Quarterly Reporting of COVID-19 Vaccination Coverage among Healthcare Personnel. Accessed February 6, 2023. <https://www.qualityforum.org/QPS/3636>.

endorsement. The PAC/LTC workgroup voted to support the staff recommendation of conditional support for rulemaking pending testing indicating the measure is reliable and valid, and endorsement by the consensus-based entity (CBE).

Following the PAC/LTC workgroup meeting, a public comment period was held in which interested parties commented on the PAC/LTC workgroup's preliminary recommendations, and the MAP received three comments. Two supported the proposed modification of the HCP COVID-19 Vaccine measure, one of which strongly supported the vaccination of HCP against COVID-19. Although these commenters supported the measure, one commenter recommended seeking NQF endorsement for the updated measure, and encouraged CMS to monitor any unintended consequences from the measure. Two commenters raised concerns with the measure's specifications. Specifically, one noted the denominator included a broad number of HCP, and another recommended a vaccination exclusion or exception for sincerely held religious beliefs. Finally, one commenter raised issues related to the time lag between data collection and public reporting on Care Compare and encouraged CMS to provide information as to whether the measure is reflecting vaccination rates accurately and encouraging HCP vaccination.

The MAP Coordinating Committee convened on January 24–25, 2023, during which the proposed measure was placed on the consent calendar and received a final recommendation of conditional support for rulemaking pending testing indicating the measure is reliable and valid, and endorsement by the CBE. We refer readers to the final MAP recommendations, titled *2022–2023 MAP Final Recommendations*.⁵¹

(4) Quality Measure Calculation

The HCP COVID-19 Vaccine measure is a process measure developed by the CDC to track COVID-19 vaccination coverage among HCP in facilities such as IRFs. The HCP COVID-19 Vaccine measure is a process measure and is not risk-adjusted.

The denominator would be the number of HCP eligible to work in the facility for at least one day during the reporting period, excluding persons with contraindications to COVID-19 vaccination that are described by the

CDC.⁵² We believe it is necessary to allow IRFs to include all HCP within the facility in the reporting because all HCP would have access to and may interact with IRF patients. IRFs report the following four categories of HCP to NHSN; the first three are included in the measure denominator:

- *Employees*: Includes all persons who receive a direct paycheck from the reporting facility (that is, on the facility's payroll), regardless of clinical responsibility or patient contact.

- *Licensed independent practitioners (LIPs)*: This includes physicians (MD, DO), advanced practice nurses, and physician assistants only who are affiliated with the reporting facility but are not directly employed by it (that is, they do not receive a direct paycheck from the facility), regardless of clinical responsibility or patient contact. Post-residency fellows are also included in this category if they are not on the facility's payroll.

- *Adult students/trainees and volunteers*: This includes all medical, nursing, or other health professional, students, interns, medical residents and volunteers aged 18 or over who are affiliated with the healthcare facility, but are not directly employed by it (that is, they do not receive a direct paycheck from the facility) regardless of clinical responsibility or patient contact.

- *Other contract personnel*: Contract personnel are defined as persons providing care, treatment, or services at the facility through a contract who do not fall into any of the above-mentioned denominator categories. This also includes vendors providing care, treatment, or services at the facility who may or may not be paid through a contract. Facilities are required to enter data on other contract personnel for submission in the NHSN application, but data for this category are not included in the HCP COVID-19 Vaccine measure.

The denominator excludes denominator-eligible individuals with contraindications as defined by the CDC.⁵³ We are not proposing any changes to the denominator exclusions.

The numerator would be the cumulative number of HCP in the denominator population who are considered up to date with CDC

recommended COVID-19 vaccines. Providers should refer to the definition of up to date as of the first day of the quarter, which can be found at <https://www.cdc.gov/nhsn/pdfs/hps/covidvax/UpToDateGuidance-508.pdf>. For the purposes of NHSN surveillance, individuals would have been considered up to date during in the Quarter 4 CY 2022 reporting period (surveillance period September 26, 2022–December 25, 2022) for the IRF QRP if they meet one of the following criteria in place at the time:

1. Individuals who received an updated bivalent⁵⁴ booster dose, or
- 2a. Individuals who received their last booster dose less than 2 months ago, or
- 2b. Individuals who completed their primary series⁵⁵ less than 2 months ago.

We refer readers to <https://www.cdc.gov/nhsn/nqf/index.html> for more details on the measure specifications.

While we are not proposing any changes to the data submission or reporting process for the HCP COVID-19 Vaccine measure, we are proposing that for purposes of meeting FY 2025 IRF QRP compliance, IRFs would report individuals who are up to date beginning in quarter four of CY 2023. Under the data submission and reporting process, IRFs would collect the numerator and denominator for the modified HCP COVID-19 Vaccine measure for at least one self-selected week during each month of the reporting quarter and submit the data to the NHSN Healthcare Personnel Safety (HPS) Component before the quarterly deadline. If an IRF submits more than 1 week of data in a month, the CDC would use the most recent week's data to calculate the measure. Each quarter, the CDC would calculate a single quarterly COVID-19 HCP vaccination coverage rate for each IRF, which would be calculated by taking the average of the data from the three weekly rates submitted by the IRF for that quarter. Beginning with the FY 2026 IRF QRP, we propose that IRFs would be required to submit data for the entire calendar year.

We are also proposing that public reporting of the modified version of the HCP COVID-19 Vaccine measure would begin by the September 2024 Care

⁵² Centers for Disease Control and Prevention. Contraindications and precautions. <https://www.cdc.gov/vaccines/covid-19/clinical-considerations/interim-considerations-us.html#contraindications>.

⁵³ Centers for Disease Control and Prevention. Contraindications and precautions. <https://www.cdc.gov/vaccines/covid-19/clinical-considerations/interim-considerations-us.html#contraindications>.

⁵⁴ The updated (bivalent) Moderna and Pfizer-BioNTech boosters target the most recent Omicron subvariants. The updated (bivalent) boosters were recommended by the CDC on September 2, 2022. As of this date, the original, monovalent mRNA vaccines are no longer authorized as a booster dose for people ages 12 years and older.

⁵⁵ Completing a primary series means receiving a two-dose series of a COVID-19 vaccine or a single dose of Janssen/J&J COVID-19 vaccine.

⁵¹ 2022–2023 MAP Final Recommendations. <https://mmshub.cms.gov/sites/default/files/2022-2023-MAP-Final-Recommendations-508.xlsx>.

Compare refresh or as soon as technically feasible.

We invite public comment on our proposal to modify the COVID-19 Vaccination Coverage among Healthcare Personnel (HCP) measure beginning with the FY 2025 IRF QRP.

b. Proposed Adoption of Discharge Function Score Measure Beginning With the FY 2025 IRF QRP

(1) Background

IRFs provide rehabilitation therapy in a resource-intensive inpatient hospital environment to patients with complex nursing, medical management, and rehabilitation needs, who require and can reasonably be expected to benefit from the multidisciplinary care provided in an IRF. Patients tend to have neurological conditions such as stroke, spinal cord injury, and brain injury; degenerative conditions including multiple sclerosis; congenital deformities; amputations; burns; active inflammatory conditions; severe or advanced osteoarthritis; or knee and hip joint replacements.⁵⁶ In 2019, the most common condition treated by IRFs was stroke, which accounted for about one-fifth of IRF cases.⁵⁷ For stroke patients, rehabilitation has been shown to be the most effective way to reduce stroke-associated motor impairments. Addressing these impairments is crucial as functional deficits affect patients' mobility, their capabilities in daily life activities, and their participation in society, which can lead to a lower quality of life.⁵⁸

Section 1886(j)(7)(F)(i) of the Act, cross-referencing subsections (b), (c), and (d) of section 1899B of the Act, requires CMS to develop and implement standardized quality measures from five quality measure domains, including the

domain of functional status, cognitive function, and changes in function and cognitive function, across post-acute care (PAC) settings, including IRFs. To satisfy this requirement, we adopted the Application of Percent of Long-Term Care Hospital (LTCH) Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (Application of Functional Assessment/Care Plan) measure for the IRF QRP in the FY 2016 IRF PPS final rule (80 FR 47100 through 47111). While this process measure allowed for the standardization of functional assessments across assessment instruments and facilitated cross-setting data collection, quality measurement, and interoperable data exchange, we believe it is now topped out⁵⁹ and are proposing to remove it in section VIII.C.1.c. of this proposed rule. While there are other outcome measures addressing functional status⁶⁰ that can reliably distinguish performance among providers in the IRF QRP, these outcome measures are not cross-setting in nature because they rely on functional status items not collected in all PAC settings. In contrast, a cross-setting functional outcome measure would align measure specifications across settings, including the use of a common set of standardized functional assessment data elements.

(a) Measure Importance

Maintenance or improvement of physical function among older adults is increasingly an important focus of health care. Adults age 65 years and older constitute the most rapidly growing population in the United States, and functional capacity in physical (non-psychological) domains has been shown to decline with age.⁶¹

Moreover, impaired functional capacity is associated with poorer quality of life and an increased risk of all-cause mortality, postoperative complications, and cognitive impairment, the latter of which can complicate the return of a patient to the community from post-acute care.^{62 63 64} Nonetheless, evidence suggests that physical functional abilities, including mobility and self-care, are modifiable predictors of patient outcomes across PAC settings, including functional recovery or decline after post-acute care.^{65 66 67 68}

Sep;67(9):1782–1790. doi: 10.1111/jgs.15975. Epub 2019 May 13. PMID: 31081938; PMCID: PMC6955596.

⁶² Clouston SA, Brewster P, Kuh D, Richards M, Cooper R, Hardy R, Rubin MS, Hofer SM. The Dynamic Relationship between Physical Function and Cognition in Longitudinal Aging Cohorts. *Epidemiol Rev.* 2013;35(1):33–50. doi: 10.1093/epirev/mxs004. Epub 2013 Jan 24. PMID: 23349427; PMCID: PMC3578448.

⁶³ Michael YL, Colditz GA, Coakley E, Kawachi I. Health Behaviors, Social Networks, and Healthy Aging: Cross-Sectional Evidence from the Nurses' Health Study. *Qual Life Res.* 1999 Dec;8(8):711–22. doi: 10.1023/a:1008949428041. PMID: 10855345.

⁶⁴ High KP, Zieman S, Gurwitz J, Hill C, Lai J, Robinson T, Schonberg M, Whitson H. Use of Functional Assessment to Define Therapeutic Goals and Treatment. *J Am Geriatr Soc.* 2019 Sep;67(9):1782–1790. doi: 10.1111/jgs.15975. Epub 2019 May 13. PMID: 31081938; PMCID: PMC6955596.

⁶⁵ Deutsch A, Palmer L, Vaughan M, Schwartz C, McMullen T. Inpatient Rehabilitation Facility Patients' Functional Abilities and Validity Evaluation of the Standardized Self-Care and Mobility Data Elements. *Arch Phys Med Rehabil.* 2022 Feb 11:S0003-9993(22)00205-2. doi: 10.1016/j.apmr.2022.01.147. Epub ahead of print. PMID: 35157893.

⁶⁶ Hong I, Goodwin JS, Reistetter TA, Kuo YF, Mallinson T, Karmarkar A, Lin YL, Ottenbacher KJ. Comparison of Functional Status Improvements Among Patients With Stroke Receiving Postacute Care in Inpatient Rehabilitation vs Skilled Nursing Facilities. *JAMA Netw Open.* 2019 Dec 2;2(12):e1916646. doi: 10.1001/jamanetworkopen.2019.16646. PMID: 31800069; PMCID: PMC6902754.

⁶⁷ Alcusky M, Ulbricht CM, Lapane KL. Postacute Care Setting, Facility Characteristics, and Poststroke Outcomes: A Systematic Review. *Arch Phys Med Rehabil.* 2018;99(6):1124–1140.e9. doi: 10.1016/j.apmr.2017.09.005. PMID: 28965738; PMCID: PMC5874162.

⁶⁸ Chu CH, Quan AML, McGilton KS. Depression and Functional Mobility Decline in Long Term Care Home Residents with Dementia: a Prospective Cohort Study. *Can Geriatr J.* 2021;24(4):325–331. doi: 10.5770/cgj.24.511. PMID: 34912487; PMCID: PMC8629506.

⁵⁶ 42 CFR 412.29.

⁵⁷ Medicare Payment Advisory Commission. Report to the Congress: Medicare and the Health Care Delivery System. June 2021. https://www.medpac.gov/wp-content/uploads/import_data/scrape_files/docs/default-source/reports/jun21_medpac_report_to_congress_sec.pdf.

⁵⁸ Hatem SM, Saussez G, Della Faille M, Prist V, Zhang X, Dispa D, Bleyenheuft Y. Rehabilitation of Motor Function After Stroke: A Multiple Systematic Review Focused on Techniques to Stimulate Upper Extremity Recovery. *Front Hum Neurosci.* 2016 Sep 13;10:442. doi: 10.3389/fnhum.2016.00442. PMID: 27679565; PMCID: PMC5020059.

⁵⁹ Centers for Medicare & Medicaid Services. 2022 Annual Call for Quality Measures Fact Sheet, p. 10. <https://www.cms.gov/files/document/mips-call-quality-measures-overview-fact-sheet-2022.pdf>.

⁶⁰ The measures include: Change in Self-Care Score for Medical Rehabilitation Patients (Change in Mobility for Medical Rehabilitation Patients, Discharge Self-Care Score for Medical Rehabilitation Patients), Discharge Mobility Score for Medical Rehabilitation Patients.

⁶¹ High KP, Zieman S, Gurwitz J, Hill C, Lai J, Robinson T, Schonberg M, Whitson H. Use of Functional Assessment to Define Therapeutic Goals and Treatment. *J Am Geriatr Soc.* 2019

rehospitalization rates,^{69 70 71} discharge to community,^{72 73} and falls.⁷⁴

The implementation of interventions that improve patients' functional outcomes and reduce the risks of associated undesirable outcomes as a part of a patient-centered care plan is essential to maximizing functional improvement. For many people, the overall goals of IRF care may include optimizing functional improvement, returning to a previous level of independence, or avoiding institutionalization. Several studies have reported that IRF care can improve patients' motor function at discharge for patients with various diagnoses, including traumatic brain injury and stroke.^{75 76 77 78} While patients generally

improve in all functional domains at IRF discharge, evidence has shown that a significant number of patients continue to exhibit deficits in the domains of fall risk, gait speed, and cognition, suggesting the need for ongoing treatment. Assessing functional status as a health outcome in IRFs can provide valuable information in determining treatment decisions throughout the care continuum, such as the need for rehabilitation services and discharge planning,^{79 80 81 82} as well as provide information to consumers about the effectiveness of rehabilitation and other IRF services delivered. Because evidence shows that older adults experience aging heterogeneously and require individualized and comprehensive health care, functional status can serve as a vital component in informing the provision of health care and thus indicate an IRF's quality of care.^{83 84}

We are proposing to adopt the Discharge Function Score (DC Function) measure⁸⁵ in the IRF QRP beginning with the FY 2025 IRF QRP. This assessment-based outcome measure evaluates functional status by calculating the percentage of IRF patients who meet or exceed an expected discharge function score. We are proposing that this measure would replace the topped-out Application of Functional Assessment/Care Plan cross-setting process measure. Like the Application of Functional Assessment/Care Plan cross-setting process measure, the proposed DC Function measure is calculated using standardized patient assessment data from the IRF Patient Assessment Instrument (IRF-PAI).

The DC Function measure supports our current priorities. Specifically, the measure aligns with the Streamline Quality Measurement domain in CMS's Meaningful Measures 2.0 Framework in two ways. First, the proposed outcome measure could further CMS's objective to prioritize outcome measures by replacing the current cross-setting process measure (see section VIII.C.1.c. of this proposed rule). This proposed DC Function measure uses a set of cross-setting assessment items which would facilitate data collection, quality measurement, outcome comparison, and interoperable data exchange among PAC settings; existing functional outcome measures do not use a set of cross-setting assessment items. Second, this measure adds no additional provider burden since it would be calculated using data from the IRF-PAI that IRFs are already required to collect.

The proposed DC Function measure would also follow a calculation approach similar to the existing functional outcome measures, which are endorsed by the CBE, with some modifications.⁸⁶ Specifically, the measure (1) considers two dimensions of function⁸⁷ (self-care and mobility activities) and (2) accounts for missing data by using statistical imputation to improve the validity of measure

⁶⁹ Li CY, Haas A, Pritchard KT, Karmarkar A, Kuo YF, Hreha K, Ottenbacher KJ. Functional Status Across Post-Acute Settings Is Associated With 30-Day and 90-Day Hospital Readmissions. *J Am Med Dir Assoc.* 2021 Dec;22(12):2447–2453.e5. doi: 10.1016/j.jamda.2021.07.039. Epub 2021 Aug 30. PMID: 34473961; PMCID: PMC8627458.

⁷⁰ Middleton A, Graham JE, Lin YL, Goodwin JS, Bettger JP, Deutsch A, Ottenbacher KJ. Motor and Cognitive Functional Status Are Associated with 30-day Unplanned Rehospitalization Following Post-Acute Care in Medicare Fee-for-Service Beneficiaries. *J Gen Intern Med.* 2016 Dec;31(12):1427–1434. doi: 10.1007/s11606-016-3704-4. Epub 2016 Jul 20. PMID: 27439979; PMCID: PMC5130938.

⁷¹ Gustavson AM, Malone DJ, Boxer RS, Forster JE, Stevens-Lapsley JE. Application of High-Intensity Functional Resistance Training in a Skilled Nursing Facility: An Implementation Study. *Phys Ther.* 2020;100(10):1746–1758. doi: 10.1093/ptj/pzaa126. PMID: 32750132; PMCID: PMC7530575.

⁷² Minor M, Jaywant A, Togliola J, Campo M, O'Dell MW. Discharge Rehabilitation Measures Predict Activity Limitations in Patients with Stroke Six Months after Inpatient Rehabilitation. *Am J Phys Med Rehabil.* 2021 Oct 20. doi: 10.1097/PHM.0000000000001908. Epub ahead of print. PMID: 34686630.

⁷³ Dubin R, Veith JM, Grippi MA, McPeake J, Harhay MO, Mikkelsen ME. Functional Outcomes, Goals, and Goal Attainment among Chronically Critically Ill Long-Term Acute Care Hospital Patients. *Ann Am Thorac Soc.* 2021;18(12):2041–2048. doi: 10.1513/AnnalsATS.202011-1412OC. PMID: 33984248; PMCID: PMC8641806.

⁷⁴ Hoffman GJ, Liu H, Alexander NB, Tinetti M, Braun TM, Min LC. Posthospital Fall Injuries and 30-Day Readmissions in Adults 65 Years and Older. *JAMA Netw Open.* 2019 May 3;2(5):e194276. doi: 10.1001/jamanetworkopen.2019.4276. PMID: 31125100; PMCID: PMC6632136.

⁷⁵ Evans E, Krebill C, Gutman R, Resnik L, Zonfrillo MR, Lueckel SN, Zhang W, Kumar RG, Dams-O'Connor K, Thomas KS. Functional Motor Improvement during Inpatient Rehabilitation among Older Adults with Traumatic Brain Injury. *PM R.* 2022 Apr;14(4):417–427. doi: 10.1002/pmrj.12644. PMID: 34018693; PMCID: PMC8606011.

⁷⁶ Kowalski RG, Hammond FM, Weintraub AH, Nakase-Richardson R, Zafonte RD, Whyte J, Giacino JT. Recovery of Consciousness and Functional Outcome in Moderate and Severe Traumatic Brain Injury. *JAMA Neurol.* 2021;78(5):548–557. doi: 10.1001/jamaneurol.2021.0084. PMID: 33646273; PMCID: PMC7922241.

⁷⁷ Li CY, Karmarkar A, Kuo YF, Haas A, Ottenbacher KJ. Impact of Self-Care and Mobility on

One or More Post-Acute Care Transitions. *J Aging Health.* 2020;32(10):1325–1334. doi: 10.1177/0898264320925259. PMID: 32501126; PMCID: PMC7718286.

⁷⁸ O'Dell MW, Jaywant A, Frantz M, Patel R, Kwong E, Wen K, Taub M, Campo M, Togliola J. Changes in the Activity Measure for Post-Acute Care Domains in Persons With Stroke During the First Year After Discharge From Inpatient Rehabilitation. *Arch Phys Med Rehabil.* 2021 Apr;102(4):645–655. doi: 10.1016/j.apmr.2020.11.020. PMID: 33440132.

⁷⁹ Harry M, Woehrle T, Renier C, Furcht M, Enockson M. Predictive Utility of the Activity Measure for Post-Acute Care "6-Clicks" Short Forms on Discharge Disposition and Effect on Readmissions: A Retrospective Observational Cohort Study. *BMJ Open.* 2021;11:e044278. doi: 10.1136/bmjopen-2020-044278. PMID: 33478966; PMCID: PMC7825271.

⁸⁰ Chang FH, Lin YN, Liou TH, Lin JC, Yang CH, Cheng HL. Predicting Admission to Post-Acute Inpatient Rehabilitation in Patients with Acute Stroke. *J Rehabil Med.* 2020 Sep 28;52(9):jrm00105. doi: 10.2340/16501977-2739. PMID: 32924065.

⁸¹ Warren M, Knecht J, Verheijde J, Tompkins J. Association of AM-PAC "6-Clicks" Basic Mobility and Daily Activity Scores With Discharge Destination. *Phys Ther.* 2021 Apr;101(4):pzab043. doi: 10.1093/ptj/pzab043. PMID: 33517463.

⁸² Covert S, Johnson JK, Stilphen M, Passek S, Thompson NR, Katzan I. Use of the Activity Measure for Post-Acute Care "6 Clicks" Basic Mobility Inpatient Short Form and National Institutes of Health Stroke Scale to Predict Hospital Discharge Disposition After Stroke. *Phys Ther.* 2020 Aug 31;100(9):1423–1433. doi: 10.1093/ptj/pzab102. PMID: 32494809.

⁸³ Criss MG, Wingood M, Staples WH, Southard V, Miller KL, Norris TL, Avers D, Ciolek CH, Lewis CB, Strunk ER. APTA Geriatrics' Guiding Principles for Best Practices in Geriatric Physical Therapy: An Executive Summary. *J Geriatr Phys Ther.* 2022 Apr–June;45(2):70–75. doi: 10.1519/JPT.0000000000000342. PMID: 35384940.

⁸⁴ Cogan AM, Weaver JA, McHarg M, Leland NE, Davidson L, Mallinson T. Association of Length of Stay, Recovery Rate, and Therapy Time per Day With Functional Outcomes After Hip Fracture Surgery. *JAMA Netw Open.* 2020 Jan 3;3(1):e1919672. doi: 10.1001/jamanetworkopen.2019.19672. PMID: 31977059; PMCID: PMC6991278.

⁸⁵ Discharge Function Score for Inpatient Rehabilitation Facilities (IRFs) Technical Report. <https://www.cms.gov/files/document/irf-discharge-function-score-technical-report-february-2023.pdf>.

⁸⁶ The existing measures are the IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients measure (Discharge Self-Care Score), and the Inpatient Rehabilitation Facility (IRF) Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients measures (Discharge Mobility Score).

⁸⁷ Post-Acute Care Payment Reform Demonstration Report to Congress Supplement—Interim Report. May 2011. Available at https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Reports/Downloads/GAGE_PACPRD_RTC_Supp_Materials_May_2011.pdf.

performance. The statistical imputation approach recodes missing functional status data to the *most likely value* had the status been assessed, whereas the current imputation approach implemented in existing functional outcome measures recodes missing data to the *lowest* functional status. A benefit of statistical imputation is that it uses patient characteristics to produce an unbiased estimate of the score on each item with a missing value. In contrast, the current approach treats patients with missing values and patients who were coded to the lowest functional

status similarly, despite evidence suggesting varying measure performance between the two groups, which can to lead less accurate measure performances.

(b) Measure Testing

The measure development contractor used FY 2019 data to conduct testing on the DC Function measure to assess validity, reliability, and reportability, all of which informed interested parties' feedback and Technical Expert Panel (TEP) input (see section VIII.C.1.b.(3) of this proposed rule). Validity was

assessed for the measure performance, the risk adjustment model, face validity, and statistical imputation models. Validity testing of measure performance entailed determining Spearman's rank correlations between the proposed measure's performance for providers with 20 or more stays and the performance of other publicly reported IRF quality measures. Results indicated that the proposed DC Function measure captures the intended outcome based on the directionalities and strengths of correlation coefficients and are further detailed below in Table 18.

TABLE 18—SPEARMAN'S RANK CORRELATION RESULTS OF DC FUNCTION MEASURE WITH PUBLICLY REPORTED IRF QUALITY MEASURES

Measure—long name	Measure—short name	p
Discharge to Community—PAC IRF QRP	Discharge to Community	0.25
IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients ...	Change in Self-Care Score	0.82
IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients	Change in Mobility Score	0.86
IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients	Discharge Self-Care Score	0.85
IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients	Discharge Mobility Score	0.88

Validity testing of the risk adjustment model showed good model discrimination as the measure model has the predictive ability to distinguish patients with low expected functional capabilities from those with high expected functional capabilities.⁸⁸ The ratios of observed-to-predicted discharge function score across eligible stays, by deciles of expected functional capabilities, ranged from 0.99 to 1.01. Both the Cross-Setting Discharge Function TEPs and patient-family feedback showed strong support for the face validity and importance of the proposed measure as an indicator of quality of care (see section VIII.C.1.b.(3) of this proposed rule). Lastly, validity testing of the measure's statistical imputation models indicated that the models demonstrate good discrimination and produce more precise and accurate estimates of function scores for items with missing scores when compared to the current imputation approach implemented in IRF QRP functional outcome measures, specifically the IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients measure (Change in Self-Care Score), the IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients measure (Change in Mobility Score), the IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients measure (Discharge Self-Care

Score), and the IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients measure (Discharge Mobility Score).

Reliability and reportability testing also yielded results that support the proposed DC Function measure's scientific acceptability. Split-half testing revealed the proposed measure's excellent reliability, indicated by an intraclass correlation coefficient value of 0.95. Reportability testing indicated high reportability (98 percent) of IRFs meeting the public reporting threshold of 20 eligible stays. For additional measure testing details, we refer readers to the document titled *Discharge Function Score for Inpatient Rehabilitation Facilities (IRFs) Technical Report*.⁸⁹

(2) Competing and Related Measures

Section 1886(j)(7)(D)(i) of the Act and section 1899B(e)(2)(A) of the Act require that, absent an exception under section 1886(j)(7)(D)(i) and 1899B(e)(2)(B) of the Act, measures specified under section 1886(j)(7)(D)(i) of the Act and section 1899B of the Act must be endorsed by the CBE with a contract under section 1890(a). In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed, section 1886(j)(7)(D)(ii) of the Act and section 1899B(e)(2)(B) of the Act permit the Secretary to specify a

measure that is not so endorsed, as long as due consideration is given to measures that have been endorsed or adopted by a CBE identified by the Secretary.

The proposed DC Function measure is not CBE endorsed, so we considered whether there are other available measures that: (1) assess both functional domains of self-care and mobility in IRFs and (2) satisfy the requirement of the Act to develop and implement standardized quality measures from the quality measure domain of functional status, cognitive function, and changes in function and cognitive function across the PAC settings. While the Application of Functional Assessment/Care Plan measure assesses both functional domains and satisfies the Act's requirement, this current cross-setting process measure is not endorsed by a CBE and the performance on the Application of Functional Assessment/Care Plan measure among IRFs is so high and unvarying that this current measure does not offer meaningful distinctions in performance. Additionally, after review of other CBE endorsed measures, we were unable to identify any CBE endorsed measures for IRFs that meet the aforementioned requirements. While the IRF QRP includes CBE endorsed outcome measures addressing functional status,⁹⁰

⁸⁸ "Expected functional capabilities" is defined as the predicted discharge function score.

⁸⁹ *Discharge Function Score for Inpatient Rehabilitation Facilities (IRFs) Technical Report*. <https://www.cms.gov/files/document/irf-discharge-function-score-technical-report-february-2023.pdf>.

⁹⁰ The measures include: Change in Self-Care Score for Medical Rehabilitation Patients Change in Mobility Score for Medical Rehabilitation Patients, Discharge Self-Care Score for Medical Rehabilitation Patients, and Discharge Mobility Score for Medical Rehabilitation Patients.

they each assess a single domain of function, and are not cross-setting in nature because they rely on functional status items not collected in all PAC settings.

Therefore, after consideration of other available measures, we find that the exception under section 1899B(e)(2)(B) of the Act applies and are proposing to adopt the DC Function measure beginning with the FY 2025 IRF QRP. We intend to submit the proposed measure to the CBE for consideration of endorsement when feasible.

(3) Interested Parties and Technical Expert Panel (TEP) Input

In our development and specification of this measure, we employed a transparent process in which we sought input from interested parties and national experts and engaged in a process that allowed for pre-rulemaking input in accordance with section 1890A of the Act. To meet this requirement, we provided the following opportunities for input from interested parties: a patient and family/caregiver advocates (PFA) focus group, two TEPs, and public comments through a request for information (RFI). First, the measure development contractor convened a PFA focus group, during which patients and caregivers provided support for the proposed measure concept. Participants emphasized the importance of measuring functional outcomes and found self-care and mobility to be critical aspects of care. Additionally, they expressed a strong interest in metrics assessing the number of patients discharged from particular facilities with improvements in self-care and mobility, and their views of self-care and mobility aligned with the functional domains captured by the proposed measure. All feedback was used to inform measure development efforts. The measure development contractor for the DC Function measure subsequently convened TEPs on July 14–15, 2021 and January 26–27, 2022 to obtain expert input on the development of a cross-setting function measure for use in the IRF QRP. The TEPs consisted of interested parties with a diverse range of expertise, including IRF and PAC subject matter knowledge, clinical expertise, patient and family perspectives, and measure development experience. The TEPs supported the proposed measure concept and provided substantive feedback regarding the measure's specifications and measure testing data.

First, the TEP was asked whether they prefer a cross-setting measure that is modeled after the currently adopted Discharge Mobility Score and Discharge

Self-Care Score measures, or one that is modeled after the currently adopted Change in Mobility Score and Change in Self-Care Score measures. With the Discharge Mobility Score and Change in Mobility Score measures and the Discharge Self-Care Score and Change in Self-Care Score measures being both highly correlated and not appearing to measure unique concepts, the TEP favored the Discharge Mobility Score and Discharge Self-Care Score measures over the Change in Mobility Score and Change in Self-Care Score measure and recommended moving forward with utilizing the Discharge Mobility Score and Discharge Self-Care Score measure concepts for the development of the cross-setting measure.

Second, in deciding the standardized functional assessment data elements to include in the cross-setting measure, the TEP recommended removing redundant data elements. Strong correlations between scores of functional items within the same functional domain suggested that certain items may be redundant in eliciting information about patient function and inclusion of these items could lead to overrepresentation of a particular functional area. Subsequently, our measure development contractor focused on the Discharge Mobility Score measure as a starting point for cross-setting development due to the greater number of cross-setting standardized functional assessment data elements for mobility while also identifying redundant functional items that could be removed from a cross-setting functional measure.

Third, the TEP supported including the cross-setting self-care items such that the cross-setting function measure would capture both self-care and mobility. Panelists agreed that self-care items added value to the measure and are clinically important to function. Lastly, the TEP provided refinements to imputation strategies to more accurately represent function performance across all PAC settings, including the support of using statistical imputation over the current imputation approach implemented in existing functional outcome measures in the PAC QRPs. We considered all the TEP's recommendations for developing a cross-setting function measure, and we applied their recommendations where technically feasible and appropriate. Summaries of the TEP proceedings titled *Technical Expert Panel (TEP) for the Refinement of Long-Term Care Hospital (LTCH), Inpatient Rehabilitation Facility (IRF), Skilled Nursing Facility (SNF)/Nursing Facility (NF), and Home Health (HH) Function Measures Summary Report* (July 2021

TEP)⁹¹ and *Technical Expert Panel (TEP) for Cross-Setting Function Measure Development Summary Report* (January 2022 TEP)⁹² are available on the CMS Measures Management System (MMS) Hub.

Finally, we solicited feedback from interested parties on the importance, relevance, and applicability of a cross-setting functional outcome measure for IRFs through an RFI in the FY 2023 IRF PPS proposed rule (87 FR 20244). Commenters were supportive of a cross-setting functional outcome measure that is inclusive of both self-care and mobility items, but also provided information related to potential risk adjustment methodologies as well as other measures that could be used to capture functional outcomes across PAC settings (87 FR 47070).

(4) Measure Applications Partnership (MAP) Review

Our pre-rulemaking process includes making publicly available a list of quality and efficiency measures, called the MUC List, that the Secretary is considering adopting for use in the Medicare program, including our quality reporting programs. This allows multi-interested parties to provide recommendations to the Secretary on the measures included on the list.

We included the DC Function measure under the IRF QRP in the publicly available MUC List for December 1, 2022.⁹³ After the MUC List was published, the CBE convened MAP received four comments from interested parties in the industry on the 2022 MUC List. Two commenters were supportive of the measure and two were not. Among the commenters in support of the measure, one commenter stated that function scores are the most meaningful outcome measure in the IRF setting, as they not only assess patient outcomes but also can be used for clinical improvement processes. Additionally, this commenter noted the measure's good reliability and validity and that the measure is feasible to implement. The

⁹¹ *Technical Expert Panel (TEP) for the Refinement of Long-Term Care Hospital (LTCH), Inpatient Rehabilitation Facility (IRF), Skilled Nursing Facility (SNF)/Nursing Facility (NF), and Home Health (HH) Function Measures Summary Report* (July 2021 TEP) is available at <https://mmshub.cms.gov/sites/default/files/TEP-Summary-Report-PAC-Function.pdf>.

⁹² *Technical Expert Panel (TEP) for Cross-Setting Function Measure Development Summary Report* (January 2022 TEP) is available at <https://mmshub.cms.gov/sites/default/files/PAC-Function-TEP-Summary-Report-Jan2022-508.pdf>.

⁹³ Centers for Medicare & Medicaid Services. Overview of the List of Measures Under Consideration for December 1, 2022. <https://mmshub.cms.gov/sites/default/files/2022-MUC-List-Overview.pdf>.

second commenter supported including the measure in the IRF QRP measures we propose through rulemaking.

Commenters not in support of the measure raised the following concerns: the need for more detailed measure specifications, the complexity of calculating the expected discharge score, the measure's validity and usability, and the differences in denominator populations across PAC settings. We were able to address these concerns during the MAP PAC/LTC workgroup meeting held on December 12, 2022. Specifically, we clarified that the technical reports include detailed measure specifications, and that expected discharge scores are calculated by risk-adjusting the observed discharge scores (see section VIII.C.1.b.(5) of this proposed rule). We also noted that the measure exhibits good validity (see section VIII.C.1.b(1)(b) of this proposed rule) and clarified that the wide range of expected scores does not indicate poor validity and is consistent with the range of observed scores. We also pointed out that the measure is highly usable since it is similar in design and complexity to existing function measures and its data elements are already in use. Lastly, we explained that the denominator population in each measure setting represents the assessed population within the setting and the measure satisfies the requirement of the Act for a cross-setting measure in the functional status domain.

Shortly after, several CBE convened MAP workgroups met to provide input on the proposed DC Function measure. First, the MAP Health Equity Advisory Group convened on December 6–7, 2022. The MAP Health Equity Advisory Group did not share any health equity concerns related to the implementation of the DC Function measure, and only asked for clarification regarding measure specifications from the measure steward. The MAP Rural Health Advisory Group met on December 8–9, 2022, during which two of its members provided support for the DC Function measure and other MAP Rural Health Advisory Group members did not express rural health concerns regarding the measure.

The MAP PAC/LTC workgroup met on December 12, 2022 and provided input on the proposed DC Function measure. During this meeting, we were able to address several concerns raised by interested parties after the publication of the MUC List. Specifically, we clarified that the expected discharge scores are not calculated using self-reported functional goals, and are simply calculated by risk-adjusting the observed discharge scores

(see section VIII.C.1.b.(5) of this proposed rule). Therefore, we believe that these scores cannot be “gamed” by reporting less-ambitious functional goals. We also pointed out that the measure is highly usable as it is similar in design and complexity to existing function measures and that the data elements used in this measure are already in use on the IRF–PAI submitted by IRFs. Lastly, we clarified that the DC Function measure is intended to supplement, rather than replace, existing IRF QRP measures for self-care and mobility and implements improvements on the existing Discharge Self-Care Score and Discharge Mobility Score measures that make the proposed measure more valid and harder to game.

The MAP PAC/LTC workgroup went on to discuss several concerns with the DC Function measure, including (1) whether the measure is cross-setting due to denominator populations that differ among settings, (2) whether the measure would adequately represent the full picture of function, especially for patients who may have a limited potential for functional gain, and (3) that the range of expected scores was too large to offer a valid facility-level score. We clarified that the denominator population in each measure-setting represents the assessed population within the setting and that the measure satisfies the requirement of section 1886(j)(7) of the Act for a cross-setting measure in the functional status domain specified under section 1899B(c)(1) of the Act. Additionally, we noted that the TEP had reviewed the item set and determined that all the self-care and mobility items were suitable for all settings. Further, we clarified that, because the DC Function measure would assess whether a patient met or exceeded their expected discharge score, it accounts for patients who are not expected to improve. Lastly, we noted that the DC Function measure has a high degree of correlation with the existing function measures and that the measure exhibits good validity and clarified that the wide range of expected scores does not indicate poor validity and is consistent with the range of observed scores. The PAC/LTC workgroup voted to support the staff recommendation of conditional support for rulemaking, with the condition that we seek CBE endorsement.

In response to the MAP PAC/LTC workgroup's preliminary recommendation, the CBE received two comments in support of the MAP PAC/LTC workgroup's preliminary recommendation of conditional support for rulemaking. One commenter recommended the DC Function measure

under the condition that the measure be reviewed and refined such that its implementation supports patient autonomy and results in care that aligns with patients' personal functional goals. The second commenter provided support for the DC Function measure under the condition that it produces statistically meaningful information that can inform improvements in care processes, while also expressing concern that the measure is not truly cross-setting because: (1) the measure utilizes different patient populations in each setting-specific denominator, (2) the risk-adjustment models use setting-specific covariates, and (3) using a single set of cross-setting Section GG self-care and mobility function items in our standardized patient assessment instruments is not appropriate since the items may not be relevant given the differences in each PAC resident/patient population.

Finally, the MAP Coordinating Committee workgroup convened on January 24–25, 2023. At this meeting, one interested party indicated their lack of support for the PAC/LTC workgroup's preliminary recommendation. The commenter expressed concern that the proposed DC Function measure competes with existing self-care and mobility measures in the IRF QRP. We noted that we monitor measures to determine whether they meet any measure removal factors, set forth in 42 CFR 413.360(b)(2), and when identified, we may remove such measures through the rulemaking process. We noted again that the TEP had reviewed the item set and determined that all the self-care and mobility items were suitable for all settings. The MAP Coordinating Committee members expressed support for our review of existing measures for potential removal, as well as for the proposed DC Function measure, favoring the implementation of a single, standardized function measure across PAC settings. The Coordinating Committee unanimously upheld the workgroup recommendation of conditional support for rulemaking. We refer readers to the final MAP recommendations titled, *2022–2023 MAP Final Recommendations*.⁹⁴

(5) Quality Measure Calculation

The proposed DC Function measure is an outcome measure that estimates the percentage of IRF patients who meet or exceed an expected discharge score during the reporting period. The proposed measure's numerator is the

⁹⁴ 2022–2023 MAP Final Recommendations. <https://mmshub.cms.gov/sites/default/files/2022-2023-MAP-Final-Recommendations-508.xlsx>.

number of IRF stays with an observed discharge function score that is equal to or greater than the calculated expected discharge function score. The observed discharge function score is the sum of individual function item values at discharge. The expected discharge function score is computed by risk-adjusting the observed discharge function score for each IRF stay. Risk adjustment controls for patient characteristics such as admission function score, age, and clinical conditions. The denominator is the total number of IRF stays with an IRF-PAI record in the measure target period (four rolling quarters) that do not meet the measure exclusion criteria. For additional details regarding the numerator, denominator, risk adjustment, and exclusion criteria, refer to the *Discharge Function Score for Inpatient Rehabilitation Facilities (IRFs) Technical Report*.⁹⁵

The proposed DC Function measure implements a statistical imputation approach for handling “missing” standardized functional assessment data elements. The coding guidance for standardized functional assessment data elements allows for using “Activity Not Attempted” (ANA) codes, resulting in “missing” information about a patient’s functional ability on at least some items, at admission and/or discharge, for a substantive portion of IRF patients. Currently, functional outcome measures in the IRF QRP use a simple imputation method whereby all ANA codes or otherwise missing scores, on both admission and discharge records, are recoded to “1” or “most dependent.” Statistical imputation, on the other hand, replaces these missing values with a variable based on the values of other, non-missing variables in the assessment and on the values of other assessments which are otherwise similar to the assessment with a missing value. Specifically, this proposed DC Function measure’s statistical imputation allows missing values (that is, the ANA codes) to be replaced with any value from 1 to 6, based on a patient’s clinical characteristics and codes assigned on other standardized functional assessment data elements. The measure implements separate imputation models for each standardized functional assessment data element used in the construction of the discharge score and the admission score. Relative to the current simple imputation method, this statistical imputation approach

increases precision and accuracy and reduces the bias in estimates of missing item values. We refer readers to the *Discharge Function Score for Inpatient Rehabilitation Facilities (IRFs) Technical Report*⁹⁶ for measure specifications and additional details.

We invite public comment on our proposal to adopt the DC Function measure, beginning with the FY 2025 IRF QRP.

c. Proposed Removal of the Application of Percent of Long-Term Care Hospital Patients With an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function Beginning With the FY 2025 IRF QRP

We are proposing to remove the Application of Percent of Long-Term Care Hospital Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (Application of Functional Assessment/Care Plan) measure from the IRF QRP beginning with the FY 2025 IRF QRP. Section 412.634(b)(2) of our regulations specifies eight factors we consider for measure removal from the IRF QRP, and we believe this measure should be removed because it satisfies two of these factors.

First, the Application of Functional Assessment/Care Plan measure meets the conditions for measure removal factor one: measure performance among IRFs is so high and unvarying that meaningful distinctions in improvements in performance can no longer be made.⁹⁷ Second, this measure meets the conditions for measure removal factor six: there is an available measure that is more strongly associated with desired patient functional outcomes. We believe the proposed DC Function measure discussed in section VIII.C.1.b. of this proposed rule better measures functional outcomes than the current Application of Functional Assessment/Care Plan measure. We discuss each of these reasons in more detail below.

In regard to removal factor one, the Application of Functional Assessment/Care Plan measure has become topped out, with average performance rates reaching nearly 100 percent over the past 3 years (ranging from 99.8 percent

to 99.9 percent during CYs 2019–2021).^{98 99 100} For the 12-month period of third quarter of CY 2020 through second quarter of CY 2021 (July 1, 2020 through June 30, 2021), IRFs had an average score for this measure of 99.8 percent, with nearly 80 percent of IRFs scoring 100 percent,¹⁰¹ and for CY 2021, IRFs had an average score of 99.9 percent, with nearly 78 percent of IRFs scoring 100 percent.¹⁰² The proximity of these mean rates to the maximum score of 100 percent suggests a ceiling effect and a lack of variation that restricts distinction among IRFs.

In regard to measure removal factor six, the DC Function measure is more strongly associated with desired patient functional outcomes than this current process measure, the Application of Functional Assessment/Care Plan measure. As described in section VIII.C.b.(1)(b) of this proposed rule, the DC Function measure has the predictive ability to distinguish patients with low expected functional capabilities from those with high expected functional capabilities.¹⁰³ We have been collecting standardized functional assessment elements across PAC settings since 2016 which has allowed for the development of the proposed DC Function measure and meets the statutory requirements to submit standardized patient assessment data and other necessary data with respect to the domain of functional status, cognitive function, and changes in function and cognitive function. In light of this development, this process measure, the Application of Functional Assessment/Care Plan measure which measures only whether a functional assessment is completed and a functional goal is included in the care plan, is no longer necessary, and can be

⁹⁸ Centers for Medicare & Medicaid Services. Inpatient Rehabilitation Facilities Data Archive, 2021, Annual Files National Data 07–21. <https://data.cms.gov/provider-data/archived-data/inpatient-rehabilitation-facilities>.

⁹⁹ Centers for Medicare & Medicaid Services. Inpatient Rehabilitation Facilities Data Archive, 2022, Annual Files National Data 04–22. <https://data.cms.gov/provider-data/archived-data/inpatient-rehabilitation-facilities>.

¹⁰⁰ Centers for Medicare & Medicaid Services. Inpatient Rehabilitation Facilities Data Archive, 2022, Annual Files National Data 09–22. <https://data.cms.gov/provider-data/archived-data/inpatient-rehabilitation-facilities>.

¹⁰¹ Centers for Medicare & Medicaid Services. Inpatient Rehabilitation Facilities Data Archive, 2022, Annual Files Provider Data 04–22. <https://data.cms.gov/provider-data/archived-data/inpatient-rehabilitation-facilities>.

¹⁰² Centers for Medicare & Medicaid Services. Inpatient Rehabilitation Facilities Data Archive, 2022, Annual Files Provider Data 09–22. <https://data.cms.gov/provider-data/archived-data/inpatient-rehabilitation-facilities>.

¹⁰³ “Expected functional capabilities” is defined as the predicted discharge function score.

⁹⁵ Discharge Function Score for Inpatient Rehabilitation Facilities (IRFs) Technical Report. <https://www.cms.gov/files/document/irf-discharge-function-score-technical-report-february-2023.pdf>.

⁹⁶ *Discharge Function Score for Inpatient Rehabilitation Facilities (IRFs) Technical Report*. <https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/irf-quality-reporting/irf-quality-reporting-program-measures-information>.

⁹⁷ For more information on the factors CMS uses to base decisions for measure removal, we refer readers to § 412.364(b)(2). <https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-B/part-412/subpart-P/section-412.634>.

replaced with a measure that evaluates the IRF's outcome of care on a patient's function.

Because the Application of Functional Assessment/Care Plan measure meets measure removal factors one and six, we are proposing to remove it from the IRF QRP beginning with the FY 2025 IRF QRP. We are also proposing that public reporting of the Application of Functional Assessment/Care Plan measure would end by the September 2024 Care Compare refresh or as soon as technically feasible when public reporting of the proposed DC Function measure would begin (see section VIII.G.3. of this proposed rule).

Under our proposal, IRFs would no longer be required to report a Self-Care Discharge Goal (that is, GG0130, Column 2) or a Mobility Discharge Goals (that is, GG0170, Column 2) on the IRF-PAI beginning with patients admitted on October 1, 2023. We would remove the items for Self-Care Discharge Goals (that is, GG0130, Column 2) and Mobility Discharge Goals (that is, GG0170, Column 2) with the next release of the IRF-PAI. Under our proposal, these items would not be required to meet IRF QRP requirements beginning with the FY 2025 IRF QRP.

We invite public comment on our proposal to remove the Application of Functional Assessment/Care Plan measure from the IRF QRP beginning with the FY 2025 IRF QRP.

d. Proposed Removal of the IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients and Removal of the IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients Beginning With the FY 2025 IRF QRP

We are proposing to remove the IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (Change in Self-Care Score) and the IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (Change in Mobility Score) measures from the IRF QRP beginning with the FY 2025 IRF QRP. Section 412.634(b)(2) of our regulations specifies eight factors we consider for measure removal from the IRF QRP. We propose removal of these measures because they satisfy measure removal factor eight: the costs associated with a measure outweigh the benefits of its use in the program.

Measure costs are multifaceted and include costs associated with implementing and maintaining the measures. On this basis, we believe these measures should be removed for

two reasons. First, the costs to IRFs associated with tracking similar or duplicative measures in the IRF QRP outweigh any benefit that might be associated with the measures. Second, the costs to CMS associated with program oversight of the measures, including measure maintenance and public display, outweigh the benefit of information obtained from the measures. We discuss each of these in more detail below.

We adopted the Change in Self-Care Score and Change in Mobility Score measures in the FY 2016 IRF PPS final rule (80 FR 47112 through 47118) under section 1888(e)(6)(B)(i)(II) of the Act because the measures meet the functional status, cognitive function, and changes in function and cognitive function domain under section 1899B(c)(1) of the Act. Two additional measures addressing the functional status, cognitive function, and changes in function and cognitive function domain were adopted in the same program year: the Application of IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients (Discharge Self-Care Score) and the Application of IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients (Discharge Mobility Score) measures. Given that the primary goal of rehabilitation is improvement in functional status, IRF clinicians have traditionally assessed and documented individual patients' functional status at admission and discharge to evaluate the effectiveness of the rehabilitation care provided.

We are proposing to remove the Change in Self-Care Score and Change in Mobility Score measures because we believe the IRF costs associated with tracking duplicative measures outweigh any benefit that might be associated with the measures. Since the adoption of these measures in 2016, we have been monitoring the data and found that the scores for the two self-care functional outcome measures, Change in Self-Care Score and Discharge Self-Care Score, are very highly correlated in IRF settings (0.97).¹⁰⁴ Similarly, in the monitoring data, we have found that, the scores for the two mobility score measures, Change in Mobility Score and Discharge Mobility Score, are very highly

correlated in IRF settings (0.98).¹⁰⁵ The high correlation between these measures suggests that the Change in Self-Care Score and Discharge Self-Care Score and the Change in Mobility Score and the Discharge Mobility Score measures provide almost identical information about this dimension of quality to IRFs and are therefore duplicative.

Our proposal to remove the Change in Self-Care Score and the Change in Mobility Score measures is supported by feedback received from the TEP convened for the Refinement of LTCH, IRF, SNF/NF, and HH Function Measures. As described in section VIII.C.1.b(3) of this proposed rule, the TEP panelists were presented with analyses that demonstrated the "Change in Score" and "Discharge Score" measure sets are highly correlated and do not appear to measure unique concepts, and they subsequently articulated that it would be sensible to retire either the "Change in Score" or "Discharge Score" measure sets for both self-care and mobility. Based on responses to the post-TEP survey, the majority of panelists (nine out of 12 respondents) suggested that only one measure is necessary. Of those nine respondents, six preferred retaining the "Discharge Score" measures over the "Change in Score" measures.¹⁰⁶

Additionally, we are proposing to remove the Change in Self-Care Score and Change in Mobility Score measures because the program oversight costs outweigh the benefit of information that CMS, IRFs, and the public obtain from the measures. We must engage in various activities when administering the QRPs, such as monitoring measure results, producing provider preview reports, and ensuring the accuracy of the publicly reported data. Because these measures essentially provide the same information to IRFs and consumers as the Discharge Self-Care Score and Discharge Mobility Score measures, the costs to CMS associated with measure maintenance and public display outweigh the benefit of

¹⁰⁵ Acumen, LLC and Abt Associates. Technical Expert Panel (TEP) for the Refinement of Long-Term Care Hospital (LTCH), Inpatient Rehabilitation Facility (IRF), Skilled Nursing Facility (SNF)/Nursing Facility (NF), and Home Health (HH) Function Measures; July 14–15, 2021: Summary Report. February 2022. <https://mmshub.cms.gov/sites/default/files/TEP-Summary-Report-PAC-Function.pdf>.

¹⁰⁴ Acumen, LLC and Abt Associates. Technical Expert Panel (TEP) for the Refinement of Long-Term Care Hospital (LTCH), Inpatient Rehabilitation Facility (IRF), Skilled Nursing Facility (SNF)/Nursing Facility (NF), and Home Health (HH) Function Measures, July 14–15, 2021: Summary Report. February 2022. <https://mmshub.cms.gov/sites/default/files/TEP-Summary-Report-PAC-Function.pdf>.

¹⁰⁶ Acumen, LLC and Abt Associates. Technical Expert Panel (TEP) for the Refinement of Long-Term Care Hospital (LTCH), Inpatient Rehabilitation Facility (IRF), Skilled Nursing Facility (SNF)/Nursing Facility (NF), and Home Health (HH) Function Measures, July 14–15, 2021: Summary Report. February 2022. <https://mmshub.cms.gov/sites/default/files/TEP-Summary-Report-PAC-Function.pdf>.

information obtained from the measures.

Because these measures meet the criteria for measure removal factor eight, we are proposing to remove the Change in Self-Care Score and Change in Mobility Score measures from the IRF QRP beginning with the FY 2025 IRF QRP. We are also proposing that public reporting of the Change in Self-Care Score and the Change in Mobility Score measure would end by the September 2024 Care Compare refresh or as soon as technically feasible.

We invite public comment on our proposal to remove the Change in Self-Care Score and Change in Mobility Score measures from the IRF QRP beginning with the FY 2025 IRF QRP.

2. IRF QRP Quality Measure Proposal Beginning With the FY 2026 IRF QRP

a. Proposed COVID-19 Vaccine: Percent of Patients/Residents Who Are Up to Date Measure Beginning With the FY 2026 IRF QRP

(1) Background

COVID-19 has been and continues to be a major challenge for PAC facilities, including IRFs. The Secretary first declared COVID-19 a PHE on January 31, 2020. As of March 23, 2023, the U.S. has reported 103,957,053 cumulative cases of COVID-19, and 1,123,613 total deaths due to COVID-19.¹⁰⁷ Although all age groups are at risk of contracting COVID-19, older persons are at a significantly higher risk of mortality and severe disease following infection, with those over age 80 dying at five times the average rate.¹⁰⁸ Older adults, in general, are prone to both acute and chronic infections owing to reduced immunity, and are a high-risk population.¹⁰⁹ Adults age 65 and older comprise over 75 percent of total COVID-19 deaths despite representing 13.4 percent of reported cases.¹¹⁰ COVID-19 has impacted older adults' access to care, leading to poorer clinical outcomes, as well as taking a serious toll on their

mental health and well-being due to social distancing.¹¹¹

Since the development of the vaccines to combat COVID-19, studies have shown they continue to provide strong protection against severe disease, hospitalization, and death in adults, including during the predominance of Omicron BA.4 and BA.5 variants.¹¹² Initial studies showed the efficacy of FDA-approved or authorized COVID-19 vaccines in preventing COVID-19. Prior to the emergence of the Delta variant of the virus, vaccine effectiveness against COVID-19-associated hospitalization among adults age 65 and older was 91 percent for those who were fully vaccinated with an mRNA vaccine (Pfizer-BioNTech or Moderna), and 84 percent for those receiving a viral vector vaccine (Janssen). Adults age 65 and older who were fully vaccinated with an mRNA COVID-19 vaccine had a 94 percent reduction in risk of COVID-19 hospitalization while those who were partially vaccinated had a 64 percent reduction in risk.¹¹³ Further, after the emergence of the Delta variant, vaccine effectiveness against COVID-19-associated hospitalization for adults who were fully vaccinated was 76 percent among adults age 75 and older.¹¹⁴

More recently, since the emergence of the Omicron variants and availability of booster doses, multiple studies have shown that while vaccine effectiveness has waned, protection is higher among those receiving booster doses than among those only receiving the primary series.¹¹⁵ ¹¹⁶ ¹¹⁷ CDC data show that,

among people age 50 and older, those who have received both a primary vaccination series and booster doses have a lower risk of hospitalization and dying from COVID-19 than their non-vaccinated counterparts.¹¹⁸ Additionally, a second vaccine booster dose has been shown to reduce risk of severe outcomes related to COVID-19, such as hospitalization or death.¹¹⁹ Early evidence also demonstrates that the bivalent boosters, specifically aimed to provide better protection against disease caused by Omicron subvariants, have been quite effective, and underscores the role of up to date vaccination protocols in effectively countering the spread of COVID-19.¹²⁰ ¹²¹

(a) Measure Importance

Despite the availability and demonstrated effectiveness of COVID-19 vaccinations, significant gaps continue to exist in vaccination rates.¹²² As of March 22, 2023, vaccination rates among people age 65 and older are generally high for the primary vaccination series (94.3 percent) but lower for the first booster (73.6 percent among those who received a primary series) and even lower for the second

2022. *MMWR Morb Mortal Wkly Rep.* 2022;71(42):1327–1334. doi: 10.15585/mmwr.mm7142a3.

¹¹⁶ Andrews N, Stowe J, Kirsebom F, et al. Covid-19 vaccine effectiveness against the Omicron (B.1.1.529) variant. *N Engl J Med.* 2022 Apr 21;386(16):1532–1546. doi: 10.1056/NEJMoa2119451. PMID: 35249272; PMCID: PMC8908811.

¹¹⁷ Buchan SA, Chung H, Brown KA, et al. Estimated effectiveness of COVID-19 vaccines against Omicron or Delta symptomatic infection and severe outcomes. *JAMA Netw Open.* 2022 Sep 1;5(9):e2232760. doi: 10.1001/jamanetworkopen.2022.32760. <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2796615>. PMID: 36136332; PMCID: PMC9500552.

¹¹⁸ Centers for Disease Control and Prevention. Rates of laboratory-confirmed COVID-19 hospitalizations by vaccination status. COVID Data Tracker. 2023, February 9. Last accessed March 22, 2023. <https://covid.cdc.gov/covid-data-tracker/#covidnet-hospitalizations-vaccination>.

¹¹⁹ Centers for Disease Control and Prevention. COVID-19 vaccine effectiveness monthly update. COVID Data Tracker. November 10, 2022. <https://covid.cdc.gov/covid-data-tracker/#vaccine-effectiveness>.

¹²⁰ Chalkias S, Harper C, Vrbicky K, et al. A bivalent omicron-containing booster vaccine against COVID-19. *N Engl J Med.* 2022 Oct 6;387(14):1279–1291. doi: 10.1056/NEJMoa2208343. PMID: 36112399; PMCID: PMC9511634.

¹²¹ Tan, S.T., Kwan, A.T., Rodríguez-Barraquer, I. et al. Infectiousness of SARS-CoV-2 breakthrough infections and reinfections during the Omicron wave. *Nat Med* 29, 358–365 (2023). <https://doi.org/10.1038/s41591-022-02138-x>.

¹²² Centers for Disease Control and Prevention. COVID-19 vaccinations in the United States. COVID Data Tracker. https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-people-booster-percent-pop5.

¹⁰⁷ Centers for Disease Control and Prevention. COVID Data Tracker. https://covid.cdc.gov/covid-data-tracker/#cases_totalcases.

¹⁰⁸ United Nations. Policy Brief: The impact of COVID-19 on older persons. May 2020. <https://unsdg.un.org/sites/default/files/2020-05/Policy-Brief-The-Impact-of-COVID-19-on-Older-Persons.pdf>.

¹⁰⁹ Lekamwasam R, Lekamwasam S. Effects of COVID-19 pandemic on health and wellbeing of older people: a comprehensive review. *Ann Geriatr Med Res.* 2020 Sep;24(3):166–172. doi: 10.4235/agmr.20.0027. PMID: 32752587; PMCID: PMC7533189.

¹¹⁰ Centers for Disease Control and Prevention. Demographic trends of COVID-19 cases and deaths in the US reported to CDC. COVID Data Tracker. <https://covid.cdc.gov/covid-data-tracker/#demographics>.

¹¹¹ United Nations. Policy Brief: The impact of COVID-19 on older persons. May 2020. <https://unsdg.un.org/sites/default/files/2020-05/Policy-Brief-The-Impact-of-COVID-19-on-Older-Persons.pdf>.

¹¹² Chalkias S, Harper C, Vrbicky K, et al. A Bivalent Omicron-Containing Booster Vaccine Against COVID-19. *N Engl J Med.* 2022 Oct 6;387(14):1279–1291. doi: 10.1056/NEJMoa2208343. PMID: 36112399; PMCID: PMC9511634.

¹¹³ Centers for Disease Control and Prevention. Fully Vaccinated Adults 65 and Older Are 94% Less Likely to Be Hospitalized with COVID-19. April 28, 2021. <https://www.cdc.gov/media/releases/2021/p0428-vaccinated-adults-less-hospitalized.html>.

¹¹⁴ Interim Estimates of COVID-19 Vaccine Effectiveness Against COVID-19-Associated Emergency Department or Urgent Care Clinic Encounters and Hospitalizations Among Adults During SARS-CoV-2 B.1.617.2 (Delta) Variant Predominance—Nine States, June–August 2021. (Grannis SJ, et al. *MMWR Morb Mortal Wkly Rep.* 2021;70(37):1291–1293. <http://dx.doi.org/10.15585/mmwr.mm7037e2>.

¹¹⁵ Surie D, Bonnell L, Adams K, et al. Effectiveness of monovalent mRNA vaccines against COVID-19-associated hospitalization among immunocompetent adults during BA.1/BA.2 and BA.4/BA.5 predominant periods of SARS-CoV-2 Omicron variant in the United States—IVY Network, 18 states, December 26, 2021–August 31,

booster (59.9 percent among those who received a first booster).¹²³ Additionally, though the uptake in boosters among people age 65 and older has been much higher than among people of other ages, booster uptake still remains relatively low compared to primary vaccination among older adults.¹²⁴ Variations are also present when examining vaccination rates by race, gender, and geographic location.¹²⁵ For example, 66.2 percent of the Asian, non-Hispanic population have completed the primary series and 21.2 percent have received a bivalent booster dose, whereas 44.9 percent of the Black, non-Hispanic population have completed the primary series and only 8.9 percent have received a bivalent booster dose. Among Hispanic populations, 57.1 percent of the population have completed the primary series, and 8.5 percent have received a bivalent booster dose, while in White, non-Hispanic populations, 51.9 percent have completed the primary series and 16.2 percent have received a bivalent booster dose.¹²⁶ Disparities have been found in vaccination rates between rural and urban areas, with lower vaccination rates found in rural areas.^{127 128} Data shows that 55.2 percent of the eligible population in rural areas have completed the primary vaccination series, as compared to 66.5 percent of the eligible population in urban

areas.¹²⁹ Receipt of bivalent booster doses among those eligible has been lower, with 18 percent of urban population having received a booster dose, and 11.5 percent of the rural population having received a booster dose.¹³⁰

We are proposing to adopt the COVID–19 Vaccine: Percent of Patients/Residents Who Are Up to Date (Patient/Resident COVID–19 Vaccine) measure for the IRF QRP beginning with the FY 2026 IRF QRP. This proposed measure has the potential to increase COVID–19 vaccination coverage of patients in IRFs, as well as prevent the spread of COVID–19 within the IRF patient population. The proposed Patient/Resident COVID–19 Vaccine measure would also support the goal of CMS’s Meaningful Measure Initiative 2.0 to “Empower consumers to make good health care choices through patient-directed quality measures and public transparency objectives.” The proposed Patient/Resident COVID–19 Vaccine measure would be reported on Care Compare and would provide patients, including those who are at high risk for developing serious complications from COVID–19, and their caregivers, with valuable information they can consider when choosing an IRF. The proposed Patient/Resident COVID–19 Vaccine measure would also facilitate patient care and care coordination during the hospital discharge planning process. For example, a discharging hospital, in collaboration with the patient and family, could use this proposed measure’s publicly reported information on Care Compare to coordinate care and ensure patient preferences are considered in the discharge plan. Additionally, the proposed Patient/Resident COVID–19 Vaccine measure would be an indirect measure of IRF action. Since the patient’s COVID–19 vaccination status would be reported at discharge from the IRF, if a patient is not up to date with their COVID–19 vaccination per applicable CDC guidance at the time they are admitted, the IRF has the opportunity to educate the patient and provide information on why they should become up to date with their COVID–19 vaccination. IRFs may also choose to administer the vaccine to the patient prior to their discharge from the IRF or coordinate a

follow-up visit for the patient to obtain the vaccine at their physician’s office or local pharmacy.

(b) Item Testing

The measure development contractor conducted testing of the proposed standardized patient/resident COVID–19 vaccination coverage assessment item for the proposed Patient/Resident COVID–19 Vaccine measure using patient scenarios, draft guidance manual coding instructions, and cognitive interviews to assess IRFs’ comprehension of the item and the associated guidance. A team of clinical experts assembled by our measure development contractor developed these patient scenarios to represent the most common scenarios that IRFs would encounter. The results of the item testing demonstrated that IRFs that used the draft guidance manual coding instructions had strong agreement (that is, 84 percent) with the correct responses, supporting its reliability. The testing also provided information to improve both the item itself and the accompanying guidance.

(2) Competing and Related Measures

Section 1886(j)(7)(D)(i) of the Act and section 1899B(e)(2)(A) of the Act require that, absent an exception under section 1886(j)(7)(D)(i) and section 1899B(e)(2)(B) of the Act, measures specified under section 1886(j)(7)(D)(i) of the Act and section 1899B of the Act must be endorsed by a CBE with a contract under section 1890(a) of the Act. In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed, section 1886(j)(7)(D)(i) of the Act and section 1899B(e)(2)(B) of the Act permit the Secretary to specify a measure that is not so endorsed, as long as due consideration is given to the measures that have been endorsed or adopted by a CBE identified by the Secretary. The proposed Patient/Resident COVID–19 Vaccine measure is not CBE endorsed, and after review of other CBE endorsed measures, we were unable to identify any CBE endorsed measures for IRFs focused on capturing COVID–19 vaccination coverage of IRF patients. We found only one related measure addressing COVID–19 vaccination, the COVID–19 Vaccination Coverage among Healthcare Personnel measure, adopted for the FY 2023 IRF QRP (86 FR 42385 through 42396), which captures the percentage of HCP who receive a complete COVID–19 primary vaccination course.

Therefore, after consideration of other available measures that assess COVID–

¹²³ Centers for Disease Control and Prevention. COVID–19 vaccination age and sex trends in the United States, national and jurisdictional. <https://data.cdc.gov/Vaccinations/COVID-19-Vaccination-Age-and-Sex-Trends-in-the-Uni/5i5k-6cmh>.

¹²⁴ Freed M, Neuman T, Kates J, Cubanski J. Deaths among older adults due to COVID–19 jumped during the summer of 2022 before falling somewhat in September. Kaiser Family Foundation. October 6, 2022. <https://www.kff.org/coronavirus-covid-19/issue-brief/deaths-among-older-adults-due-to-covid-19-jumped-during-the-summer-of-2022-before-falling-somewhat-in-september/>.

¹²⁵ Saelee R, Zell E, Murthy BP, et al. Disparities in COVID–19 Vaccination Coverage Between Urban and Rural Counties—United States, December 14, 2020–January 31, 2022. *MMWR Morb Mortal Wkly Rep.* 2022 Mar 4;71:335–340. doi: 10.15585/mmwr.mm7109a2. PMID: 35239636; PMCID: PMC8893338.

¹²⁶ Centers for Disease Control and Prevention. COVID Data Tracker: Trends in demographic characteristics of people receiving COVID–19 vaccinations in the United States. <https://covid.cdc.gov/covid-data-tracker/#vaccination-demographics-trends>.

¹²⁷ Saelee R, Zell E, Murthy BP, et al. Disparities in COVID–19 Vaccination Coverage Between Urban and Rural Counties—United States, December 14, 2020–January 31, 2022. *MMWR Morb Mortal Wkly Rep.* 2022 Mar 4;71:335–340. doi: 10.15585/mmwr.mm7109a2. PMID: 35239636; PMCID: PMC8893338.

¹²⁸ Sun Y, Monnat SM. Rural-urban and within-rural differences in COVID–19 vaccination rates. *J Rural Health.* 2022 Sep;38(4):916–922. doi: 10.1111/jrh.12625. PMID: 34555222; PMCID: PMC8661570.

¹²⁹ Centers for Disease Control and Prevention. COVID Data Tracker. Vaccination Equity. <https://covid.cdc.gov/covid-data-tracker/#vaccination-equity>.

¹³⁰ Centers for Disease Control and Prevention. Vaccination Equity. COVID Data Tracker; 2023, January 20. Last accessed January 17, 2023. <https://covid.cdc.gov/covid-data-tracker/#vaccination-equity>.

19 vaccination rates among IRF patients, we believe the exception under section 1899B(e)(2)(B) of the Act applies. We intend to submit the proposed measure for consideration of endorsement by a CBE when feasible.

(3) Interested Parties and Technical Expert Panel (TEP) Input

First, the measure development contractor convened a focus group of patient and family/caregiver advocates (PFAs) to solicit input. The PFAs felt a measure capturing raw vaccination rate, irrespective of IRF action, would be most helpful in patient and family/caregiver decision-making. Next, TEP meetings were held on November 19, 2021 and December 15, 2021 to solicit feedback on the development of patient/resident COVID-19 vaccination measures and assessment items for the PAC settings. The TEP panelists voiced their support for PAC patient/resident COVID-19 vaccination measures and agreed that developing a measure to report the rate of vaccination in an IRF setting without denominator exclusions was an important goal. We considered the TEP's recommendations, and we applied the recommendations where technically feasible and appropriate. A summary of the TEP proceedings titled *Technical Expert Panel (TEP) for the Development of Long-Term Care Hospital (LTCH), Inpatient Rehabilitation Facility (IRF), Skilled Nursing Facility (SNF)/Nursing Facility (NF), and Home Health (HH) COVID-19 Vaccination-Related Items and Measures Summary Report* is available on the CMS MMS Hub.¹³¹

To seek input on the importance, relevance, and applicability of a patient/resident COVID-19 vaccination coverage measure, we also solicited public comments in an RFI for publication in the FY 2023 IRF PPS proposed rule (87 FR 47038).¹³² Comments were generally positive on the concept of a measure addressing COVID-19 vaccination coverage among IRF patients. Some commenters included caveats with their support and requested further details regarding measure specifications and CBE endorsement. In addition, commenters voiced concerns regarding the evolving recommendations related to boosters and the definition of "up to date," as

well as whether an IRF length of stay would allow for meaningful distinctions among IRFs (87 FR 47071).

(4) Measure Applications Partnership (MAP) Review

The pre-rulemaking process includes making publicly available a list of quality and efficiency measures, called the Measures Under Consideration (MUC) List that the Secretary is considering adopting for use in Medicare programs. This allows interested parties to provide recommendations to the Secretary on the measures included on the list. The Patient/Resident COVID-19 Vaccine measure was included on the publicly available 2022 MUC List for the IRF QRP.¹³³

After the MUC List was published, the MAP received five comments from interested parties. Commenters were mostly supportive of the measure and recognized the importance of patients' COVID-19 vaccination, and that measurement and reporting is one important method to help healthcare organizations assess their performance in achieving high rates of up to date vaccination. One commenter noted that patient engagement is critical at this stage of the pandemic, while another noted the criteria for inclusion in the numerator and denominator provide flexibility for the measure to remain relevant to current circumstances. Another commenter anticipated minimal implementation challenges, since healthcare providers are already asking for patients' COVID-19 vaccination status at intake. Commenters who were not supportive of the measure raised several issues, including that the measure does not capture quality of care, concern about the evolving definition of the term "up to date," that data collection would be burdensome, that administering the vaccine could impact the IRF treatment plan, and that a measure only covering one quarter may not be meaningful.

Subsequently, several MAP workgroups met to provide input on the proposed measure. First, the MAP Health Equity Advisory Group convened on December 6, 2022. One MAP Health Equity Advisory Group member noted that the percentage of true contraindications for the COVID-19 vaccine is low, and the lack of exclusions on the measure is reasonable in order to minimize variation in what

constitutes a contraindication.¹³⁴ Similarly, the MAP Rural Health Advisory Group met on December 8, 2022, and requested clarification of the term "up to date" and noted concerns with the perceived level of burden for collection of data.¹³⁵ Next, the MAP PAC/LTC workgroup met on December 12, 2022. The MAP PAC/LTC workgroup's voting members raised concerns brought up in public comments, such as provider actionability, lack of denominator exclusions, requirements for assessing patient vaccination status, evolving COVID-19 vaccination recommendations, and data reporting frequency for this measure. Additionally, MAP PAC/LTC workgroup members noted the potential inability of IRFs to administer the vaccine due to the shorter average length of stay as compared to other PAC settings. In response to workgroup member feedback, we noted that the intent of the Patient/Resident COVID-19 Vaccine measure would be to promote transparency of data for patients to make informed decisions regarding care, and is not intended to be a measure of IRF action. We also explained that this measure does not have exclusions for patient refusal since this measure was intended to report raw rates of vaccination, and this information is important for consumer choice. Additionally, we believe that PAC providers, including IRFs, are in a unique position to leverage their care processes to increase vaccination coverage in their settings to protect patients and prevent negative outcomes. We also noted that collection of these data will not require additional documentation or proof of vaccination. We clarified that the Patient/Resident COVID-19 Vaccine measure would include the definition of up to date, so the measure would consider future changes in the CDC guidance regarding COVID-19 vaccination. We also clarified that the measure would continue to be a quarterly measure similar to the existing HCP COVID-19 Vaccine measure, as CDC has not determined whether COVID-19 is, or will be, a seasonal disease like influenza. Finally, we noted that the

¹³¹ *Technical Expert Panel (TEP) for the Development of Long-Term Care Hospital (LTCH), Inpatient Rehabilitation Facility (IRF), Skilled Nursing Facility (SNF)/Nursing Facility (NF), and Home Health (HH) COVID-19 Vaccination-Related Items and Measures Summary Report*. <https://mmshub.cms.gov/sites/default/files/COVID19-Patient-Level-Vaccination-TEP-Summary-Report-NovDec2021.pdf>.

¹³² 87 FR 20218.

¹³³ Centers for Medicare & Medicaid Services. (2022). Overview of the List of Measures Under Consideration for December 1, 2022. <https://mmshub.cms.gov/sites/default/files/2022-MUC-List-Overview.pdf>.

¹³⁴ CMS Measures Management System (MMS). Measure Implementation: Pre-rulemaking MUC Lists and MAP reports. Last accessed March 22, 2023. <https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports>.

¹³⁵ CMS Measures Management System (MMS). Measure Implementation: Pre-rulemaking MUC Lists and MAP reports. Last accessed March 22, 2023. <https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports>.

average 12-day length of stay at IRFs is generally longer than patient stays at acute care hospitals. Given that health care is a continuum and every contact along the continuum provides an opportunity to encourage vaccination, IRFs have sufficient time to act on the patient's vaccination status. However, the MAP PAC/LTC workgroup reached a 60 percent consensus on the vote of "Do not support for rulemaking" for this measure.¹³⁶

The MAP received four comments from industry commenters in response to the MAP PAC/LTC workgroup's recommendations. Interested parties generally understood the importance of COVID-19 vaccinations in preventing the spread of COVID-19, although a majority of commenters did not recommend the inclusion of the proposed Patient/Resident COVID-19 Vaccine measure for the IRF QRP and raised several concerns. Specifically, commenters were concerned about vaccine hesitancy and providers' inability to influence results based on factors outside of their control. Commenters also noted that the measure has not been fully tested and encouraged CMS to monitor the measure for unintended consequences and ensure that the measure has meaningful results. One commenter raised concerns on whether patients' vaccination information would be easily available to IRFs as well as potential limitations with patients recounting vaccination status. One commenter was in support of the measure and provided recommendations for CMS to consider adding an exclusion for medical contraindications and submitting the measure for CBE endorsement.

Finally, the MAP Coordinating Committee convened on January 24, 2023, and noted concerns which were previously discussed in the MAP PAC/LTC workgroup, such as potential disruption to patient therapy due to vaccination and acuity of patients in the IRF setting. However, a MAP Coordinating Committee member noted that a patient's potential inability to complete rehabilitation was not a valid reason to withhold support of this measure, and that, because these patients have a high acuity, they are more vulnerable to COVID-19, further emphasizing the need to vaccinate them. MAP Coordinating Committee members also raised concerns discussed previously during the MAP PAC/LTC workgroup, including the shorter IRF

length of stay and excluding medical contraindications from the denominator.

The MAP Coordinating Committee recommended three mitigation strategies for the Patient/Resident COVID-19 Vaccine measure: (i) reconsider exclusions for medical contraindications, (ii) complete reliability and validity measure testing, and (iii) seek CBE endorsement. The MAP Coordinating Committee ultimately reached 81 percent consensus on its voted recommendation of 'Do not support with potential for mitigation.' Despite the MAP Coordinating Committee's vote, we believe it is still important to propose the Patient/Resident COVID-19 Vaccine measure for the IRF QRP. As we stated in section VIII.C.2.a.(3) of this proposed rule, we did not include exclusions for medical contraindications because the PFAs we met with told us that a measure capturing raw vaccination rate, irrespective of any medical contraindications, would be most helpful in patient and family/caregiver decision-making. We do plan to conduct reliability and validity measure testing once we have collected enough data, and we intend to submit the proposed measure to the CBE for consideration of endorsement when feasible. We refer readers to the final MAP recommendations, titled *2022–2023 MAP Final Recommendations*.¹³⁷

(5) Quality Measure Calculation

The proposed Patient/Resident COVID-19 Vaccine measure is an assessment-based process measure that reports the percent of stays in which patients in an IRF are up to date on their COVID-19 vaccinations per the CDC's latest guidance.¹³⁸ This measure has no exclusions, and is not risk adjusted.

The numerator for the proposed measure would be the total number of IRF stays in the denominator in which patients are up to date with their COVID-19 vaccination per CDC's latest guidance. The denominator for the proposed measure would be the total number of IRF stays discharged during the reporting period.

The data source for the proposed Patient/Resident COVID-19 Vaccine measure is the IRF–PAI for IRF patients. For more information about the proposed data submission requirements,

we refer readers to section VIII.F.3. of this proposed rule. For additional technical information about this proposed measure, we refer readers to the draft measure specifications document titled *Patient-Resident-COVID-Vaccine-Draft-Specs.pdf*.¹³⁹ available on the IRF QRP Measures and Technical Information web page.

We invite public comments on the proposal to adopt the Patient/Resident COVID-19 Vaccine measure beginning with the FY 2026 IRF QRP.

D. Principles for Selecting and Prioritizing IRF QRP Quality Measures and Concepts Under Consideration for Future Years—Request for Information (RFI)

1. Background

We have established a National Quality Strategy (NQS)¹⁴⁰ for quality programs which support a resilient, high-value health care system promoting quality outcomes, safety, equity and accessibility for all individuals. The CMS NQS is foundational for contributing to improvements in health care, enhancing patient outcomes, and informing consumer choice. To advance these goals, leaders from across CMS have come together to move toward a building-block approach to streamline quality measures across our quality programs for the adult and pediatric populations. This "Universal Foundation"¹⁴¹ of quality measures will focus provider attention and reduce provider burden, as well as identify disparities in care, prioritize development of interoperable, digital quality measures, allow for cross-comparisons across programs, and help identify measurement gaps. The development and implementation of the Preliminary Adult and Pediatric Universal Foundation Measures will promote the best, safest, and most equitable care for individuals as we all come together on these critical quality areas.

In alignment with the CMS NQS, the IRF QRP endeavors to move toward a

¹³⁹ Patient-Resident-COVID-Vaccine-Draft-Specs.pdf. <https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/irf-quality-reporting/irf-quality-reporting-program-measures-information->

¹⁴⁰ Schreiber M, Richards AC, Moody-Williams J, Fleisher LA. The CMS National Quality Strategy: A Person-centered Approach to Improving Quality. Centers for Medicare & Medicaid ServicesBlog. June 6, 2022. <https://www.cms.gov/blog/cms-national-quality-strategy-person-centered-approach-improving-quality>.

¹⁴¹ Jacobs DB, Schreiber M, Seshamani M, Tsai D, Fowler E, Fleisher LA. Aligning Quality Measures across CMS—The Universal Foundation. *N Engl J Med*. 2023 Mar 2; 338:776–779. doi: 10.1056/NEJMp2215539. PMID: 36724323.

¹³⁶ CMS Measures Management System (MMS). Measure Implementation: Pre-rulemaking MUC Lists and MAP reports. <https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports>.

¹³⁷ 2022–2023 MAP Final Recommendations. <https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports>.

¹³⁸ The definition of "up to date" may change based on CDC's latest guidelines and is available on the CDC web page, "Stay Up to Date with COVID-19 Vaccines Including Boosters," at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/stay-up-to-date.html> (updated March 2, 2023).

more parsimonious set of measures while continually improving the quality of health care for beneficiaries. The purpose of this RFI is to gather input on existing gaps in IRF QRP measures and to solicit public comment on fully developed IRF measures that are not part of the IRF QRP, fully developed quality measures in other programs that may be appropriate for the IRF QRP, and measurement concepts that could be developed into IRF QRP measures, to fill these measurement gaps in the IRF QRP. While we will not be responding to specific comments submitted in response to this RFI in the FY 2024 IRF PPS final rule, we intend to use this input to inform future policies.

This RFI consists of three sections. The first section discusses a general framework or set of principles that CMS could use to identify future IRF QRP measures. The second section draws from an environmental scan conducted to identify measurement gaps in the current IRF QRP, and measures or measure concepts that could be used to fill these gaps. The final section solicits public comment on (1) the set of principles for selecting measures for the IRF QRP, (2) identified measurement gaps, and (3) measures that are available for immediate use, or that may be adapted or developed for use in the IRF QRP.

2. Guiding Principles for Selecting and Prioritizing Measures

We have identified a set of principles to guide future IRF QRP measure set development and maintenance. These principles are intended to ensure that measures resonate with beneficiaries and caregivers, do not impose undue burden on IRFs, align with our PAC program goals, and can be readily operationalized. Specifically, measures incorporated into the IRF QRP should meet the following four objectives:

- **Actionability:** Optimally, IRF QRP measures should focus on structural elements, healthcare processes, and outcomes of care that have been demonstrated, such as through clinical evidence or other best practices, to be amenable to improvement and feasible for IRFs to implement.
- **Comprehensiveness and Conciseness:** IRF QRP measures should assess performance of all IRF core services using the smallest number of measures that comprehensively assess the value of care provided in IRF settings. Parsimony in the QRP measure set minimizes IRFs' burden resulting from data collection and submission.
- **Focus on Provider Responses to Payment:** The IRF PPS shapes incentives for care delivery. IRF

performance measures should neither exacerbate nor induce unwanted responses to the payment systems. As feasible, measures should mitigate adverse incentives of the payment system.

- **Compliance with Statutory Requirements and Key Program Goals:** Measures must comply with the governing statutory authorities and our policy to align QRP measures with our broader policy initiatives, such as the Meaningful Measures Framework.

3. Gaps in IRF QRP Measure Set and Potential New Measures

We conducted an environmental scan that utilized the previously listed principles and identified measurement gaps in the domains of cognitive function, behavioral and mental health, patient experience and patient satisfaction, and chronic conditions and pain management. We discuss each of these in more detail below.

a. Cognitive Function

Illnesses associated with limitations in cognitive function, which may include stroke, dementia, and Alzheimer's disease, affect an individual's ability to think, reason, remember, problem-solve, and make decisions. Section 1886(j)(7) of the Act requires IRFs to submit data on quality measures under section 1899B(c)(1) of the Act, and cognitive function and changes in cognitive function are key dimensions of clinical care that are not currently represented in the IRF QRP.

Under the IRF QRP, IRFs currently collect and report to CMS data on cognitive function using the Brief Interview for Mental Status (BIMS) and Confusion Assessment Method (CAM©).¹⁴² Both the BIMS and CAM© have been incorporated into the IRF-PAI as standardized patient assessment data elements. Scored by IRFs via direct observation, the BIMS is used to determine orientation and the ability to register and recall new information. The CAM© assesses the presence of delirium and inattention, and level of consciousness. While data from the BIMS and CAM© are collected and reported via the IRF-PAI, these items have not been developed into specific quality measures for the IRF QRP.

Alternative sources of information on cognitive function include the Patient-Reported Outcomes Measurement Information Set (PROMIS) Cognitive Function forms and the PROMIS Neuro-

Quality of Life (Neuro-QoL) measures.^{143 144} Developed and tested with a broad range of patient populations, PROMIS Cognitive Function assesses cognitive functioning using items related to patient perceptions regarding performance of cognitive tasks, such as memory and concentration, and perceptions of changes in these activities. The Neuro-QoL, which was specifically designed for use in patients with neurological conditions, assesses patient perceptions regarding oral expression, memory, attention, decision-making, planning, and organization.

The BIMS, CAM©, PROMIS Cognitive Function short forms, and PROMIS Neuro-QoL include items representing different aspects of cognitive function, from which quality measures may be constructed. Although these assessment instruments have been subjected to feasibility, reliability, and validity testing, additional development and testing would be required prior to transforming the concepts reflected in the BIMS and CAM© (for example, temporal orientation, recall) into fully specified measures for implementation in the IRF QRP.

Through this RFI, we are requesting comment on the availability of cognitive functioning measures outside of the IRF QRP that may be available for immediate use in the IRF QRP, or that may be adapted or developed for use in the IRF QRP, using the BIMS, CAM©, PROMIS Cognitive Function forms, and PROMIS Neuro-QoL, or other instruments. In addition to comment on specific measures and instruments, we seek input on the feasibility of measuring improvement in cognitive functioning during an IRF stay, which typically averages less than 15 days;¹⁴⁵ the cognitive skills (for example, executive functions) that are more likely to improve during an IRF stay; conditions for which measures of maintenance—rather than improvement in cognitive functioning—are more practical; and the types of intervention that have been demonstrated to assist in

¹⁴³ HealthMeasures. List of Adult Measures: Available Neuro-QoL™ Measures for Adult Self-Report. <https://www.healthmeasures.net/explore-measurement-systems/neuro-qol/intro-to-neuro-qol/list-of-adult-measures>.

¹⁴⁴ HealthMeasures. List of Adult Measures: Available PROMIS® Measures for Adults. <https://www.healthmeasures.net/explore-measurement-systems/promis/intro-to-promis/list-of-adult-measures>.

¹⁴⁵ Medicare Payment Advisory Commission. March 2022 Report to the Congress; Chapter 9. https://www.medpac.gov/wp-content/uploads/2022/03/Mar22_MedPAC_ReportToCongress_Ch9_SEC.pdf.

¹⁴² Centers for Medicare & Medicaid Services. Final Inpatient Rehabilitation Facility Patient Assessment Version 4.0. Effective October 1, 2022. <https://www.cms.gov/files/document/irf-pai-version-40-eff-10012022-final.pdf>.

improving or maintaining cognitive functioning.

b. Behavioral and Mental Health

Estimates suggest that one in five Medicare beneficiaries has a “common mental health disorder” and nearly 8 percent have a serious mental illness.¹⁴⁶ Substance use disorders (SUDs) are also common. Research estimates that approximately 1.7 million Medicare beneficiaries (8 percent) reported a SUD in the past year, with 77 percent attributed to alcohol use and 16 percent to prescription drug use.¹⁴⁷ In some instances, such as following a knee replacement or stroke, patients may develop depression, anxiety, and/or SUDs. In other instances, patients may have been dealing with mental or behavioral health or SUD issues long before their post-acute admission. Left unmanaged, however, these conditions could make it difficult for affected patients to actively participate in medical rehabilitation or to adhere to the prescribed treatment regimen, thereby contributing to poor health outcomes.

Information on the availability and appropriateness of behavioral health measures in PAC settings is limited, and the 2021 National Impact Assessment of the CMS Quality Measures Report¹⁴⁸ identified PAC program measurement gaps in the areas of behavioral and mental health. Among the mental health quality measures in current use by other quality reporting programs, one Home Health QRP measure assesses the extent to which patients have been screened for depression and, if positive, a follow-up plan is documented.¹⁴⁹ Although it may be possible to adapt this depression screening measure for use in other PAC settings, this process measure does not directly assess performance in the management of depression and related mental health concerns.

Other instruments that may be adapted to assess management of mental health or SUDs in PAC settings include the Consumer Assessment of Healthcare Providers and Systems (CAHPS) Experience of Care and Health Outcomes Survey (ECHO), which consists of a series of questions that may be used to understand patients’ perspectives concerning mental health services received;¹⁵⁰ the PROMIS¹⁵¹ suite of instruments that may be used to monitor and evaluate mental health and quality of life; and the National Institutes of Health (NIH) Toolbox for the Assessment of Neurological and Behavioral Health Function,¹⁵² which was commissioned by the NIH Blueprint for Neuroscience Research and includes both stand-alone measures, and batteries of measures to assess emotional function and psychological well-being.

Like other mental health issues, SUDs have been under studied in the IRF and other PAC settings, even though they are among the fastest growing disorders in the community dwelling older adult population.¹⁵³ Left untreated, SUDs can lead to overdose deaths, emergency department visits, and hospitalizations. The Substance Abuse and Mental Health Services Administration (SAMHSA) was established by Congress in 1992 to make substance use and mental disorder information, services, and research more accessible. As part of its work, SAMHSA developed the Screening, Brief Intervention, and Referral to Treatment (SBIRT) approach to support providers in using early intervention with at-risk substance users before more severe consequences occur, and has a number of resources available.¹⁵⁵

We seek feedback on these and other measures or instruments that may be directly applied, adapted, or developed for use in the IRF QRP. Further, we seek

comments on the degree to which measures have been or will require validation and testing prior to application in the IRF QRP. We seek input on the availability of data, the manner in which data could be collected and reported to CMS, and the burden imposed on IRFs.

c. Patient Experience and Patient Satisfaction

Patient experience measures focus on how patients experienced or perceived selected aspects of their care, whereas patient satisfaction measures focus on whether a patient’s expectations were met. Information on patient experience of care is typically collected via a number of instruments that rely on patient self-reported data. The most prominent among these is the CAHPS suite of surveys, although CAHPS instruments have not been developed for use in IRFs. However, we have developed the IRF Experience of Care Survey,¹⁵⁶ which measures patient experience in terms of goal setting, communications with staff, respect and privacy received, ability to obtain assistance when needed, cleanliness of the facility, and other domains.

One patient satisfaction measure that has been developed for use by SNFs and potentially could be adapted for use by IRFs is the CoreQ: Short Stay Discharge (CoreQ: SS DC) measure. The CoreQ: SS DC measure, which underwent 2017–2018 pre-rulemaking for the SNF QRP,¹⁵⁷ assesses the level of satisfaction among SNF short-stay (less than 100 days) patients.

We seek comment on the feasibility and challenges of adapting existing patient experience and patient satisfaction measures and instruments, such as the CMS IRF Experience of Care Survey and the CoreQ: SS DC measure, for use in the IRF QRP. We seek input on the extent to which patient experience measures offer IRFs sufficient information to assist in quality improvement, and the challenges of collecting and reporting patient experience and patient satisfaction data.

d. Chronic Conditions and Pain Management

Despite the availability of measures focused on IRF clinical care, existing

¹⁴⁶ Figueroa JF, Phelan J, Orav EJ, Patel V, Jha AK. Association of mental health disorders with health care spending in the Medicare population. *JAMA Network Open*. 2020 Mar 2;3(3):e201210. doi: 10.1001/jamanetworkopen.2020.1210. PMID: 32191329; PMCID: PMC7082719.

¹⁴⁷ Parish WJ, Mark TL, Weber EW, Steinberg DG. Substance Use Disorders Among Medicare Beneficiaries: Prevalence, Mental and Physical Comorbidities, and Treatment Barriers. *Am J Prev Med*. 2022 Aug;63(2):225–232. doi: 10.1016/j.amepre.2022.01.021. PMID: 35331570.

¹⁴⁸ Centers for Medicare & Medicaid Services. 2021 National Impact Assessment of the Centers for Medicare & Medicaid Services (CMS) Quality Measures Report. June 2021. <https://www.cms.gov/files/document/2021-national-impact-assessment-report.pdf>.

¹⁴⁹ Centers for Medicare & Medicaid Services. Depression Screening Conducted and Follow-Up Plan Documented. <https://cmit.cms.gov/cmit/#/MeasureView?variantId=3102&sectionNumber=1>.

¹⁵⁰ Agency for Healthcare Research and Quality. CAHPS Mental Health Care Surveys. May 2022. <https://www.ahrq.gov/cahps/surveys-guidance/echo/index.html>.

¹⁵¹ HealthMeasures. Intro to PROMIS®. January 10, 2023. <https://www.healthmeasures.net/explore-measurement-systems/promis/intro-to-promis>.

¹⁵² HealthMeasures. NIH Toolbox. February 9, 2023. <https://www.healthmeasures.net/explore-measurement-systems/nihi-toolbox>.

¹⁵³ Desai A, Grossberg G. Substance Use Disorders in Postacute and Long-Term Care Settings. *Psychiatr Clin North Am*. 2022 Sep;45(3):467–482. doi: 10.1016/j.psc.2022.05.005. PMID: 36055733.

¹⁵⁴ Sorrell JM. Substance Use Disorders in Long-Term Care Settings: A Crisis of Care for Older Adults. *J Psychosoc Nurs Ment Health Serv*. 2017 Jan 1;55(1):24–27. doi: 10.3928/02793695-20170119-08. PMID: 28135388.

¹⁵⁵ Substance Abuse and Mental Health Services Administration. Resources for Screening, Brief Intervention, and Referral to Treatment (SBIRT). April 14, 2022. <https://www.samhsa.gov/sbirt/resources>.

¹⁵⁶ Centers for Medicare & Medicaid Services. Inpatient Rehabilitation Facility (IRF) Experience of Care. October 12, 2022. <https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/irf-quality-reporting/irf-experience-of-care->

¹⁵⁷ Centers for Medicare & Medicaid Services. List of Measures under Consideration for December 1, 2017. <https://www.cms.gov/files/document/2017amuc-listclearancertpt.pdf>.

IRF QRP measures do not directly address aspects of care rendered to populations with chronic conditions or IRFs' management of patients' pain. For example, the measures that address respiratory care relate to staff influenza and COVID-19 vaccination status. Although these measures target provider performance in preventing a respiratory illness with a potentially severe impact on morbidity and mortality, current measures fail to capture IRF performance in treatment or management of patients' chronic respiratory conditions, such as chronic obstructive pulmonary disease (COPD) or asthma.

Existing IRF QRP measures also fail to capture concisely IRFs' actions with respect to patients' pain management, even though pain has been demonstrated to contribute to falls with major injury and restrictions in mobility and daily activity. However, a host of other factors also contribute to these measure domains, making it difficult to directly link provider actions to performance. Instead, a measure of IRFs' actions in reducing pain interference in daily activities, including the ability to sleep, would be a more concise measure of pain management. Beginning October 1, 2022, IRFs began collecting new standardized patient assessment data elements under the IRF QRP, including items that assess pain interference with (1) daily activities, (2) sleep, and (3) participation in therapy. The collection of this data may provide an opportunity to develop more concise measures of provider performance related to pain management in IRF patients (87 FR 39109 through 39161).

Through this RFI, we are seeking input on measures of chronic condition and pain management for patients that may be used to assess IRF performance. Additionally, we seek general comment on the feasibility and challenges of measuring and reporting IRF performance on existing QRP measures, such as Discharge Self-Care Score and Discharge Mobility Score measures, for subgroups of patients defined by type of chronic condition. As examples, measures could assess discharge outcomes for IRF patients with a stroke diagnosis or for patients admitted with a diagnosis of multiple sclerosis.

4. Solicitation of Comments

We invite general comments on the principles for identifying IRF QRP measures, as well as additional comments about measurement gaps, and suitable measures for filling these gaps. Specifically, we solicit comment on the following questions:

- Principles for Selecting and Prioritizing QRP Measures
 - ++ To what extent do you agree with the principles for selecting and prioritizing measures?
 - ++ Are there principles that you believe CMS should eliminate from the measure selection criteria?
 - ++ Are there principles that you believe CMS should add to the measure selection criteria?
- IRF QRP Measurement Gaps
 - ++ CMS requests input on the identified measurement gaps, including in the areas of cognitive function, behavioral and mental health, patient experience and patient satisfaction, and chronic conditions and pain management.
 - ++ Are there gaps in the IRF QRP measures that have not been identified in this RFI?
- Measures and Measure Concepts Recommended for Use in the IRF QRP
 - ++ Are there measures that you believe are either currently available for use, or that could be adapted or developed for use in the IRF QRP program to assess performance in the areas of (1) cognitive functioning, (2) behavioral and mental health, (3) patient experience and patient satisfaction, (4) chronic conditions, (5) pain management, or (6) other areas not mentioned in this RFI?

CMS also seeks input on data available to develop measures, approaches for data collection, perceived challenges or barriers, and approaches for addressing challenges.

E. Health Equity Update

1. Background

In the FY 2023 IRF PPS proposed rule (87 FR 20247 through 20254), we included an RFI entitled “*Overarching Principles for Measuring Equity and Healthcare Quality Disparities Across CMS Quality Programs*.” We define health equity as “the attainment of the highest level of health for all people, where everyone has a fair and just opportunity to attain their optimal health regardless of race, ethnicity, disability, sexual orientation, gender identity, socioeconomic status, geography, preferred language, or other factors that affect access to care and health outcomes.”¹⁵⁸ We are working to advance health equity by designing, implementing, and operationalizing policies and programs that support health for all the people served by our

programs and models, eliminating avoidable differences in health outcomes experienced by people who are disadvantaged or underserved, and providing the care and support that our enrollees need to thrive. Our goals outlined in the *CMS Framework for Health Equity 2022–2023*¹⁵⁹ are in line with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.”¹⁶⁰ The goals included in the CMS Framework for Health Equity serve to further advance health equity, expand coverage, and improve health outcomes for the more than 170 million individuals supported by our programs, and set a foundation and priorities for our work, including: strengthening our infrastructure for assessment, creating synergies across the health care system to drive structural change, and identifying and working to eliminate barriers to CMS-supported benefits, services, and coverage.

In addition to the CMS Framework for Health Equity, we seek to advance health equity and whole-person care as one of eight goals comprising the CMS National Quality Strategy (NQS).¹⁶¹ The NQS identifies a wide range of potential quality levers that can support our advancement of equity, including: (1) establishing a standardized approach for patient-reported data and stratification; (2) employing quality and value-based programs to address closing equity gaps; and (3) developing equity-focused data collections, regulations, oversight strategies, and quality improvement initiatives.

A goal of this NQS is to address persistent disparities that underlie our healthcare system. Racial disparities, in particular, are estimated to cost the U.S. \$93 billion in excess medical costs and \$42 billion in lost productivity per year, in addition to economic losses due to premature deaths.¹⁶² At the same time,

¹⁵⁹ Centers for Medicare & Medicaid Services. CMS Framework for Health Equity 2022–2023. <https://www.cms.gov/files/document/cms-framework-health-equity-2022.pdf>.

¹⁶⁰ The White House. Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. Executive Order 13985, January 20, 2021. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

¹⁶¹ Centers for Medicare & Medicaid Services. What Is the CMS National Quality Strategy? <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Value-Based-Programs/CMS-Quality-Strategy>.

¹⁶² Turner A. The Business Case for Racial Equity: A Strategy for Growth. April 24, 2018. W.K. Kellogg

¹⁵⁸ Centers for Medicare and Medicaid Services. Health Equity. <https://www.cms.gov/pillar/health-equity>. October 3, 2022.

racial and ethnic diversity has increased in recent years with an increase in the percentage of people who identify as two or more races accounting for most of the change, rising from 2.9 percent to 10.2 percent between 2010 and 2020.¹⁶³ Therefore, we need to consider ways to reduce disparities, achieve equity, and support our diverse beneficiary population through the way we measure quality and display the data.

We solicited public comments via the aforementioned RFI on changes that we should consider in order to advance health equity. We refer readers to the FY 2023 IRF PPS final rule (87 FR 47072 through 47073) for a summary of the public comments and suggestions CMS received in response to the health equity RFI. We will take these comments into account as we continue to work to develop policies, quality measures, and measurement strategies on this important topic.

2. Anticipated Future State

We are committed to developing approaches to meaningfully incorporate the advancement of health equity into the IRF QRP. One option we are considering is including social determinants of health (SDOH) as part of new quality measures.

Social determinants of health are the conditions in the environments where people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks. They may have a stronger influence on the population's health and well-being than services delivered by practitioners and healthcare delivery organizations.¹⁶⁴ Measure stratification is important for understanding differences in outcomes across different groups. For example, when pediatric measures over the past two decades are stratified by race, ethnicity, and income, they show that outcomes for children in the lowest income households and for Black and Hispanic children have improved faster than outcomes for children in the highest income households or for White children, thus narrowing an important health disparity.¹⁶⁵ This analysis and

comparison of the SDOH items in the assessment instruments support our desire to understand the benefits of measure stratification. Hospital providers receive such information in their confidential feedback reports and we think this learning opportunity would benefit post-acute care providers. The goals of the confidential reporting are to provide IRFs with their results; educate IRFs and offer the opportunity to ask questions; and solicit feedback from IRFs for future enhancements to the methods.

We are considering whether health equity measures we have adopted for other settings, such as hospitals, could be adopted in post-acute care settings. We are exploring ways to incorporate SDOH elements into the measure specifications. For example, we could consider a future health equity measure like screening for social needs and interventions. With 30 percent to 55 percent of health outcomes attributed to SDOH,¹⁶⁶ a measure capturing and addressing SDOH could encourage IRFs to identify patients' specific needs and connect them with the community resources necessary to overcome social barriers to their wellness. We could specify a health equity measure using the same SDOH data items that we currently collect as standardized patient assessment data elements under the IRF. These SDOH data items assess health literacy, social isolation, transportation problems, and preferred language (including need or want of an interpreter). We also see value in aligning SDOH data items across all care settings as we develop future health equity quality measures under our IRF QRP statutory authority. This would further the NQS to align quality measures across our programs as part of the Universal Foundation.¹⁶⁷

As we move this important work forward, we will continue to take input from interested parties.

F. Form, Manner, and Timing of Data Submission Under the IRF QRP

1. Background

We refer readers to the regulatory text at § 412.634(b)(1) for information regarding the current policies for reporting IRF QRP data.

¹⁶⁶ World Health Organization. Social Determinants of Health. https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1.

¹⁶⁷ Jacobs DB, Schreiber M, Seshamani M, Tsai D, Fowler E, Fleisher LA. Aligning Quality Measures across CMS—The Universal Foundation. *N Engl J Med*. 2023 Mar 2;338:776–779. doi: 10.1056/NEJMp2215539. PMID: 36724323.

2. Proposed Reporting Schedule for the IRF–PAI Assessment Data for the Discharge Function Score Measure Beginning With the FY 2025 IRF

As discussed in section VIII.C.1.b. of this proposed rule, we are proposing to adopt the Discharge Function Score (DC Function) measure beginning with the FY 2025 IRF QRP. We are proposing that IRFs would be required to report these IRF–PAI assessment data related to the DC Function measure beginning with patients discharged on October 1, 2023, for purposes of the FY 2025 IRF QRP. Starting in CY 2024, IRFs would be required to submit data for the entire calendar year beginning with the FY 2026 IRF QRP. Because the DC Function measure is calculated based on data that are currently submitted to the Medicare program in the IRF–PAI, there would be no new burden associated with data collection for this measure.

We invite public comments on our proposal.

3. Proposed Reporting Schedule for the Data Submission of IRF–PAI Assessment Data for the COVID–19 Vaccine: Percent of Patients/Residents Who Are Up to Date Quality Measure Beginning With the FY 2026 IRF QRP

As discussed in section VIII.C.2.a. of this proposed rule, we are proposing to adopt the COVID–19 Vaccine: Percent of Patients/Residents Who Are Up to Date (Patient/Resident COVID–19 Vaccine) measure beginning with the FY 2026 IRF QRP. We are proposing that IRFs would be required to report the IRF–PAI assessment data related to the Patient/Resident COVID–19 Vaccine measure beginning with patients discharged on October 1, 2024 for purposes of the FY 2026 IRF QRP. Starting in CY 2025, IRFs would be required to submit data for the entire CY beginning with the FY 2027 IRF QRP.

We are also proposing to add a new item to the IRF–PAI in order for IRFs to report this measure. Specifically, a new item would be added to the IRF–PAI discharge assessment to collect information on whether a patient is up to date with their COVID–19 vaccine at the time of discharge from the IRF. A draft of the new item is available in the *COVID–19 Vaccine: Percent of Patients/Residents Who Are Up to Date Draft Measure Specifications*.¹⁶⁸

We invite public comments on our proposal.

¹⁶⁸ *COVID–19 Vaccine: Percent of Patients/Residents Who Are Up to Date, Draft Measure Specifications*. <https://www.cms.gov/files/document/patient-resident-covid-vaccine-draft-specs.pdf>.

Foundation and Altarum. <https://altarum.org/RacialEquity2018>.

¹⁶³ Agency for Healthcare Research and Quality. 2022 National Healthcare Quality and Disparities Report. November 2022. <https://www.ahrq.gov/research/findings/nhqrdr/nhqrdr22/index.html>.

¹⁶⁴ Agency for Healthcare Research and Quality. 2022 National Healthcare Quality and Disparities Report. November 2022. <https://www.ahrq.gov/research/findings/nhqrdr/nhqrdr22/index.html>.

¹⁶⁵ Agency for Healthcare Research and Quality. 2022 National Healthcare Quality and Disparities Report. November 2022. <https://www.ahrq.gov/research/findings/nhqrdr/nhqrdr22/index.html>.

G. Policies Regarding Public Display of Measure Data for the IRF QRP

1. Background

Section 1886(j)(7)(E) of the Act requires the Secretary to establish procedures for making the IRF QRP data available to the public after ensuring that IRFs have the opportunity to review their data prior to public display. For a more detailed discussion about our policies regarding public display of IRF QRP measure data and procedures for the IRF's opportunity to review and correct data and information, we refer readers to the FY 2017 IRF PPS final rule (81 FR 52045 through 52048).

2. Proposed Public Reporting of the Transfer of Health (TOH) Information to the Provider—Post-Acute Care (PAC) Measure and TOH Information to the Patient—PAC Measure Measures Beginning With the FY 2025 IRF QRP

We are proposing to begin publicly displaying data for the measures, TOH Information to the Provider—PAC Measure (TOH—Provider) and TOH Information to the—Patient PAC Measure (TOH—Patient) beginning with the September 2024 Care Compare refresh or as soon as technically feasible.

We adopted these measures in the FY 2020 IRF PPS final rule (84 FR 39099 through 39107). In response to the COVID-19 PHE, we issued an interim final rule (85 FR 27595 through 27596) which delayed the compliance date for the collection and reporting of the TOH—Provider and TOH—Patient measures to October 1st of the year that is at least one full FY after the end of the COVID-19 PHE. Subsequently, the CY 2022 Home Health PPS Rate Update final rule (86 FR 62381 through 62386) revised the compliance date for the collection and reporting of the TOH—Provider and TOH—Patient measures under the IRF QRP to October 1, 2022. Data collection for these two assessment-based measures in the IRF QRP began with patients discharged on or after October 1, 2022.

We are proposing to publicly display four rolling quarters of the data we receive for these two assessment-based measures, initially using data on discharges from January 1, 2023, through December 31, 2023 (Quarter 1 2023 through Quarter 4 2023); and to begin publicly reporting data on these measures with the September 2024 refresh of Care Compare, or as soon as technically feasible. To ensure the statistical reliability of the data, we are proposing that we would not publicly report an IRF's performance on a measure if the IRF had fewer than 20

eligible cases in any four consecutive rolling quarters for that measure. IRFs that have fewer than 20 eligible cases would be distinguished with a footnote that states, "The number of cases/patient stays is too small to publicly report."

We invite public comment on our proposal for the public display of the TOH—Provider and TOH—Patient assessment-based measures.

3. Proposed Public Reporting of the Discharge Function Score Measure Beginning With the FY 2025 IRF QRP

We are proposing to begin publicly displaying data for the Discharge Function Score (DC Function) measure beginning with the September 2024 refresh of Care Compare, or as soon as technically feasible, using data collected from January 1, 2023 through December 31, 2023 (Quarter 1 2023 through Quarter 4 2023). We are proposing that an IRF's DC Function measure score would be displayed based on four quarters of data. Provider preview reports would be distributed to IRFs in June 2024, or as soon as technically feasible. Thereafter, an IRF's DC Function measure score would be publicly displayed based on four quarters of data and updated quarterly. To ensure the statistical reliability of the data, we are proposing that we would not publicly report an IRF's performance on the measure if the IRF had fewer than 20 eligible cases in any quarter. IRFs that have fewer than 20 eligible cases would be distinguished with a footnote that states: "The number of cases/patient stays is too small to report."

We invite public comment on the proposal for the public display of the DC Function assessment-based measure beginning with the September 2024 refresh of Care Compare, or as soon as technically feasible.

4. Proposed Public Reporting of the COVID-19 Vaccine: Percent of Patients/Residents Who Are Up to Date Measure Beginning With the FY 2026 IRF QRP

We are proposing to begin publicly displaying data for the COVID-19 Vaccine: Percent of Patients/Residents Who are Up to Date (Patient/Resident COVID-19 Vaccine) measure beginning with the September 2025 refresh of Care Compare, or as soon as technically feasible, using data collected for Q4 2024 (October 1, 2024 through December 31, 2024). We are proposing that an IRF's percent of patients who are up to date, as reported under the Patient/Resident COVID-19 Vaccine measure, would be displayed based on one quarter of data. Provider preview

reports would be distributed to IRFs in June 2025 for data collected in Q4 2024, or as soon as technically feasible. Thereafter, the percent of IRF patients who are up to date with their COVID-19 vaccinations would be publicly displayed based on one quarter of data updated quarterly. To ensure the statistical reliability of the data, we are proposing that we would not publicly report an IRF's performance on the measure if the IRF had fewer than 20 eligible cases in any quarter. IRFs that have fewer than 20 eligible cases would be distinguished with a footnote that states: "The number of cases/patient stays is too small to report."

We invite public comment on the proposal for the public display of the Patient/Resident COVID-19 Vaccine measure beginning with the September 2025 refresh of Care Compare, or as soon as technically feasible.

IX. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

This proposed rule refers to associated information collections that are not discussed in the regulation text contained in this document.

A. Requirements for Updates Related to the IRF QRP Beginning With the FY 2025 IRF QRP

An IRF that does not meet the requirements of the IRF QRP for a fiscal year would receive a 2-percentage point reduction to its otherwise applicable annual increase factor for that fiscal year.

We believe that the burden associated with the IRF QRP is the time and effort associated with complying with the requirements of the IRF QRP. In section VIII.C. of this proposed rule, we are

proposing to modify one measure, adopt three new measures, and remove three measures from the IRF QRP.

As stated in section VIII.C.1.a. of this proposed rule, we propose that IRFs submit data on one modified quality measure, the COVID–19 Vaccination Coverage among Healthcare Personnel (HCP) (HCP COVID–19 Vaccine) measure beginning with the FY 2025 IRF QRP. The data is collected through the Centers for Disease Control and Prevention (CDC’s) National Health Safety Network (NHSN). IRFs currently utilize the NHSN for purposes of meeting other IRF QRP requirements, including the current HCP COVID–19 Vaccine measure. IRFs would continue to submit the HCP COVID–19 Vaccine measure data to CMS through the NHSN. The burden associated with the HCP COVID–19 Vaccine measure is accounted for under the CDC’s information collection request currently approved under OMB control number 0920–1317 (expiration date: January 31, 2024). Because we are not proposing any updates to the form, manner, and timing of data submission for this HCP COVID–19 Vaccine measure, there would be no increase in burden associated with the proposal, and refer readers to the FY 2022 IRF PPS final rule (86 FR 42399 through 42400) for these policies.

In section VIII.C.1.b. of this proposed rule, we propose to adopt the Discharge Function Score (DC Function) measure beginning with the FY 2025 IRF QRP. This assessment-based quality measure would be calculated using data from the IRF Patient Assessment Instrument (IRF–PAI) that are already reported to CMS for payment and quality reporting purposes, and the burden is accounted for in the information collection request currently approved under OMB control number 0938–0842 (expiration date: August 31, 2025). There would be no additional burden for IRFs associated with this proposed DC Function measure since it does not require collection of new data elements.

In section VIII.C.1.c. of this proposed rule, we also propose to remove the Application of Percent of Long-Term Care Hospital Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (Application of Functional Assessment/Care Plan) measure beginning with the FY 2025 IRF QRP. We believe that the removal of the Application of Functional Assessment/Care Plan measure would result in a decrease of 18 seconds (0.3 minutes or 0.005 hours) of clinical staff time at admission beginning with the FY 2025 IRF QRP. We believe the IRF–PAI item affected by the Application of

Functional Assessment/Care Plan measure is completed by Occupational Therapists (OT), Physical Therapists (PT), Registered Nurses (RN), Licensed Practical and Licensed Vocational Nurses (LVN), and/or Speech-Language Pathologists (SLP) depending on the functional goal selected. We identified the staff type per item based on past IRF burden calculations in conjunction with expert opinion. Our assumptions for staff type were based on the categories generally necessary to perform an assessment. Individual providers determine the staffing resources necessary. Therefore, we averaged the national average for these labor types and established a composite cost estimate. This composite estimate was calculated by weighting each salary based on the following breakdown regarding provider types most likely to collect this data: OT 45 percent; PT 45 percent; RN 5 percent; LVN 2.5 percent; SLP 2.5 percent. For the purposes of calculating the costs associated with the collection of information requirements, we obtained mean hourly wages for these staff from the U.S. Bureau of Labor Statistics’ (BLS) May 2021 National Occupational Employment and Wage Estimates.¹⁶⁹ To account for overhead and fringe benefits, we have doubled the hourly wage. These amounts are detailed in Table 19.

TABLE 19—U.S. BUREAU OF LABOR AND STATISTICS’ MAY 2021 NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation code	Mean hourly wage (\$/hr)	Overhead and fringe benefit (\$/hr)	Adjusted hourly wage (\$/hr)
Registered Nurse (RN)	29–1141	\$39.78	\$39.78	\$79.56
Licensed Vocational Nurse (LVN)	29–2061	24.93	24.93	49.86
Speech Language Pathologist (SLP)	29–1127	41.26	41.26	82.52
Physical Therapist (PT)	29–1123	44.67	44.67	89.34
Occupational Therapist (OT)	29–1122	43.02	43.02	86.04

As a result of this proposal, the estimated burden and cost for IRFs for complying with requirements of the FY 2025 IRF QRP would decrease. Specifically, we believe that there would be a 0.005 hour decrease in clinical staff time to report data for each IRF–PAI completed at admission. Using data from calendar year 2021, we estimate 511,938 admission assessments from 1,128 IRFs annually. This equates to a decrease of 2,560 hours in burden at admission for all IRFs (0.005 hour × 511,938 admissions). Given 0.135 minutes of occupational therapist time at \$86.04 per hour, 0.135 minutes of

physical therapist time at \$89.34 per hour, 0.015 minutes registered nurse time at \$79.56 per hour, 0.0075 minutes of licensed vocational nurse time at \$49.86 per hour, and 0.0075 minutes of speech language pathologist time at \$82.52 per hour to complete an average of 454 IRF–PAI admission assessments per IRF per year, we estimate the total cost would be decreased by \$195.65 (\$220,697.60 total reduction/1,128 IRFs) per IRF annually, or \$220,697.60 for all IRFs annually based on the proposed removal of the Application of Functional Assessment/Care Plan measure.

In section VIII.C.1.d. of this proposed rule, we propose to remove the IRF Functional Outcome Measure: Change in Self-Care Score for Medical Rehabilitation Patients (Change in Self-Care Score) and the IRF Functional Outcome Measure: Change in Mobility Score for Medical Rehabilitation Patients (Change in Mobility Score) measures beginning with the FY 2025 IRF QRP. While these assessment-based quality measures are proposed for removal, the data elements used to calculate the measures would still be collected by IRFs for payment and quality reporting purposes, specifically

¹⁶⁹ U.S. Bureau of Labor Statistics’ (BLS) May 2021 National Occupational Employment and Wage

Estimates. https://www.bls.gov/oes/current/oes_nat.htm.

for other quality measures under the IRF QRP. Therefore, we believe that the proposal to remove the Change in Self-Care Score and Change in Mobility Score measures would not decrease burden for IRFs.

In section VIII.C.2.a. of this proposed rule, we propose to adopt the COVID-19 Vaccine: Percent of Patients/Residents Who Are Up to Date (Patient/Resident COVID-19 Vaccine) measure beginning with the FY 2026 IRF QRP. The proposed measure would be collected using the IRF-PAI. One data element would need to be added to the IRF-PAI at discharge in order to allow for collection of the Patient/Resident COVID-19 Vaccine measure, and we believe would result in an increase of 0.3 minutes of clinical staff time at discharge. We believe that the

additional Patient/Resident COVID-19 Vaccine measure's data element would be completed equally by registered nurses and licensed vocational nurses. Mean hourly wages for these staff are detailed in Table 19. However, individual IRFs determine the staffing resources necessary. Using data from CY 2021, we estimate a total of 779,274 discharges on all patients regardless of payer from 1,128 IRFs annually. This equates to an increase of 3,896 hours in burden for all IRFs (0.005 hour $\times$ 779,274 admissions). Given 0.15 minutes of registered nurse time at \$79.56 per hour and 0.15 minutes of licensed vocational nurse time at \$49.86 per hour to complete an average of 691 IRF-PAI discharge assessments per IRF per year, we estimate that the total cost of complying with the IRF QRP

requirements would be increased by \$223.50 [(\$64.71/hr $\times$ 3,896 hours)/1,128 IRFs] per IRF annually, or \$252,110.16 (\$64.71/hr $\times$ 3,896 hours) for all IRFs annually based on the proposed adoption of the Patient/Resident COVID-19 Vaccine measure. The information collection request approved under OMB control number 0938-0842 (expiration date: August 31, 2025) will be revised and sent to OMB for approval.

In summary, under OMB control number (0938-0842), if the proposals for the IRF QRP are adopted as proposed, we estimate that there would be a cost increase of \$27.85 per IRF (\$31,412.56/1,128 IRFs). The total cost increase related to this information collection is approximately \$31,412.56 and is summarized in Table 20.

TABLE 20—PROPOSALS ASSOCIATED WITH OMB CONTROL NUMBER 0938-0842

Proposal	Per IRF		All IRFs	
	Change in annual burden hours	Change in annual cost	Change in annual burden hours	Change in annual cost
Change in Burden associated with proposed removal of the Application of Functional Assessment/Care Plan measure beginning with the FY 2025 IRF QRP	-2.3	-\$195.65	-2,560	-\$220,697.60
Change in Burden associated with proposed Patient/Resident COVID-19 Vaccine measure beginning with the FY 2026 IRF QRP	+3.5	+\$223.50	+3,896	+\$252,110.16
Total Change in burden for the IRF QRP associated with 0938-0842	1.2	27.85	1,336	31,412.56

We invite public comments on the proposed information collection requirements.

If you comment on these information collection, that is, reporting, recordkeeping or third-party disclosure requirements, please submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule.

Comments must be received on/by June 2, 2023.

X. Response to Comments

Because of the large number of public comments, we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

XI. Regulatory Impact Analysis

A. Statement of Need

This proposed rule would update the IRF prospective payment rates for FY 2024 as required under section 1886(j)(3)(C) of the Act and in accordance with section 1886(j)(5) of the

Act, which requires the Secretary to publish in the **Federal Register** on or before August 1 before each FY, the classification and weighting factors for CMGs used under the IRF PPS for such FY and a description of the methodology and data used in computing the prospective payment rates under the IRF PPS for that FY. This proposed rule would also implement section 1886(j)(3)(C) of the Act, which requires the Secretary to apply a productivity adjustment to the market basket increase factor for FY 2012 and subsequent years.

Furthermore, this proposed rule proposes to adopt policy changes to the IRF QRP under the statutory discretion afforded to the Secretary under section 1886(j)(7) of the Act. This rule proposes updates to the IRF QRP requirements beginning with the FY 2025 IRF QRP and FY 2026 IRF QRP. We propose a modification to a current measure in the IRF QRP which we believe will encourage healthcare personnel to remain up to date with the COVID-19 vaccine, resulting in fewer cases, less hospitalizations, and lower mortality associated with the virus. We propose adoption of two new measures: one measure to maintain compliance with the requirements of section 1899B of the

Act and replace the current cross-setting process measure with a measure that is more strongly associated with desired patient functional outcomes; and a second measure that supports the goals of CMS Meaningful Measures Initiative 2.0 to empower consumers with tools and information as they make healthcare choices as well as assist IRFs leverage their care processes to increase vaccination coverage in their settings to protect residents and prevent negative outcomes. We propose the removal of three measures from the IRF QRP as they meet the criteria specified at § 412.634(b)(2) for measure removal.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104-4), Executive Order 13132 on Federalism (August 4, 1999).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule: (1) having an annual effect on the economy of \$100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in Executive Order 12866.

Section (6)(a) of Executive Order 12866 provides that a regulatory impact analysis (RIA) must be prepared for major rules with significant effects as per section 3(f)(1) Executive Order 12866 (\$100 million or more in any 1 year). We estimate the total impact of the policy updates described in this proposed rule by comparing the estimated payments in FY 2024 with those in FY 2023. This analysis results in an estimated \$335 million increase for FY 2024 IRF PPS payments. Additionally, we estimate that costs associated with the proposal to update the reporting requirements under the IRF QRP result in an estimated \$31,783,532.15 additional cost in FY 2026 for IRFs. Based on our estimates OMB’s Office of Information and Regulatory Affairs has reviewed and determined that this rulemaking is “significant” as per section 3(f)(1) of Executive Order 12866. Accordingly, we have prepared an RIA that, to the best of our ability, presents the costs and benefits of the rulemaking.

C. Anticipated Effects

1. Effects on IRFs

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small

governmental jurisdictions. Most IRFs and most other providers and suppliers are small entities, either by having revenues of \$8.0 million to \$41.5 million or less in any 1 year depending on industry classification, or by being nonprofit organizations that are not dominant in their markets. (For details, see the Small Business Administration’s final rule that set forth size standards for health care industries, at 65 FR 69432 at https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf, effective January 1, 2017 and updated on August 19, 2019.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IRFs or the proportion of IRFs’ revenue that is derived from Medicare payments. Therefore, we assume that all IRFs (an approximate total of 1,128 IRFs, of which approximately 51 percent are nonprofit facilities) are considered small entities and that Medicare payment constitutes the majority of their revenues. HHS generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. As shown in Table 21, we estimate that the net revenue impact of the final rule on all IRFs is to increase estimated payments by approximately 3.7 percent. The rates and policies set forth in this proposed rule will not have a significant impact (not greater than 4 percent) on a substantial number of small entities. The estimated impact on small entities is shown in Table 21. MACs are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. As shown in Table 21, we estimate that the net revenue impact of this proposed rule on rural IRFs is to increase estimated payments by approximately 3.2 percent based on the data of the 134 rural units and 12 rural hospitals in our database of 1,128 IRFs for which data were available. We estimate an overall impact for rural IRFs in all areas between 1.3 percent and 5.1 percent. As a result, we anticipate that this proposed rule will not have a

significant impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–04, enacted March 22, 1995) (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2023, that threshold is approximately \$177 million. This proposed rule does not mandate any requirements for State, local, or tribal governments, or for the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. As stated, this proposed rule would not have a substantial effect on State and local governments, preempt State law, or otherwise have a federalism implication.

2. Detailed Economic Analysis

This proposed rule would update the IRF PPS rates contained in the FY 2023 IRF PPS final rule (87 FR 47038). Specifically, this proposed rule would update the CMG relative weights and ALOS values, the wage index, and the outlier threshold for high-cost cases. This proposed rule would apply a productivity adjustment to the FY 2024 IRF market basket increase factor in accordance with section 1886(j)(3)(C)(ii)(I) of the Act. Further, this proposed rule proposes to rebase and revise the IRF market basket to reflect a 2021 base year. We are also proposing to modify the regulation governing when IRF units can be excluded and paid under the IRF PPS.

We estimate that the impact of the changes and updates described in this proposed rule would be a net estimated increase of \$335 million in payments to IRFs. The impact analysis in Table 21 of this proposed rule represents the projected effects of the updates to IRF PPS payments for FY 2024 compared with the estimated IRF PPS payments in FY 2023. We determine the effects by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as number of discharges or case-mix.

We note that certain events may combine to limit the scope or accuracy

of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to forecasting errors because of other changes in the forecasted impact time period. Some examples could be legislative changes made by the Congress to the Medicare program that would impact program funding, or changes specifically related to IRFs. Although some of these changes may not necessarily be specific to the IRF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon IRFs.

In updating the rates for FY 2024, we are proposing the standard annual revisions described in this proposed rule (for example, the update to the wage index and market basket increase factor used to adjust the Federal rates). We are also reducing the FY 2024 IRF market basket increase factor by a productivity adjustment in accordance with section 1886(j)(3)(C)(ii)(I) of the Act. We estimate the total increase in payments to IRFs in FY 2024, relative to FY 2023, would be approximately \$335 million.

This estimate is derived from the application of the proposed FY 2024 IRF market basket increase factor, as reduced by a productivity adjustment in accordance with section 1886(j)(3)(C)(ii)(I) of the Act, which yields an estimated increase in aggregate payments to IRFs of \$270 million. However, there is an estimated \$65 million increase in aggregate payments to IRFs due to the proposed update to the outlier threshold amount. Therefore, we estimate that these updates would result in a net increase in estimated payments of \$335 million from FY 2023 to FY 2024.

The effects of the proposed updates that impact IRF PPS payment rates are shown in Table 21. The following proposed updates that affect the IRF PPS payment rates are discussed separately below:

- The effects of the proposed update to the outlier threshold amount, from approximately 2.3 percent to 3.0 percent of total estimated payments for FY 2024, consistent with section 1886(j)(4) of the Act.
- The effects of the proposed annual market basket update (using the proposed 2021-based IRF market basket) to IRF PPS payment rates, as required by sections 1886(j)(3)(A)(i) and (j)(3)(C) of the Act, including a productivity adjustment in accordance with section 1886(j)(3)(C)(ii)(I) of the Act.
- The effects of applying the proposed budget-neutral labor-related

share and wage index adjustment, as required under section 1886(j)(6) of the Act, accounting for the permanent cap on wage index decreases when applicable.

- The effects of the proposed budget-neutral changes to the CMG relative weights and ALOS values under the authority of section 1886(j)(2)(C)(i) of the Act.
- The total change in estimated payments based on the FY 2024 payment changes relative to the estimated FY 2023 payments.

3. Description of Table 21

Table 21 shows the overall impact on the 1,128 IRFs included in the analysis.

The next 12 rows of Table 21 contain IRFs categorized according to their geographic location, designation as either a freestanding hospital or a unit of a hospital, and by type of ownership; all urban, which is further divided into urban units of a hospital, urban freestanding hospitals, and by type of ownership; and all rural, which is further divided into rural units of a hospital, rural freestanding hospitals, and by type of ownership. There are 982 IRFs located in urban areas included in our analysis. Among these, there are 645 IRF units of hospitals located in urban areas and 337 freestanding IRF hospitals located in urban areas. There are 146 IRFs located in rural areas included in our analysis. Among these, there are 134 IRF units of hospitals located in rural areas and 12 freestanding IRF hospitals located in rural areas. There are 455 for-profit IRFs. Among these, there are 420 IRFs in urban areas and 35 IRFs in rural areas. There are 570 non-profit IRFs. Among these, there are 480 urban IRFs and 90 rural IRFs. There are 103 government-owned IRFs. Among these, there are 82 urban IRFs and 21 rural IRFs.

The remaining four parts of Table 21 show IRFs grouped by their geographic location within a region, by teaching status, and by DSH patient percentage (PP). First, IRFs located in urban areas are categorized for their location within a particular one of the nine Census geographic regions. Second, IRFs located in rural areas are categorized for their location within a particular one of the nine Census geographic regions. In some cases, especially for rural IRFs located in the New England, Mountain, and Pacific regions, the number of IRFs represented is small. IRFs are then grouped by teaching status, including non-teaching IRFs, IRFs with an intern and resident to average daily census (ADC) ratio less than 10 percent, IRFs with an intern and resident to ADC ratio greater than or equal to 10 percent and

less than or equal to 19 percent, and IRFs with an intern and resident to ADC ratio greater than 19 percent. Finally, IRFs are grouped by DSH PP, including IRFs with zero DSH PP, IRFs with a DSH PP less than 5 percent, IRFs with a DSH PP between 5 and less than 10 percent, IRFs with a DSH PP between 10 and 20 percent, and IRFs with a DSH PP greater than 20 percent.

The estimated impacts of each policy described in this rule to the facility categories listed are shown in the columns of Table 21. The description of each column is as follows:

- Column (1) shows the facility classification categories.
- Column (2) shows the number of IRFs in each category in our FY 2024 analysis file.
- Column (3) shows the number of cases in each category in our FY 2024 analysis file.
- Column (4) shows the estimated effect of the proposed adjustment to the outlier threshold amount.
- Column (5) shows the estimated effect of the proposed update to the IRF labor-related share and wage index, in a budget-neutral manner.
- Column (6) shows the estimated effect of the proposed update to the CMG relative weights and ALOS values, in a budget-neutral manner.
- Column (7) compares our estimates of the payments per discharge, incorporating all of the policies reflected in this proposed rule for FY 2024 to our estimates of payments per discharge in FY 2023.

The average estimated increase for all IRFs is approximately 3.7 percent. This estimated net increase includes the effects of the proposed IRF market basket update for FY 2024 of 3.0 percent, which is based on a proposed IRF market basket increase factor of 3.2 percent, less a 0.2 percentage point productivity adjustment, as required by section 1886(j)(3)(C)(ii)(I) of the Act. It also includes the approximate 0.7 percent overall increase in estimated IRF outlier payments from the proposed update to the outlier threshold amount. Since we are making the proposed updates to the IRF wage index, labor-related share and the CMG relative weights in a budget-neutral manner, they would not be expected to affect total estimated IRF payments in the aggregate. However, as described in more detail in each section, they would be expected to affect the estimated distribution of payments among providers.

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TABLE 21: IRF Impact for FY 2024 (Columns 4 through 7 in percentage)

Facility Classification	Number of IRFs	Number of Cases	Outlier	FY 2024 Wage Index and Labor-Related Share	CMG Weights	Total Percent Change ¹
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Total	1,128	383,601	0.7	0.0	0.0	3.7
Urban unit	645	136,108	1.3	0.1	-0.0	4.4
Rural unit	134	16,705	1.0	-0.4	-0.1	3.5
Urban hospital	337	225,650	0.3	0.0	0.0	3.4
Rural hospital	12	5,138	0.2	-1.0	0.1	2.3
Urban For-Profit	420	220,853	0.4	0.0	0.0	3.4
Rural For-Profit	35	8,113	0.6	-0.9	0.0	2.7
Urban Non-Profit	480	122,596	1.2	0.1	0.0	4.4
Rural Non-Profit	90	11,608	1.0	-0.4	0.0	3.6
Urban Government	82	18,309	1.3	0.1	0.0	4.4
Rural Government	21	2,122	0.7	-0.6	-0.1	3.1
Urban	982	361,758	0.7	0.0	0.0	3.8
Rural	146	21,843	0.8	-0.6	0.0	3.2
Urban by region						
Urban New England	29	13,377	0.5	-0.3	0.0	3.2
Urban Middle Atlantic	118	40,264	0.8	0.6	0.1	4.6
Urban South Atlantic	170	81,239	0.6	0.0	0.0	3.6
Urban East North Central	164	42,894	0.8	-0.4	0.0	3.4
Urban East South Central	55	25,490	0.2	-0.2	0.0	3.1
Urban West North Central	76	20,887	0.8	-0.1	-0.1	3.7
Urban West South Central	198	86,706	0.5	0.2	0.0	3.8
Urban Mountain	77	27,445	0.6	-0.7	-0.1	2.8
Urban Pacific	95	23,456	1.7	0.3	0.0	5.0
Rural by region						
Rural New England	5	1,051	0.6	-2.5	0.3	1.3
Rural Middle Atlantic	10	1,028	0.8	-0.7	0.0	3.1
Rural South Atlantic	15	3,946	0.4	-0.1	0.0	3.4
Rural East North Central	24	2,913	0.7	-0.5	0.0	3.1
Rural East South Central	20	3,418	0.3	-0.8	-0.1	2.5
Rural West North Central	20	2,357	1.5	-0.5	-0.1	3.9
Rural West South Central	43	6,387	1.0	-0.4	0.0	3.5
Rural Mountain	6	463	2.3	-0.1	-0.1	5.1
Rural Pacific	3	280	2.3	-0.4	-0.1	4.8
Teaching status						
Non-teaching	1,027	340,427	0.7	-0.1	0.0	3.6
Resident to ADC less than 10%	56	31,139	0.9	0.4	0.0	4.3
Resident to ADC 10%-19%	34	10,744	1.5	0.6	0.1	5.3
Resident to ADC greater than 19%	11	1,291	1.8	1.0	-0.1	5.8
Disproportionate share patient percentage (DSH PP)						
DSH PP = 0%	59	10,028	0.9	0.4	0.0	4.4
DSH PP <5%	132	57,035	0.6	0.1	0.0	3.7
DSH PP 5%-10%	243	95,773	0.5	0.1	0.0	3.6
DSH PP 10%-20%	395	142,995	0.7	-0.1	0.0	3.7
DSH PP greater than 20%	299	77,770	1.0	0.0	0.0	4.0

¹This column includes the impact of the updates in columns (4), (5), and (6) above, and of the proposed IRF market basket update for FY 2024 of 3.2 percent, reduced by 0.2 percentage point for the productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act. Note, the products of these impacts may be different from the percentage changes shown here due to rounding effects.

4. Impact of the Proposed Update to the Outlier Threshold Amount

The estimated effects of the proposed update to the outlier threshold adjustment are presented in column 4 of Table 21.

For this proposed rule, we are using preliminary FY 2022 IRF claims data and, based on that preliminary analysis, we estimated that IRF outlier payments as a percentage of total estimated IRF payments would be 2.3 percent in FY 2023. Thus, we propose to adjust the outlier threshold amount in this proposed rule to maintain total estimated outlier payments equal to 3 percent of total estimated payments in FY 2024. The estimated change in total IRF payments for FY 2024, therefore, includes an approximate 0.7 percentage point increase in payments because the estimated outlier portion of total payments is estimated to increase from approximately 2.3 percent to 3.0 percent.

The impact of this proposed outlier adjustment update (as shown in column 4 of Table 21) is to increase estimated overall payments to IRFs by 0.7 percentage point.

5. Impact of the Proposed Wage Index, Labor-Related Share, and Wage Index Cap

In column 5 of Table 21, we present the effects of the proposed budget-neutral update of the wage index and labor-related share, taking into account the permanent 5 percent cap on wage index decreases, when applicable. The proposed changes to the wage index and the labor-related share are discussed together because the wage index is applied to the labor-related share portion of payments, so the proposed changes in the two have a combined effect on payments to providers. As discussed in section V.E. of this proposed rule, we are proposing to update the FY 2024 labor-related share from 72.9 percent in FY 2023 to 74.1 percent in FY 2024. In aggregate, we do not estimate that these proposed updates will affect overall estimated payments to IRFs. However, we do expect these updates to have small distributional effects. We estimate the largest decrease in payment from the update to the CBSA wage index and labor-related share to be a 2.5 percent decrease for IRFs in the Rural New England region and the largest increase in payment to be a 0.6 percent increase

for IRFs in the Urban Middle Atlantic Region.

6. Impact of the Proposed Update to the CMG Relative Weights and ALOS Values

In column 6 of Table 21, we present the effects of the proposed budget-neutral update of the CMG relative weights and ALOS values. In the aggregate, we do not estimate that these proposed updates will affect overall estimated payments of IRFs. However, we do expect these updates to have small distributional effects, with the largest effect being an increase in payments of 0.3 percent to IRFs in the Rural New England region.

7. Effects of Proposed Modification of the Regulation for Excluded IRF Units Paid Under the IRF PPS

As discussed in section VII. of this proposed rule, we are proposing to amend the regulation text at § 412.25(c)(1) in this proposed rule.

We do not anticipate a financial impact associated with the proposed modification of the regulation for excluded IRF units paid under the IRF PPS. In response to the need for availability of inpatient rehabilitation beds we are proposing changes to § 412.25(c) to allow greater flexibility for hospitals to open excluded units, while minimizing the amount of effort that Medicare contractors would need to spend administering the regulatory requirements. We believe this proposal would provide IRFs greater flexibility when establishing an excluded unit at a time other than the start of a cost reporting period.

8. Effects of Requirements for the IRF QRP Beginning With FY 2025

In accordance with section 1886(j)(7)(A) of the Act, the Secretary must reduce by 2 percentage points the annual market basket increase factor otherwise applicable to an IRF for a fiscal year if the IRF does not comply with the requirements of the IRF QRP for that fiscal year. In section VIII.A. of the proposed rule, we discuss the method for applying the 2 percentage point reduction to IRFs that fail to meet the IRF QRP requirements.

As discussed in section VIII.C.1.a. of this proposed rule, we propose to modify one measure in the IRF QRP beginning with the FY 2025 IRF QRP, the HCP COVID-19 Vaccine measure. We believe that the burden associated

with the IRF QRP is the time and effort associated with complying with the non-claims-based measures requirements of the IRF QRP. The burden associated with the COVID-19 Vaccination Coverage among HCP measure is accounted for under the CDC PRA package currently approved under OMB control number 0920-1317 (expiration August 1, 2025).

As discussed in section VIII.C.1.b. of this proposed rule, we propose that IRFs would collect data on one new quality measure, the DC Function measure, beginning with assessments completed on October 1, 2023. However, the measure utilizes data items that IRFs already report to CMS for payment and quality reporting purposes, and therefore the burden is accounted for in the PRA package approved under OMB control number 0920-0842 (expiration August 31, 2025).

As discussed in section VIII.C.1.c. of this proposed rule, we propose to remove the Application of Functional Assessment/Care Plan measure, from the IRF QRP and this proposal would result in a decrease of 0.3 minutes of clinical staff time beginning with admission assessments completed on October 1, 2023. Although the proposed decrease in burden will be accounted for in a revised information collection request under OMB control number (0938-0842), we are providing impact information. We believe the data element for this quality measure is completed by occupational therapists (45 percent of the time or 0.135 minutes), physical therapists (45 percent of the time or 0.135 minutes), registered nurses (5 percent of the time or 0.015 minutes), licensed practical and vocational nurses (2.5 percent of the time or 0.0075 minutes), or by speech-language pathologists (2.5 percent of the time or 0.0075 minutes). For the purposes of calculating the costs associated with the collection of information requirements, we obtained mean hourly wages for these staff from the U.S. Bureau of Labor Statistics' (BLS) May 2021 National Occupational Employment and Wage Estimates.¹⁷⁰ To account for overhead and fringe benefits, we have doubled the hourly wage. These amounts are detailed in Table 22.

¹⁷⁰ U.S. Bureau of Labor Statistics' (BLS) May 2021 National Occupational Employment and Wage Estimates. https://www.bls.gov/oes/current/oes_nat.htm.

TABLE 22—U.S. BUREAU OF LABOR AND STATISTICS' MAY 2021 NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation code	Mean hourly wage (\$/hr)	Overhead and fringe benefit (\$/hr)	Adjusted hourly wage (\$/hr)
Registered Nurse (RN)	29-1141	\$39.78	\$39.78	\$79.56
Licensed Vocational Nurse (LVN)	29-2061	24.93	24.93	49.86
Speech Language Pathologist (SLP)	29-1127	41.26	41.26	82.52
Physical Therapist (PT)	29-1123	44.67	44.67	89.34
Occupational Therapist (OT)	29-1122	43.02	43.02	86.04

With 511,938 admissions from 1,128 IRFs annually, we estimate an annual burden decrease of 2,560 fewer hours (511,938 admissions × .005 hours) and a decrease of \$220,697.60 [2,560 hours × \$86.21/hr]. For each IRF we estimate an annual burden decrease of 2.3 hours (2,560 hours/1,128 IRFs) at a savings of \$195.65 (\$220,697.60/1,128 IRFs).

As discussed in section VIII.C.1.d. of this proposed rule, we propose to remove two additional measures from the IRF QRP, the Change in Self-Care and Change in Mobility measures, beginning with assessments completed on October 1, 2023. However, the data items used in the calculation of this measure are used for other payment and quality reporting purposes, and therefore there is no change in burden associated with this proposal.

9. Effects of Requirements for the IRF QRP Beginning With FY 2026

As discussed in section VIII.C.2.a. of this proposed rule, we propose to adopt

a measure, the Patient/Resident COVID-19 Vaccine measure, beginning with the FY 2026 IRF QRP and this proposal would result in an increase of 0.3 minutes of clinical staff time beginning with discharge assessments completed on October 1, 2024. Although the proposed increase in burden will be accounted for in a revised information collection request under OMB control number (0938-0842), we are providing impact information. We estimate the data element for this quality measure would be completed by registered nurses (50 percent of the time or 0.15 minutes) or by licensed practical and vocational nurses (50 percent of the time or 0.15 minutes). For the purposes of calculating the costs associated with the collection of information requirements, we obtained mean hourly wages for these staff from the U.S. Bureau of Labor Statistics' (BLS) May 2021 National Occupational Employment and Wage Estimates.¹⁷¹ To

account for overhead and fringe benefits, we have doubled the hourly wage. These amounts are detailed in Table 22. With 779,274 discharges on all patients regardless of payer from 1,128 IRFs annually, we estimate an annual burden increase of 3,896 hours (779,274 discharges × 0.005 hours) and an increase of \$252,110.16 (\$64.71/hr × 3,896 hours). For each IRF we estimate an annual burden increase of 3.5 hours (3,896 hours/1,128 IRFs) at an additional cost of \$223.50 (\$252,110.16/1,128 IRFs).

In summary, under OMB control number (0938-0842), if the proposals associated with the IRF QRP are adopted as proposed, we estimate an increase in programmatic impact for 1,128 IRFs. The total burden reduction is approximately \$31,412.56 and is summarized in Table 23.

TABLE 23—ESTIMATED IRF QRP PROGRAM IMPACTS FOR FY 2025 AND FY 2026

Proposal	Per IRF		All IRFs	
	Change in annual burden hours	Change in annual cost	Change in annual burden hours	Change in annual cost
Change in Burden associated with proposed removal of the Application of Functional Assessment/Care Plan measure beginning with the FY 2025 IRF QRP	-2.3	-\$195.65	-2,560	-\$220,697.60
Change in Burden associated with proposed Patient/Resident COVID-19 Vaccine measure beginning with the FY 2026 IRF QRP	+3.5	+\$223.50	+3,896	+\$252,110.16
Total increase in burden for the IRF QRP proposals associated with this proposed rule	1.2	27.85	1,336	31,412.56

We invite public comments on the overall impact of the IRF QRP proposals for FY 2025 and FY 2026.

D. Alternatives Considered

The following is a discussion of the alternatives considered for the IRF PPS updates contained in this proposed rule.

Section 1886(j)(3)(C) of the Act requires the Secretary to update the IRF PPS payment rates by an increase factor that reflects changes over time in the prices of an appropriate mix of goods

and services included in the covered IRF services.

We are proposing to adopt a market basket increase factor for FY 2024 that is based on a rebased and revised market basket reflecting a 2021 base year. We considered the alternative of continuing to use the IRF market basket without rebasing to determine the market basket increase factor for FY 2024. However, we typically rebase and revise the market baskets for the various

PPS every 4 to 5 years so that the cost weights and price proxies reflect more recent data. Therefore, we believe it is more technically appropriate to use a 2021-based IRF market basket since it allows for the FY 2024 market basket increase factor to reflect a more up-to-date cost structure experienced by IRFs.

As noted previously in this proposed rule, section 1886(j)(3)(C) of the Act requires the Secretary to update the IRF PPS payment rates by an increase factor

¹⁷¹ U.S. Bureau of Labor Statistics' (BLS) May 2021 National Occupational Employment and Wage

Estimates. https://www.bls.gov/oes/current/oes_nat.htm.

that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered IRF services and section 1886(j)(3)(C)(ii)(I) of the Act requires the Secretary to apply a productivity adjustment to the market basket increase factor for FY 2024. Thus, in accordance with section 1886(j)(3)(C) of the Act, we propose to update the IRF prospective payments in this proposed rule by 3.0 percent (which equals the 3.2 percent estimated IRF market basket increase factor for FY 2024 reduced by a 0.2 percentage point productivity adjustment as determined under section 1886(b)(3)(B)(xi)(II) of the Act (as required by section 1886(j)(3)(C)(ii)(I) of the Act)).

We considered maintaining the existing CMG relative weights and average length of stay values for FY 2024. However, in light of recently available data and our desire to ensure that the CMG relative weights and average length of stay values are as reflective as possible of recent changes in IRF utilization and case mix, we believe that it is appropriate to propose to update the CMG relative weights and average length of stay values at this time to ensure that IRF PPS payments continue to reflect as accurately as possible the current costs of care in IRFs.

We considered maintaining the existing outlier threshold amount for FY 2024. However, analysis of updated FY 2023 data indicates that estimated outlier payments would be less than 3 percent of total estimated payments for FY 2024, by approximately 0.7 percent, unless we updated the outlier threshold amount. Consequently, we propose adjusting the outlier threshold amount in this proposed rule to reflect a 0.7 percent increase thereby setting the total outlier payments equal to 3 percent, instead of 2.3 percent, of aggregate estimated payments in FY 2024.

We considered not modifying the regulation governing when IRF units can be excluded and paid under the IRF PPS. However, we believe that amending the regulation would provide hospitals greater flexibility when establishing an IRF.

With regard to the proposal to modify the HCP COVID–19 Vaccine measure and to add the Patient/Resident COVID–19 Vaccine measure to the IRF QRP Program, the COVID–19 pandemic has exposed the importance of implementing infection prevention

strategies, including the promotion of COVID–19 vaccination for HCP and patients/residents. We believe these measures would encourage healthcare personnel to get up to date with the COVID–19 vaccine and increase vaccine uptake in patients/residents resulting in fewer cases, less hospitalizations, and lower mortality associated with the SARS-CoV–2 virus, but we were unable to identify any alternative methods for collecting the data. An overwhelming public need exists to target quality improvement among IRFs as well as provide data to patients and caregivers through transparency of data. Therefore, these proposed measures have the potential to generate actionable data on COVID–19 vaccination rates.

The proposal to replace the topped-out Application of Functional Assessment/Care Plan process measure with the proposed DC Function measure, which has strong scientific acceptability, satisfies the requirement that there be at least one cross-setting function measure in the PAC QRPs, including the IRF QRP, that uses standardized functional assessment data elements from standardized patient assessment instruments. We considered the alternative of delaying the proposal of adopting the DC Function measure. However, given the proposed DC Function measure's strong scientific acceptability, the fact that it provides an opportunity to replace the current cross-setting process measure (that is, the Application of Functional Assessment/Care Plan measure) with an outcome measure, and uses standardized functional assessment data elements that are already collected, we believe further delay of the DC Function measure is unwarranted. Further, the proposed removal of the Application of Functional Assessment/Care Plan measure meets measure removal factors one and six, and no longer provides meaningful distinctions in improvements in performance. Finally, the proposal to remove the Change in Self-Care Score and Change in Mobility Score measures meets measure removal factor eight, and the costs associated with a measure outweigh the benefits of its use in the program. Therefore, no alternatives were considered.

E. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should estimate the

cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on the FY 2024 IRF PPS proposed rule will be the number of reviewers of last year's proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this proposed rule. It is possible that not all commenters reviewed the FY 2023 IRF PPS proposed rule in detail, and it is also possible that some reviewers chose not to comment on the FY 2023 proposed rule. For these reasons, we thought that the number of commenters would be a fair estimate of the number of reviewers of this proposed rule.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this proposed rule, and therefore, for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule.

Using the national mean hourly wage data from the May 2021 BLS for Occupational Employment Statistics (OES) for medical and health service managers (SOC 11–9111), we estimate that the cost of reviewing this rule is \$115.22 per hour, including overhead and fringe benefits (https://www.bls.gov/oes/current/oes_nat.htm). Assuming an average reading speed, we estimate that it would take approximately 3 hours for the staff to review half of this proposed rule. For each reviewer of the rule, the estimated cost is \$345.66 (3 hours × \$115.22). Therefore, we estimate that the total cost of reviewing this regulation is \$21,085.26 (\$345.66 × 61 reviewers).

F. Accounting Statement and Table

As required by OMB Circular A–4 (available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf), in Table 24 we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. Table 24 provides our best estimate of the increase in Medicare payments under the IRF PPS as a result of the proposed updates presented in this proposed rule based on the data for 1,128 IRFs in our database.

TABLE 24—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURE

	Category	Transfers
Change in Estimated Transfers from FY 2023 IRF PPS to FY 2024 IRF PPS.	Annualized Monetized Transfers	\$335 million.
	From Whom to Whom?	Federal Government to IRF Medicare Providers.
Estimated Costs Associated with the FY 2025 and FY 2026 IRF QRP.	Annualized monetized cost in FY 2025 and FY 2026 for IRFs due to new quality reporting program requirements.	\$31,412.56.
Estimated Costs Associated with Review Cost for FY 2024 IRF PPS.	Cost associated with regulatory review cost	\$21,085.26.

G. Conclusion

Overall, the estimated payments per discharge for IRFs in FY 2024 are projected to increase by 3.7 percent, compared with the estimated payments in FY 2023, as reflected in column 7 of Table 21.

IRF payments per discharge are estimated to increase by 3.8 percent in urban areas and 3.2 percent in rural areas, compared with estimated FY 2023 payments. Payments per discharge to rehabilitation units are estimated to increase 4.4 percent in urban areas and 3.5 percent in rural areas. Payments per discharge to freestanding rehabilitation hospitals are estimated to increase 3.4 percent in urban areas and 2.3 percent in rural areas.

Overall, IRFs are estimated to experience a net increase in payments as a result of the proposed policies in this proposed rule. The largest payment increase is estimated to be a 5.1 percent increase for IRFs located in the Rural Mountain region. The analysis above, together with the remainder of this preamble, provides an RIA.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by OMB.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document March 30, 2023.

List of Subjects 42 CFR 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

■ 1. The authority citation for part 412 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 2. Amend § 412.25 by revising paragraph (c)(1) to read as follows:

§ 412.25 Excluded hospital units: Common requirements.

* * * * *

(c) * * *

(1) The status of an IRF unit may be changed from not excluded to excluded or excluded to not excluded at any time during a cost reporting period, but only if the hospital notifies the Medicare Administrative Contractor and the CMS Regional Office in writing of the change at least 30 days before the date of the change, and maintains the information needed to accurately determine costs that are or are not attributable to the IRF unit. A change in the status of an IRF unit from not excluded to excluded or excluded to not excluded that is made during a cost reporting period must remain in effect for the rest of that cost reporting period.

* * * * *

Dated: March 30, 2023.

Xavier Becerra,
Secretary, Department of Health and Human Services.

[FR Doc. 2023–06968 Filed 4–3–23; 4:15 pm]

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Part III

Department of Homeland Security

Coast Guard

33 CFR Part 181

46 CFR Parts 25, 28, 108, Et al.

Lifejacket Approval Harmonization; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 181

46 CFR Parts 25, 28, 108, 117, 133, 141, 160, 169, 180 and 199

[Docket No. USCG–2022–0120]

RIN 1625–AC62

Lifejacket Approval Harmonization

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the approval requirements and follow-up program requirements for lifejackets by incorporating new standards to replace existing legacy standards. The Coast Guard further proposes to amend lifejacket and personal flotation device (PFD) carriage requirements to allow for the use of equipment approved to the new standards and remove obsolete equipment approval requirements. The proposed amendments would streamline the process for the approval of PFDs and allow manufacturers the opportunity to produce more innovative equipment that would meet approval requirements in both Canada and the United States while also reducing the burden of the approval process and the production inspections on manufacturing firms.

DATES: Comments and related material must be received by the Coast Guard on or before June 6, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0120 using the Federal Decision Making Portal at www.regulations.gov. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

Viewing material proposed for incorporation by reference. Make arrangements to view this material by calling the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document.

FOR FURTHER INFORMATION CONTACT: For further information about this document call or email Jacqueline Yurkovich, Coast Guard; telephone 202–372–1389, email Jacqueline.m.yurkovich@uscg.mil.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

The Coast Guard views public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment may help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at www.regulations.gov. To do so, go to www.regulations.gov, type USCG–2022–0120 in the search box, and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material using www.regulations.gov, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the www.regulations.gov Frequently Asked Questions web page. That web page also explains how to subscribe for email alerts that will notify you when comments are posted or if a final rule is published. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to www.regulations.gov will

include any personal information you have provided. For more about privacy and submissions in response to this document, see the Department of Homeland Security’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Public meeting. We do not plan to hold a public meeting but we will consider doing so if we determine from public comments that a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

II. Abbreviations

ANSI American National Standards Institute
 CFR Code of Federal Regulations
 DHS Department of Homeland Security
 FR Federal Register
 IBR Incorporation by reference
 IRFA Initial Regulatory Flexibility Analysis
 ISO International Organization for Standardization
 NAICS North American Industry Classification System
 NBSAC National Boating Safety Advisory Committee
 NPRM Notice of proposed rulemaking
 OMB Office of Management and Budget
 PFD Personal flotation device
 QMS Quality management system
 RA Regulatory analysis
 RFA Regulatory Flexibility Act
 § Section
 SBA Small Business Administration
 SOLAS International Convention for the Safety of Life at Sea
 U.S.C. United States Code

III. Background, Basis, and Purpose

The Coast Guard has statutory authority under Title 46, U.S. Code, Sections 3306(a) and (b), 4102(b), 4302(a) and (c), and 4502(a) and (c)(2)(B), to prescribe regulations for the design, construction, performance, testing, carriage, use, and inspection of lifesaving equipment on commercial and recreational vessels. Under Department of Homeland Security (DHS) Delegation 00170.1, Revision No. 01.2, paragraph (II)(92)(b), the Secretary delegated authority under these statutes to the Commandant of the Coast Guard.

With this rulemaking, we are proposing to incorporate the American National Standards Institute (ANSI) standards ANSI/CAN/UL 12402–5 for Level 50 and Level 70 personal flotation devices (PFDs), ANSI/CAN/UL 12402–4 for Level 100 PFDs, and ANSI/CAN/UL 9595 for quality assurance. In addition, we propose to incorporate the ANSI/UL 1123 and ANSI/UL 1175 standards for marine buoyant devices and inherently buoyant and inflatable throwable PFDs, respectively. The Coast Guard currently approves inherently buoyant and

inflatable throwable PFDs to these standards as a matter of policy, so incorporating them in the Code of Federal Regulations (CFR) would not result in any changes in practice but would improve transparency.

We are also proposing to remove portions of Title 46 in part 160 of the CFR, where the newly incorporated standards would supersede the previous standards or requirements. Additionally, we are proposing amendments to lifesaving equipment carriage requirements that would permit the use of Level 50, Level 70, and Level 100 PFDs approved to the new standards.

The Coast Guard actively participates in the development of ANSI-accredited industry consensus standards for lifesaving equipment. In that capacity, the Coast Guard has worked with Transport Canada and United States and Canadian stakeholders in the development of the suite of harmonized ANSI/CAN/UL standards to streamline the process for approval of PFDs. Additionally, the harmonization would allow manufacturers the opportunity to produce more innovative equipment that would still meet approval requirements in both Canada and the United States. PFD manufacturers largely drove the development of these standards; therefore, we expect PFD manufacturers to generally support this proposed rulemaking.

To further those efforts, on September 22, 2014, the Coast Guard published a final rule to remove references to type codes in its regulations on the carriage and labeling of Coast Guard approved PFDs to facilitate the future incorporation by reference (IBR) of new industry consensus standards (79 FR 56491, September 22, 2014). In April 2017, the Coast Guard and Transport Canada signed a Memorandum of Understanding outlining an intended cooperation for the approval of personal lifesaving appliances that comply with mutually acceptable standards, are tested by mutually accepted conformity assessment bodies or independent test laboratories, and are covered by a mutually acceptable follow-up program.

On August 17, 2018, the Coast Guard published a notice in the **Federal Register** (83 FR 41095) regarding a policy letter and deregulatory savings analysis on accepting the standard ANSI/CAN/UL 12402–5 for Level 70 PFDs, not including inflatable PFDs for use by persons less than 16 years old. On November 15, 2019, the Coast Guard published a notice (84 FR 62546) that finalized this policy.

The Coast Guard published a final rule (77 FR 19937, April 3, 2012)

incorporating by reference updated revisions of industry consensus standards for PFDs including UL 1180, “UL Standard for Safety for Fully Inflatable Recreational Personal Flotation Devices,” Second Edition (including revisions through December 3, 2010). The discussion and response to comments in that rulemaking included a discussion on inflatable PFDs for users less than 16 years of age. UL 1180 limits the approval of inflatable PFDs to persons of at least 16 years of age, and thus the final rule retained that age limit for approved users of inflatable PFDs. No age limit was included in the regulatory text to allow for a possible future rulemaking to incorporate by reference a standard that sufficiently addresses the needs of younger wearers.

IV. Discussion of Proposed Rule

The Coast Guard is proposing seven main amendments to our regulations:

(1) Adding new subpart 160.255 and incorporating by reference ANSI/CAN/UL 12402–4 for approval of Level 100 PFDs, and removing sections of subpart 160.055.

(2) Adding new subparts 160.264 and 160.276, which incorporate by reference ANSI/CAN/UL 12402–5 for approval of Level 50 and Level 70 PFDs without additional buoyancy or age restrictions; removing the sections of subparts 160.060, 160.064, and 160.076 pertaining to the approval of new wearable PFDs; relocating the sections pertaining to throwable PFDs from subpart 160.064 to new subpart 160.045 and incorporating by reference ANSI/UL 1123 and ANSI/UL 1175; and removing subpart 160.077 in its entirety.

(3) Incorporating by reference ANSI/CAN/UL 9595 for quality assurance requirements in subparts 160.045, 160.055, 160.060, 160.064, 160.076, 160.255, 160.264, and 160.276.

(4) Removing subparts 160.001, 160.002, 160.005, 160.047, 160.048, and 160.052, as these subparts are mostly or entirely obsolete, and moving the remaining relevant material from subpart 160.001 to subpart 160.055.

(5) Amending lifesaving equipment carriage requirements to include the new approval categories, where appropriate, and removing any remaining references to type codes.

(6) Amending the requirements for instruction pamphlets for PFDs to include the placard specified in subparts 160.055, 160.060, 160.255, 160.264, and 160.276.

(7) Amending the existing regulatory text to make editorial corrections and increase clarity.

We provide additional details and discussion on each of these seven main

categories of amendments below. If we finalize this proposed rule, then under 46 U.S.C. 4302(b) the effective date of provisions applying to recreational vessels would be at least 180 days after publication. For simplicity, we would likely delay the effective date of the entire rule until 180 days after publication. We invite public comments on that timing.

The National Boating Safety Advisory Committee (NBSAC) was consulted regarding the updated standards proposed in this rule, as shown by NBSAC Resolutions 2009–83–01 and 2011–87–01, and the revalidation of those resolutions found in Resolution 2022–03–01. We also welcome comments from NBSAC on this proposed rule.

1. Add New Subpart, 46 CFR 160.255, and Incorporate by Reference ANSI/CAN/UL 12402–4

We propose adding a new subpart, 160.255, to title 46 of the CFR. PFDs approved under this new subpart would meet the carriage requirements for wearable PFDs for inspected vessels that are neither on an international voyage nor subject to the International Convention for the Safety of Life at Sea (SOLAS), uninspected commercial vessels over 40 feet (12m) in length, and uninspected passenger vessels.

Newly proposed subpart 160.255 contains structural and performance requirements for approval of Level 100 PFDs, as well as requirements for production inspections and quality control, markings, information pamphlets, and associated manuals. ANSI/CAN/UL 12402–4 would be incorporated by reference. PFDs approved under this subpart could rely upon inherently buoyant material, inflation, or a combination of the two to achieve the minimum buoyancy.

A Level 100 PFD has the same basic requirements as a PFD meeting 46 CFR 160.055. The minimum amount of buoyancy, basic mechanical properties, and in-water performance requirements are the same. However, ANSI/CAN/UL 12402–4 is less prescriptive regarding the design requirements of a Level 100 PFD, so manufacturing firms would be able to develop more innovative designs. The marking requirements in ANSI/CAN/UL 12402–4 specify pictorial graphics to communicate the performance of the PFD and warnings for use. The Coast Guard conducted research and focus groups to identify issues with the Type code labels and to evaluate multiple new pictorial labeling options. Our research indicated that people consistently preferred pictorial

markings.¹ Therefore, we expect this marking format to be more easily understandable to both English-speaking and non-English-speaking populations.

ANSI/CAN/UL 12402–4 does not require fully or partially inflatable Level 100 PFDs to provide redundant back-up inflation chambers. Current regulations require inflatable lifejackets under approval series 160.176 to have at least two inflation chambers and to reach minimum in-water performance with any one chamber deflated. These inflatable lifejackets meet the International Maritime Organization Life-Saving Appliance code and are intended for use on vessels subject to SOLAS.

Back-up chambers were originally required for inflatable lifejackets intended for use on inspected vessels as an additional safety measure in case the primary inflation chamber failed to inflate (54 FR 50320). In that rulemaking, the Coast Guard noted that we would continue discussions with industry, standards organizations, and state boating law administrators regarding the reliability of inflatable PFDs. We also indicated that when new developments or innovations reduced the risk of inflation failure to an acceptable level, we could address this issue with a subsequent rulemaking. Since the publication of that rule in 1989, the Coast Guard has no evidence that a well-maintained PFD with a single inflation chamber is less reliable than an inherently buoyant PFD. Additionally, the Coast Guard has approved inflatable PFDs without back-up chambers under approval series 160.076. Such devices have been in use in the United States on uninspected commercial vessels less than 12 m in length and recreational vessels and in Canada on small vessels for over a decade. Therefore, the Coast Guard believes that the material testing of the PFD components coupled with the required annual servicing of inflatable Level 100 PFDs is sufficient, and that redundant back-up inflation chambers are not necessary to provide an equivalent level of safety to PFDs meeting 46 CFR 160.055.

Because newly proposed subpart 160.255 would supersede the requirements for life preservers in subpart 160.055, we propose to delete structural and performance requirements for approval of life preservers in subpart 160.055, but

maintain the requirements for production inspections, tests, and quality assurance. Manufacturers could continue to produce life preservers currently approved under subpart 160.055, while all new lifejackets would require Coast Guard approval under new subpart 160.255.

At the same time, we propose to restructure subpart 160.055 to include a statement of the subpart's scope and to mirror the structure of other PFD-related subparts. We would add the scope as § 160.055–1 and definitions in § 160.055–3, and the documents incorporated by reference would be moved from § 160.055–1 to § 160.055–5. Because no new approvals would be granted under § 160.055, we propose to remove existing requirements for materials and construction, marking, and procedure for approval, including current 46 CFR 160.055–3, 160.055–4, 160.055–5, 160.055–6, 160.055–8, and 160.055–9. We propose independent laboratory requirements for addition in § 160.055–11. We would move sampling, tests, and inspections from § 160.055–7 to newly created § 160.055–15 and pamphlet requirements would be included in new § 160.055–19. Procedures for the approval of design or material changes would be included in new § 160.055–23 and information on suspension or termination of approval would be included in new § 160.055–25.

2. Add New Subparts 46 CFR 160.045, 160.264, and 160.276, and Incorporate by Reference ANSI/CAN/UL 12402–5, ANSI/UL 1123, and ANSI/UL 1175

We propose three new subparts in Title 46 of the CFR: 160.045, 160.264, and 160.276. PFDs approved under these subparts would meet the carriage requirements for uninspected commercial vessels less than 40 feet (12m) in length and not carrying passengers for hire, and recreational boats, in accordance with 33 part CFR 175 and 46 CFR subpart 25.25.

Newly proposed 46 CFR 160.264 contains structural and performance requirements for approval of Level 50 and Level 70 inherently buoyant PFDs, as well as requirements for production inspections and quality control, markings, information pamphlets, and associated manuals. Newly proposed 46 CFR 160.276 contains structural and performance requirements for approval of Level 50 and Level 70 fully and partially inflatable recreational PFDs, as well as requirements for production inspections and quality control, associated manuals, information pamphlets, and markings. ANSI/CAN/UL 12402–5 would be incorporated by reference in both subparts.

ANSI/CAN/UL 12402–5 prescribes minimum performance requirements instead of prescribing design requirements. These performance-based standards allow manufacturing firms to design more innovative, comfortable, and stylish PFDs. New PFD designs could lead to more individuals choosing to wear their PFDs, resulting in fewer drownings.² Drowning is the leading cause of death in recreational boating accidents, accounting for 79 percent of all recreational boating casualties where the cause of death is known.³ Of those who drowned, 86 percent were not wearing a lifejacket. Wearing a lifejacket is one of the best means available of preventing accidental drowning in recreational boating. Unfortunately, recreational boaters only wear lifejackets about 24 percent of the time.⁴

Discomfort, whether real or perceived, is negatively associated with PFD wear.⁵ ANSI/CAN/UL 12402–5 allows manufacturers more flexibility when selecting materials, design, and construction of new PFDs. Because manufacturers would be less limited in the materials, design, and construction, we expect new PFDs might be slimmer, lighter in weight, or more comfortable to wear than PFDs approved under the current requirements.

In our 2018 policy letter, the Coast Guard determined that Level 70 inherently buoyant devices, Level 70 inflatable devices, and Level 70 multi-chamber devices that meet the requirements of ANSI/CAN/UL 12402–5 provide equivalent performance to wearable PFDs meeting 46 CFR 160.064 or 160.076.

Now, the Coast Guard is proposing this rule based on our assessment that

² Readers should reference the National Center for Biotechnology Information (NCBI), which is part of the National Library of Medicine (NLM) at the National Institutes of Health (NIH), and perform a literature search for articles on the topic of PFDs and their usage. Readers can access this website at <https://pubmed.ncbi.nlm.nih.gov>. More specifically, readers should reference the following articles for further information: “Personal, social, and environmental factors associated with lifejacket wear in adults and children: A systematic literature review” (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5931488>) and “Barriers to life jacket use among adult recreational boaters” (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4310692>).

³ United States Coast Guard, “2019 Recreational Boating Statistics.” <https://uscgboating.org/library/accident-statistics/Recreational-Boating-Statistics-2019.pdf>.

⁴ United States Coast Guard, “2019 Life Jacket Wear Rate Observation Study.” <https://uscgboating.org/library/national-live-jacket-wear-study/2019-Life-Jacket-Wear-Rate-Report.pdf>.

⁵ Amy Peden, Daniel Demant, Martin Hagger, and Kyra Hamilton, “Personal, social, and environmental factors associated with lifejacket wear in adults and children: A systematic literature review.” <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5931488/>.

¹ “Revision of Labeling and Classification for Personal Flotation Devices (PFDs),” *Applied Safety & Ergonomics, Inc.*, December 28, 2004, Young et al.

a Level 50 PFD, when worn and used in accordance with the label, provides an equivalent level of safety as a wearable PFD meeting subpart 160.064 or 160.076. A Level 50 PFD has a lower minimum amount of buoyancy than the current minimum requirement for Coast Guard approved PFDs. However, ANSI/CAN/UL 12402–5 requires that a Level 50 PFD keep the user's airway above the water, as demonstrated by in-water performance testing. A Level 50 PFD is intended for use by those who can swim and who have help or rescue nearby. As required in ANSI/CAN/UL 12402–5, Level 50 PFDs must be marked: "Not recommended for weak or non-swimmers." Every PFD offered for sale must have a placard providing users with information on how to select the appropriate PFD, and reminding users to try the PFD on in the water to ensure proper fit and performance. To satisfy requirements of ANSI/CAN/UL 12402–5, Level 50 PFDs must be worn and must be marked: "Approval conditions state that this device must be worn to be counted as equipment required by vessels meeting Transport Canada or USCG regulations." A Level 50 PFD, when worn by a person who can swim and used in accordance with ANSI/CAN/UL 12402–5, provides an equivalent level of safety as a PFD meeting 46 CFR 160.064 or 160.076. By approving Level 50 PFDs, the Coast Guard would provide a critical level of oversight to the currently unregulated Level 50 competition watersports PFDs, resulting in safer products for the public.

In this proposed rule, we are not proposing additional requirements that would limit users of inflatable PFDs based on age. There are already requirements in ANSI/CAN/UL 12402–5 addressing inflatable PFDs for users less than 16 years of age. To be certified as meeting ANSI/CAN/UL 12402–5, an inflatable PFD intended for wearers less than 16 years of age must automatically inflate, must not require secondary donning, must be worn, and must include a warning statement about adult supervision. The Coast Guard believes these requirements are adequate to ensure safety for wearers less than 16 years of age, so we are proposing to fully incorporate ANSI/CAN/UL 12402–5 without any additional age restrictions beyond those included in the standard.

New proposed subparts 160.264 and 160.276 would supersede the requirements for foam buoyant vests in subpart 160.060, marine buoyancy devices in subpart 160.064, inflatable recreational personal flotation devices in subpart 160.076, and hybrid

inflatable personal flotation devices in subpart 160.077.

We propose removing the structural and performance requirements for the approval of foam buoyant vests, marine buoyant devices, and inflatable recreational flotation devices in subparts 160.060, 160.064, and 160.076, respectively, but retaining the requirements for production inspections, tests, and quality control of wearable PFDs. We are proposing to delete subpart 160.077 entirely and modify the scope of subpart 160.076 to include PFDs previously approved under subpart 160.077. By retaining the requirements for production inspections, tests, and quality control, the Coast Guard would ensure that manufacturing firms producing PFDs currently approved under approval series 160.060, 160.064, 160.076, or 160.077 could continue to manufacture and sell these PFDs, but would not approve new products under these approval series. At the same time, we are proposing to reformat the remaining text of subparts 160.060, 160.064, and 160.076, without amending the language, to align with the other subparts related to PFDs and increase the ease of understanding for the reader.

To eliminate confusion over approval categories, we are proposing to relocate the requirements for throwable PFDs from subpart 160.064 to newly proposed subpart 160.045. Newly proposed subpart 160.045 would be dedicated to throwable PFDs intended for carriage on recreational boats. We propose to permit the use of inflatable compartments to meet the minimum required buoyancy in § 160.045–7. This proposed new subpart would incorporate by reference the ANSI/UL 1175 standard for inherently buoyant and inflatable throwable PFDs and the ANSI/UL 1123 standard for marine buoyant devices. The Coast Guard already approves throwable PFDs to these standards; we are formally incorporating them by reference in this rulemaking to increase clarity and transparency of the approval requirements.

3. Incorporate by Reference ANSI/CAN/UL 9595

We propose to incorporate by reference new industry consensus standard ANSI/CAN/UL 9595, "Standard for factory follow-up of Personal Flotation Devices (PFDs)" (First Edition, June 4, 2020), into subparts 160.055, 160.060, 160.064, 160.076, 160.255, 160.264, and 160.276. This standard covers the basic elements of a production inspection program for various types of PFDs.

The Coast Guard currently requires a satisfactory follow-up (production testing and inspection) program administered by an independent laboratory recognized by the Coast Guard for each approved PFD. A task group of experts and stakeholders convened over the past decade to develop ANSI/CAN/UL 9595 to improve the consistency of follow-up programs among different recognized independent laboratories and to provide a binational harmonized standard for production testing acceptable to the Coast Guard and Transport Canada. ANSI/CAN/UL 9595 establishes a set of Process Ratings (A, B, and C) based on the quality management system (QMS) at each facility. Process Rating C is equivalent to current industry practice for follow-up programs and meets the current minimum requirements. Process Rating B is assigned to facilities with a good QMS including a Quality Manual that incorporates the requirements in ANSI/CAN/UL 9595 but is not approved by a third party. Process Rating A is reserved for facilities that have demonstrated a superior QMS that meets International Organization for Standardization (ISO) standard ISO 9001 or a comparable quality standard, either by audits or acceptance of a third-party registration.⁶

For Process Rating C, ANSI/CAN/UL 9595 provides a minimum requirement for production inspections that is equivalent to the production inspection programs currently accepted by the Commandant. For Process Ratings A and B, this standard provides the option for the manufacturer to implement a QMS to reduce the number of inspections required. ANSI/CAN/UL 9595 sets forth roles and responsibilities; required tests, sample sizes, and acceptability criteria; and specific requirements for inspection frequency, traceability of components, critical dimensions verification, visual inspection of completed PFDs, and review of records. Annex A provides test methods and Annex B provides information on the elements of a QMS.

We propose to include ANSI/CAN/UL 9595 in the newly proposed subparts and in existing subparts 160.055, 160.060, 160.064, and 160.076, to allow manufacturers that implement a QMS to be evaluated as Process Rating A or B, resulting in fewer required inspections. A QMS can result in greater production consistency, a reduction in defects and errors, increased efficiency, and continuous improvement.

⁶For more information on process ratings, see the preliminary regulatory analysis in the docket.

4. Remove Obsolete Material and Relocate Pertinent Material

We propose to remove subparts 160.002, 160.005, 160.047, 160.048, and 160.052, while also removing or relocating the entirety of subpart 160.001.

Subpart 160.001 provides general requirements for all life preservers. Most of this information is either obsolete or found elsewhere in the CFR. We propose to delete subpart 160.001, preserving the still-pertinent information on production oversight by relocating it to § 160.055–15.

Subpart 160.006 provides two paragraphs related to the repairing of life preservers. Subpart 160.006 is no longer relevant and is not referenced in any approval or carriage requirement; therefore, we propose to remove it.

Subparts 160.002, 160.005, 160.047, and 160.048 provide specifications and requirements for kapok and fibrous glass life preservers. Subpart 160.052 provides specifications and requirements for a unicellular plastic foam buoyant vest. Manufacturers no longer produce any of these types of life preservers due to the unavailability of material, the advancement of foam technology, and improvements to the fit and function of PFDs industry-wide. With no current approvals for equipment under any of these subparts, these approval categories have become obsolete. Therefore, we propose to delete subparts 160.002, 160.005, 160.047, 160.048, and 160.052. All new PFD approvals would have to meet the requirements in proposed subparts 160.255, 160.264, and 160.276, which incorporate current industry standards.

5. Amend Lifesaving Equipment Carriage Requirements

Where current carriage requirements specify approval series for PFDs, we propose to add the new proposed approval series, as applicable. The affected Subchapters are Subchapter C (uninspected commercial vessels), Subchapters K and T (small passenger vessels), Subchapter L (offshore supply vessels), Subchapter M (towing vessels), and Subchapter W (lifesaving appliances for certain inspected vessels).

For example, according to the current requirements, an uninspected vessel carrying passengers for hire must have at least one PFD approved under approval series 160.055, 160.155, or 160.176 for each person on board. We propose to add approval series 160.255 to the list of approval series, to permit the use of PFDs approved under this new approval series. We are not

proposing to remove any of the currently accepted approval series from the carriage requirements. Therefore, it would not be necessary for owners and operators to purchase new equipment if their current equipment is in good and serviceable condition.

We also propose to remove references to PFDs approved under approval series 160.177 because there have never been any approvals granted under that series. All new commercial PFDs, including commercial hybrid PFDs, would be approved under approval series 160.255.

6. Amend the Requirements for Instruction Pamphlets for PFDs

We propose to amend the requirements for instruction pamphlets for PFDs in 33 CFR 181 to allow both pamphlets and placards to meet the requirements for information furnished with each PFD sold or offered for sale for use on recreational boats. As previously described, we propose to incorporate both ANSI/CAN/UL 12402–4 and ANSI/CAN/UL 12402–5 with respect to the approval of PFDs. Both these standards require that a PFD include an informational placard in a pictographic format containing specific information on PFD performance, selection, approval, and maintenance, as well as general water safety information. To permit the placard to be used in place of the currently required pamphlet, the Coast Guard is proposing to add the term “placard” to 33 CFR 181.701–702. We also propose to remove 33 CFR 181.703, which requires that placards conform with UL 1123, and would add text to 33 CFR 181.702 specifying that a pamphlet or placard must meet the requirements in the applicable subpart of 46 CFR part 160 or be accepted by the Commandant. All currently approved PFDs have pamphlets or placards that have been accepted by the Commandant. Removing 33 CFR 181.703 would eliminate all references to UL 1123 in this subpart, so we would remove 33 CFR 181.4, which incorporates that standard, as well. Finally, we propose to remove the separate requirements for hybrid and inflatable PFDs in 33 CFR 181.704 and 181.705, respectively, and include requirements for all PFDs in 33 CFR 181.702.

7. Amend the Existing Regulatory Text To Make Editorial Corrections and Increase Clarity

We propose to update the introductory IBR text, in accordance with current practice, in 46 CFR 160.055, 160.060, 160.064, and 160.076. We propose to amend table 28.110 to

replace “Do” (meaning “ditto”) with the actual text to clarify the requirements in plain language, and to remove references to type codes from the table without modifying the intent or application of the requirements. We further propose to remove reference to approval series 160.177 in 46 CFR 108, 133 and 199, because this unused approval series does not exist, and to remove outdated provisions allowing cork and balsa wood lifejackets until March 11, 1999, from 46 CFR 117 and 180. Finally, we are proposing to consistently use the term “lifejacket” by amending instances of “life jacket” from two words to one.

V. Incorporation by Reference

Material proposed for IBR appears in 46 CFR 160.045, 160.055, 160.060, 160.064, 160.076, 160.255, 160.264, and 160.276. The standards proposed for IBR are summarized in section IV, paragraphs (1) through (3), of this preamble. They are:

- (1) ANSI/CAN/UL 9595:2021, Standard for Factory Follow-Up on Personal Flotation Devices (PFDs), First Edition, June 4, 2020 (including revisions through September 9, 2021) (“ANSI/CAN/UL 9595”). This standard specifies the basic elements of a production inspection program for various types of PFDs.
- (2) ANSI/CAN/UL 12402–4:2020, Standard for Personal Flotation Devices—Part 4: Lifejackets, Performance Level 100—Safety Requirements, First Edition, July 9, 2020 (“ANSI/CAN/UL 12402–4”). This standard specifies safety requirements for Level 100 lifejackets for use by adults, children, and infants.
- (3) ANSI/CAN/UL 12402–5:2022, Standard for Personal Flotation Devices—Part 5: Buoyancy Aids (Level 50)—Safety Requirements, First Edition, December 31, 2015 (including revisions through January 27, 2022) (“ANSI/CAN/UL 12402–5”). This standard specifies safety requirements for Level 50 and Level 70 buoyancy aids for use by children and adults.
- (4) ANSI/UL 1123, Standard for Marine Buoyant Devices, Seventh Edition, October 1, 2008 (including revisions through November 23, 2020) (“ANSI/UL 1123”). This standard specifies requirements for marine buoyant devices intended for recreational use.
- (5) ANSI/UL 1175, Standard for Buoyant Cushions, Fourth Edition, April 20, 2007 (including revisions through January 10, 2020) (“ANSI/UL 1175”). This standard specifies construction, performance, and markings requirements for inherently buoyant and inflatable throwable PFDs.

These standards are reasonably available to, and usable by, the class of persons affected by this proposed rule. PFD manufacturing firms have access to these standards in their normal course of business. These standards are

available for free digital viewing with the creation of a free account at <https://shopulstandards.com>. Copies of the material are also available for purchase from the publishers listed in 46 CFR 160.045, 160.055, 160.060, 160.064, 160.076, 160.255, 160.264, and 160.276. In addition, any person may view the standards at a Coast Guard facility, by making arrangements with the person in the **FOR FURTHER INFORMATION CONTACT** section of this preamble. Before publishing a final rule, we will submit this material to the Director of the Federal Register for approval of the IBR. We are also accepting comments on whether you use the substance of these standards, or if certain standards can be simply referenced where we no longer

need to incorporate the full text of the reference.

VI. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. We have prepared a full regulatory analysis (RA) based on these statutes and Executive orders and have placed it in the docket; a summary of our analysis follows.

A. Regulatory Planning and Review

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) has not designated this proposed rule a significant regulatory action under section 3(f) of Executive Order 12866. OMB has not reviewed this proposed rule. A regulatory analysis (RA) is available in the docket and a summary follows. Table 1 summarizes the impacts of this rulemaking.

TABLE 1—SUMMARY OF IMPACTS OF THE PROPOSED RULE

Category	Summary
Applicability	IBR of ANSI/CAN/UL 9595, ANSI/CAN/UL 12402–5, and ANSI/CAN/UL 12402–4.
Affected Population	2 recognized independent laboratories (1 U.S. and 1 foreign), 57 PFD manufacturing firms (37 U.S. and 20 foreign), the Coast Guard, recreational vessel operators, and commercial vessel operators.
Costs to U.S. Firms (\$2019, 7% discount rate)	10-year total: \$1,401,108. Annualized: \$199,486.
Costs to Foreign Firms (\$2019, 7% discount rate)	10-year total: \$340,229. Annualized: \$48,441.
Total Costs (\$2019, 7% discount rate)	10-year total: \$1,741,338. Annualized: \$247,927.
Cost Savings to U.S. Firms (\$2019, 7% discount rate)	10-year total: \$5,841,460. Annualized: \$831,693.
Cost Savings to Foreign Firms (\$2019, 7% discount rate)	10-year total: \$1,453,901. Annualized: \$207,003.
Cost Savings to the U.S. Government (\$2019, 7% discount rate)	10-year total: \$27,414. Annualized: \$3,903.
Total Cost Savings to All Entities (\$2019, 7% discount rate)	10-year total: \$7,322,776. Annualized: \$1,042,599.
Net Cost Savings to U.S. Firms (\$2019, 7% discount rate)	10-year total: \$18,405,217. Annualized: \$2,620,489.
Net Cost Savings to Foreign Firms (\$2019, 7% discount rate)	10-year total: \$4,401,743. Annualized: \$626,709.
Net Cost Savings to the U.S. Government (\$2019, 7% discount rate) ...	10-year total: \$22,806,961. Annualized: \$3,247,198.
Net Cost Savings to All Entities (\$2019, 7% discount rate)	10-year total: \$4,440,352. Annualized: \$632,206.
Unquantified Benefits	The newer performance-based standards would allow for the development of more innovative PFD designs that might better meet boaters’ needs. New PFD designs that may be more form fitting, in addition to the requirement that Level 50 devices be worn to count for carriage, could lead to higher PFD wear rates and additional lives saved from drowning. Placards are cheaper to produce than pamphlets and provide pictorial instructions, understandable by non-English reading populations.

The Coast Guard proposes to harmonize its approval process for PFDs with that of Canada, resulting in cost savings from eliminating duplicative requirements. The proposed rule would introduce harmonized performance standards instead of design standards for PFDs, allowing manufacturers the opportunity to produce more innovative equipment that meets the approval requirements of both Canada and the United States. The proposed rule would amend PFD approval and follow-up program requirements by incorporating three new binational standards into regulations, amend PFD carriage requirements to allow for the use of equipment approved to the new standards, and remove obsolete equipment approval requirements. The proposed performance-based standards are more current and intended to replace the legacy design standards. The proposed amendments would streamline the process for approval of PFDs and allow manufacturers the opportunity to produce more innovative equipment that meets the approval requirements of Canada and the United States, while reducing the burden for manufacturers in the approval process and follow-up program.

Specifically, the Coast Guard proposes to incorporate by reference the following binational industry consensus standards:

1. ANSI/CAN/UL 12402–4. This binational standard specifies the safety requirements for lifejackets that provide face-up flotation for use in sheltered or calm water, where users may have to wait for rescue. A lifejacket meeting the requirements of ANSI/CAN/UL 12402–4 provides an equivalent level of safety to

a lifejacket currently approved under 46 CFR subpart 160.055.

2. ANSI/CAN/UL 12402–5. This binational standard specifies the safety requirements for buoyancy aids used in sheltered waters with help and rescue nearby. A PFD meeting the requirements of ANSI/CAN/UL 12402–5 provides an equivalent level of safety as a PFD currently approved under 46 CFR 160.064 or 160.076.

3. ANSI/CAN/UL 9595. This binational standard covers the basic elements of a production inspection program for various types of PFDs, and formalizes and modifies current industry standards.

Additionally, the Coast Guard proposes to incorporate two national standards (ANSI/UL/1123 and ANSI/UL/1175) and to amend numerous CFR parts to remove obsolete PFD design standards and update carriage requirements to include PFDs approved to the new proposed subparts. As mentioned earlier, ANSI/UL/1123 and ANSI/UL/1175 are both currently in use as a matter of policy and are being incorporated by reference for the sake of clarity, so we do not estimate any costs or benefits from their incorporation by reference into the CFR. Similarly, we do not anticipate any quantifiable costs or benefits from the removal of obsolete design standards, as these design standards are not currently in use.

Affected Population

To determine the affected population of the rule, it is first necessary to describe the economic impacts from this proposed rule. The economic impacts would stem from the following proposed provisions:

(1) The IBR of ANSI/CAN/UL 12402–4 in 46 CFR 160.255 to replace the design requirements in 46 CFR 160.055.

(2) The IBR of ANSI/CAN/UL 12402–5 in 46 CFR 160.264 and 160.276 to replace the design standards in 46 CFR 160.064, 160.076, and 160.077.

(3) The IBR of ANSI/CAN/UL 9595 for follow-up service into the PFD approval requirements of existing subparts 46 CFR 160.055, 160.060, 160.064, 160.076 and new proposed subparts of 46 CFR 160.045, 160.255, 160.264, and 160.276.

(4) The proposed edits to 33 CFR 181 subpart G, which would permit manufacturers of all PFDs to provide placards instead of information pamphlets.

These four provisions would affect PFD manufacturers, the two recognized independent laboratories, and the Coast Guard. Before we present the affected population for each of these provisions, we present the overall PFD manufacturing firm population.

As of 2021, there are over 800 models of PFDs approved by the Coast Guard, manufactured by 57 separate manufacturing firms worldwide.⁷ Based on a review of publicly available information across the 57 manufacturing firms, the Coast Guard estimates that 37 are U.S. firms and 20 are foreign firms. Market share and production volumes are not equal across the firms.⁸

⁷ The Coast Guard lists all approved products on the Coast Guard Maritime Information Exchange website, <https://cgmix.uscg.mil/>.

⁸ We used the headquarters location of a firm's parent company, as indicated on the company website, to determine whether a firm was U.S. or foreign.

TABLE 2—DISTRIBUTION OF MARKET SHARE OF PFD MANUFACTURERS

Manufacturing firms	Total market share (%)	U.S. firm market share (%)	Foreign firm market share (%)
Top 5 Manufacturing Firms	75	65.00	10.00
Manufacturing Firms 6–13	20	12.50	7.50
All Other Manufacturing Firms	5	3.20	1.80
Total	100	80.70	19.30

The first provision, the IBR of ANSI/CAN/UL 12402–4, would affect three populations:

(1) PFD manufacturers that would seek approval to manufacture devices meeting the requirements of ANSI/CAN/UL 12402–4;

(2) The two recognized independent laboratories that would review and certify these devices; and

(3) The Coast Guard, which would correspond with the recognized independent laboratories and manufacturers on device approval.

In table 3, we list the number of PFD manufacturing firms that would be

affected by ANSI/CAN/UL 12402–4. We estimate that each of the top 13 firms would produce ANSI/CAN/UL 12402–4 devices or components of those devices at 2 facilities each and firms outside of the top 13 firms would produce ANSI/CAN/UL 12402–4 devices at 1 facility each.⁹

TABLE 3—MANUFACTURING FIRMS AND FACILITIES IMPACTED BY ANSI/CAN/UL 12402–4

Firm ownership	U.S. firms	Foreign firms	U.S. associated facilities	Foreign facilities	Total facilities
Firms in top 13	5	3	10	6	16
All other firms	4	2	4	2	6
Total facilities	9	5	14	8	22

In the second provision, by incorporating by reference ANSI/CAN/UL 12402–5, the Coast Guard would introduce new categories for youth inflatables and Level 50 PFDs for approval. Permitting youth inflatables and Level 50 devices would affect three populations:

(1) PFD manufacturers that would seek Coast Guard approval to produce youth inflatables or Level 50 devices;

(2) The two recognized independent laboratories that would review and certify youth inflatables and Level 50 devices; and

(3) The boating public that would purchase youth inflatables or Level 50 devices instead of Level 70 or Type III devices, because youth inflatables and Level 50 devices are likely to be more form-fitting than Level 70 or Type III devices.

In the third provision, the Coast Guard intends to incorporate by reference ANSI/CAN/UL 9595 covering production inspections and inspection frequency into multiple newly proposed and existing subparts in Title 46, as listed in table 4.

TABLE 4—PFDs IMPACTED BY ANSI/CAN/UL 9595

Subpart	PFD type	Proposed or existing subpart
160.045	Throwable PFDs	Proposed.
160.255	Level 100 PFDs	Proposed.
160.264	Inherently Buoyant Level 50 and Level 70 PFDs	Proposed.
160.276	Inflatable Level 50 and Level 70 PFDs	Proposed.
160.055	Life Preservers	Existing.
160.060	Buoyant Vests	Existing.
160.064	Marine Buoyant Devices	Existing.
160.076	Inflatable PFDs	Existing.

ANSI/CAN/UL 9595 establishes a set of Process Ratings (A, B, and C) based on the QMS at each facility. Process Rating C is assigned to facilities with a minimally compliant QMS. The

requirements for Process Rating C are equivalent to the current minimum requirements. Process Rating B is assigned to facilities with a good QMS, and Process Rating A is reserved for

facilities that have demonstrated a superior QMS. Because Process Rating C is equivalent to current industry practice, the affected population for the IBR of ANSI/CAN/UL 9595 would be

⁹ The PFD manufacturing firm does not necessarily own the facilities where its products are produced. Instead, the facility may be producing PFDs on contract for the PFD manufacturing firm.

Additionally, much production for U.S. firms occurs at overseas facilities. We call these “U.S. Associated Facilities” not because they are in the United States but because they have a longstanding

relationship with U.S. firms, while “Foreign Facilities” have longstanding relationships with foreign firms.

any PFD manufacturer producing a device approved under one of the subparts listed in table 4 and eligible to gain a Process Rating of A or B.

In table 5, we estimate the market share likely to be at Process Rating A, B, or C and whether they are foreign or domestic firms.¹⁰ Because a QMS

system is expensive to set up, industry stakeholders informed the Coast Guard that firms are not expected to develop a QMS solely to secure the cost savings of ANSI/CAN/UL 9595. However, a number of firms have already established QMS systems at their facilities because of other benefits, such

as production consistency and quality control. The firms that have already established a QMS system would experience net cost savings from the proposed IBR of ANSI/CAN/UL 9595. As a result, we estimate the process rating distribution recorded in table 5.

TABLE 5—MARKET SHARE OF PRODUCTION LIKELY TO BE AT EACH PROCESS RATING

Firm category	Process rating	Market share (%)
U.S. Firms	A	26.5
Foreign Firms	A	15.0
U.S. Firms	B	51.0
Foreign Firms	B	2.5
U.S. and Foreign Firms	C	5.0
Total		100.0

The fourth provision, permitting the option for placards to replace instruction pamphlets, would affect all

firms manufacturing PFDs approved to any of the categories in table 6 that list

placards as permitted under the proposed rule.

TABLE 6—DEVICE CATEGORY AND PERMITTED INSTRUCTION TYPES

Device category	Types of instructions allowed by the proposed rule	Types of instructions currently in use
New Level 50 Devices (ANSI/CAN/UL 12402–5)	Placard	N/A because these devices are not yet produced.
New Level 70 Devices (ANSI/CAN/UL 12402–5)	Placard	Placard.
New Level 100 Devices (ANSI/CAN/UL 12402–4)	Placard	N/A because these devices are not yet produced.
Existing Type I Commercial Devices	Placard or Information Pamphlet ...	Information Pamphlet.
Existing Type II Recreational Devices	Placard or Information Pamphlet ...	Information Pamphlet.
Existing Type III Recreational Devices	Placard or Information Pamphlet ...	Information Pamphlet.
Existing Type IV Throwable Devices	Information Pamphlet	Information Pamphlet.

ANSI/CAN/UL 12402–4

Costs

There are two sources of costs from this provision: (1) independent laboratories would need to train their staff to these new standards and (2) manufacturing firms that intend to sell in only one market (the United States or

Canada) would experience additional costs due to an increase in the cost of testing according to ANSI/CAN/UL 12402–4 when compared to the cost of testing to the legacy standards.¹¹

We provide our estimate for the total costs of the proposed IBR of ANSI/CAN/UL 12402–4 to U.S. firms in table 7.

These costs would include \$25,000 paid

by independent laboratories in the first year to develop the instructions and manuals on how to conduct the new ANSI/CAN/UL 12402–4 testing and the estimated \$1,406 per year manufacturers would spend on the more expensive ANSI/CAN/UL 12402–4 certification as opposed to the legacy certification.¹²

¹⁰ The process rating applies to a facility owned by a PFD manufacturing firm. The lowest process rating is C; if manufacturers seek a higher process rating of A or B, then an independent laboratory must certify that each facility owned by a manufacturing firm meets the standard of the higher rating, which is determined through an audit of a facility. A PFD manufacturing firm incurs the cost of a higher process rating at each facility. A PFD manufacturing firm who currently has a QMS (at least partially in place) would be able to seek a higher process rating, A or B, for each facility it owns (process rating C is the current baseline or

default rating and represents the current inspection volume at facilities). A separate QMS inspection or audit is necessary for this to occur. A higher process rating would result in a reduction in the inspection volume at facilities, which would save PFD manufacturing firms money.

¹¹ We estimate the increase in the cost of testing based upon data provided by representatives of independent laboratories.

¹² We estimate the cost of Level 100 testing and approval to be about \$44,280 and we estimate the cost for the new Type I approval to be about \$40,000. The Coast Guard estimates 0.45 new

approvals annually for products intended for sale exclusively in the United States. Therefore, the total additional cost to manufacturers for the more expensive Level 100 certification would be about \$1,926 (\$4,280 × 0.45). There are currently 51 products approved as Type I devices under 46 CFR part 160.055, of which 37 (73 percent) are produced by U.S. PFD firms and 14 (27 percent) are produced by foreign PFD firms. Therefore, we estimate the cost to U.S. PFD firms for the new UL 12402–4 approval would be about \$1,406 annually (\$1,926 × 0.73). We estimate the cost to foreign PFD firms would be about \$520 (\$1,926 × 0.27) annually.

TABLE 7—ESTIMATED COSTS TO U.S. FIRMS FOR LEVEL 100 DEVICES UNDER STANDARD ANSI/CAN/UL 12402–4
[2019 dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs	
		7%	3%
1	\$26,406	\$24,678	\$25,637
2	1,406	1,228	1,325
3	1,406	1,148	1,287
4	1,406	1,073	1,249
5	1,406	1,002	1,213
6	1,406	937	1,177
7	1,406	876	1,143
8	1,406	818	1,110
9	1,406	765	1,078
10	1,406	715	1,046
Total	39,060	33,240	36,265
Annualized .....	.....	\$4,733	\$4,251

We present the 10-year total costs to foreign firms from the proposed IBR of ANSI/CAN/UL 12402–4 in table 8. Foreign firms would only experience the additional approval costs of \$520 per year.

TABLE 8—ESTIMATED COSTS TO FOREIGN FIRMS FOR LEVEL 100 DEVICES UNDER STANDARD ANSI/CAN/UL 12402–4
[2019 dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs	
		7%	3%
1	\$520	\$486	\$505
2	520	454	490
3	520	424	476
4	520	397	462
5	520	371	449
6	520	347	436
7	520	324	423
8	520	303	411
9	520	283	399
10	520	264	387
Total	5,200	3,652	4,436
Annualized .....	.....	520	520

We present the 10-year total costs to U.S. and foreign firms from the proposed IBR of ANSI/CAN/UL 12402–4 in table 9.

TABLE 9—ESTIMATED TOTAL COST TO ALL FIRMS FOR LEVEL 100 DEVICES UNDER STANDARD ANSI/CAN/UL 12402–4
[2019 dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs	
		7%	3%
1	\$26,926	\$25,164	\$26,142
2	1,926	1,682	1,815
3	1,926	1,572	1,763
4	1,926	1,469	1,711
5	1,926	1,373	1,661
6	1,926	1,283	1,613
7	1,926	1,199	1,566
8	1,926	1,121	1,520
9	1,926	1,048	1,476
10	1,926	979	1,433
Total	44,260	36,892	40,701
Annualized .....	.....	5,253	4,771

Cost Savings

By adopting ANSI/CAN/UL 12402–4, the Coast Guard would be able to harmonize commercial PFD requirements of the United States with those of Transport Canada. Harmonization of commercial PFD standards would lead to cost savings for PFD manufacturing firms through less expensive approval requirements and less frequent ongoing facility inspections.

Additionally, as a performance-based standard ANSI/CAN/UL 12402–4 would allow for more innovative designs than the current standards and regulations. The newer performance-based standards would allow for the development of more innovative PFD designs that might better meet boaters' needs. The adoption of a performance-based standard would

spare the Coast Guard from making the equivalency determinations frequently necessary when using the current prescriptive requirements. Consequently, the Coast Guard would experience time savings from reducing the review time of new device applications during the approval process.

In total, we estimate three sources of quantifiable benefits in the form of cost savings associated with the proposed IBR of ANSI/CAN/UL 12402–4:

(1) The Coast Guard would spend less time reviewing approval applications and making equivalency determinations for the approval of innovative PFDs because ANSI/CAN/UL 12402–4 is a performance-based rather than prescriptive standard and would allow more innovative designs to meet the standard;

(2) All firms that would apply for approval in both Canadian and United States markets would save the difference between one certification to ANSI/CAN/UL 12402–4 and separate United States and Canadian certifications to legacy standards; and

(3) Manufacturing facilities producing devices meeting the requirements of ANSI/CAN/UL 12402–4 for the United States and Canadian markets could be inspected just once for both United States and Canadian approval instead of the current requirement to be inspected twice, once for United States approval and once for Canadian approval.

We summarize the total quantified benefits for the cost savings of the proposed IBR of ANSI/CAN/UL 12402–4 by reporting the annual undiscounted cost savings in table 10.

TABLE 10—ESTIMATED ANNUAL COST SAVINGS OF ANSI/CAN/UL 12402–4 TO THE INDUSTRY AND THE U.S. GOVERNMENT
[2019 Dollars]

Annual cost savings item	Cost savings to U.S. entities	Cost savings to foreign entities
Value of Coast Guard time saved	\$3,903	\$0
Canadian and United States approval savings	23,551	8,711
Billed facility inspection savings	13,129	7,502
Quality manager's time saved	3,054	1,182
Total	43,637	17,395

In table 11 and table 12, we record the 10-year cost savings from the proposed adoption of ANSI/CAN/UL 12402–4 to

U.S. and foreign firms, separately. In table 13, we record the total 10-year cost

savings from this proposed provision to the U.S. government.

TABLE 11—ESTIMATED COST SAVINGS TO U.S. FIRMS FROM ANSI/CAN/UL 12402–4
[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted cost savings	
		7%	3%
1	\$39,734	\$37,135	\$38,577
2	39,734	34,705	37,453
3	39,734	32,435	36,362
4	39,734	30,313	35,303
5	39,734	28,330	34,275
6	39,734	26,476	33,277
7	39,734	24,744	32,307
8	39,734	23,126	31,366
9	39,734	21,613	30,453
10	39,734	20,199	29,566
Total	397,340	279,075	338,939
Annualized .....	.....	39,734	39,734

TABLE 12—ESTIMATED COST SAVINGS TO FOREIGN FIRMS FROM ADOPTING ANSI/CAN/UL 12402–4
[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted cost savings	
		7%	3%
1	\$17,395	\$16,257	\$16,888
2	17,395	15,193	16,396
3	17,395	14,200	15,919
4	17,395	13,271	15,455
5	17,395	12,402	15,005
6	17,395	11,591	14,568
7	17,395	10,833	14,144
8	17,395	10,124	13,732
9	17,395	9,462	13,332
10	17,395	8,843	12,944
Total	173,950	122,175	148,383
Annualized .....	.....	17,395	17,395

TABLE 13—ESTIMATED COST SAVINGS TO THE UNITED STATES GOVERNMENT OF ANSI/CAN/UL 12402–4
[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted cost savings	
		7%	3%
1	\$3,903	\$3,648	\$3,789
2	3,903	3,409	3,679
3	3,903	3,186	3,572
4	3,903	2,978	3,468
5	3,903	2,783	3,367
6	3,903	2,601	3,269
7	3,903	2,431	3,174
8	3,903	2,272	3,081
9	3,903	2,123	2,991
10	3,903	1,984	2,904
Total	39,032	27,414	33,295
Annualized .....	.....	3,903	3,903

In table 14, we record the total discounted, 10-year cost savings to the U.S. and foreign PFD industry for the ANSI/CAN/UL 12402–4 portion of this

proposed rule. We estimate this proposed provision would save the U.S. and foreign PFD industry about \$57,129 annually and produce cost savings for

the industry of about \$401,250 over a 10-year period of analysis using a 7-percent discount rate.

TABLE 14—TOTAL ESTIMATED COST SAVINGS TO INDUSTRY OF THE PROPOSED RULE FOR ANSI/CAN/UL 12402–4
[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted cost savings	
		7%	3%
1	\$57,129	\$53,392	\$55,465
2	57,129	49,899	53,850
3	57,129	46,634	52,281
4	57,129	43,583	50,758
5	57,129	40,732	49,280
6	57,129	38,067	47,845
7	57,129	35,577	46,451
8	57,129	33,250	45,098
9	57,129	31,074	43,785
10	57,129	29,041	42,509
Total	571,290	401,250	487,322
Annualized .....	.....	57,129	57,129

*ANSI/CAN/UL 12402–5***Costs**

The PFD industry would also incur an increase in costs from this proposed rule because, based on consultation with industry experts, we estimate this rule would increase the PFD market by 5 percent (meaning manufacturing firms would seek new device approvals and produce more devices).¹³ The Coast Guard requests public comment on the possibility that this rule would increase the PFD market by 5 percent. We estimate the costs of this proposed provision as the costs of the additional device approvals and the costs of the

additional production inspections for the greater volume of production that we estimate this rule would generate.¹⁴

We present in table 15, table 16, and table 17 the discounted costs of introducing Level 50 devices over the 10-year period of analysis to U.S. firms, foreign firms, and all firms, respectively. The tables include the estimated costs of Level 50 devices approved and inspected under the current inspections regime. In Year 1, undiscounted costs would only be the costs of Level 50 approval for manufacturers, or \$521,751 for U.S. manufacturers and \$124,781 for foreign manufacturers. For Year 2, the undiscounted costs would be the costs

of Level 50 approvals to manufacturers (\$521,751 for U.S. firms and \$124,781 for foreign firms) plus the cost of inspections (\$29,325 for U.S. firms and \$6,516 for foreign firms), for a total of about \$551,076 (\$521,751 + \$29,325) to U.S. firms and \$131,297 (\$124,781 + \$6,516) to foreign firms. In Years 3–10, the costs would be the cost of inspections of \$71,682 (\$58,650 for U.S. firms and \$13,032 for foreign firms). The estimated 10-year cost discounted at 7 percent would be \$1,274,842 or \$181,509 annualized for U.S. firms, and the 10-year cost discounted at 7 percent would be \$299,267 or \$42,609 annualized for foreign firms.

TABLE 15—ESTIMATED COSTS TO U.S. FIRMS FROM INTRODUCING LEVEL 50 DEVICES
[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs	
		7%	3%
1	\$521,751	\$487,618	\$506,554
2	551,076	481,331	519,442
3	58,650	47,876	53,673
4	58,650	44,744	52,110
5	58,650	41,817	50,592
6	58,650	39,081	49,118
7	58,650	36,524	47,688
8	58,650	34,135	46,299
9	58,650	31,902	44,950
10	58,650	29,815	43,641
Total	1,542,027	1,274,842	1,414,068
Annualized .....	.....	181,509	165,772

TABLE 16—ESTIMATED COSTS TO FOREIGN FIRMS FROM THE INTRODUCTION OF LEVEL 50 DEVICES
[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs	
		7%	3%
1	\$124,781	\$116,618	\$121,147
2	131,297	114,680	123,760
3	13,032	10,638	11,926
4	13,032	9,942	11,579
5	13,032	9,292	11,242
6	13,032	8,684	10,914
7	13,032	8,116	10,596
8	13,032	7,585	10,288
9	13,032	7,089	9,988
10	13,032	6,625	9,697
Total	360,334	299,267	331,136
Annualized .....	.....	42,609	38,819

¹³ As part of our discussion with PFD manufacturing firms, we asked their representatives whether the introduction of Level 50 devices would lead to a net growth in the PFD market (inclusive of substitution out of existing types of products). Manufacturing firm representatives stated that they

would expect the PFD market would grow by about 5 percent from this provision. We interpret the 5 percent growth as a one-time growth in the level of manufacturing spread over a 2-year period.

¹⁴ We estimate the additional production inspections based on the current production

inspection requirements, and we estimate the reduction in these inspections through the proposed incorporation by reference of ANSI/CAN/UL 9595 in its associated section.

TABLE 17—TOTAL ESTIMATED COSTS TO PFD MANUFACTURERS FROM THE INTRODUCTION OF LEVEL 50 DEVICES
[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs	
		7%	3%
1	\$646,532	\$604,236	\$627,701
2	682,373	596,011	643,202
3	71,682	58,514	65,599
4	71,682	54,686	63,689
5	71,682	51,108	61,834
6	71,682	47,765	60,033
7	71,682	44,640	58,284
8	71,682	41,720	56,586
9	71,682	38,990	54,938
10	71,682	36,439	53,338
Total	1,902,361	1,574,109	1,745,204
Annualized .....	.....	224,118	204,591

Qualitative Benefits of ANSI/CAN/UL 12402–5

The Coast Guard believes that the proposed introduction of Level 50 devices coupled with the requirement to wear them if they are to count for the purposes of PFD carriage requirements may lead to an unquantifiable increase in PFD wear rates among recreational boaters and thereby potentially decrease the rate of drowning. The Coast Guard requests public comment on whether Level 50 devices could lead to an increase in PFD wear rates among recreational boaters. Drowning is the leading cause of death in recreational boating accidents, accounting for 79 percent of all recreational boating casualties where we know the cause of death.¹⁵ Of those who drowned, 86 percent were not wearing a lifejacket. Wearing a lifejacket is one of the best means available of preventing accidental drowning in recreational boating. Unfortunately, recreational boaters only wear lifejackets about 24 percent of the time.¹⁶

Level 50 devices are likely to be slimmer, lighter in weight, and more comfortable to wear than current Type III and Level 70 devices. Additionally, the Coast Guard would require recreational boaters to wear Level 50 devices to count towards PFD carriage requirements. Individuals who purchase Level 50 devices would be more likely to wear PFDs than similar individuals who purchase bulkier Level 70 or Type III devices without a requirement that

they be worn for the purposes of carriage. The National Institutes of Health (NIH) conducted a literature review, and among other factors, found discomfort to be negatively associated with lifejacket wear [NIH, 2018].¹⁷ It is the Coast Guard's view that PFDs worn are more effective than PFDs carried on board if a man overboard situation occurs. As a result, it is possible that the public would be safer due to recreational boaters wearing a greater number of PFDs while boating.

Since the Level 50 devices provide a lower level of buoyancy than Level 70 devices, a direct comparison is not possible. However, the view of the subject matter experts in the Coast Guard's Office of Boating Safety is that the wearing of Level 50 PFDs by recreational boaters and the general boating public would improve safety on the water. Recreational boaters fail to wear lifejackets 76 percent of the time, leaving themselves vulnerable to drowning. The Coast Guard believes that by offering recreational boaters an additional choice of a Level 50 PFD, which is required to be worn, more recreational boaters will choose to wear their lifejacket while engaged in boating activities. A lifejacket that is worn by the user is more effective than a lifejacket stowed on the boat.

ANSI/CAN/UL 9595

The third proposed change incorporates by reference the consensus standard ANSI/CAN/UL 9595 to cover follow-up inspections and inspection frequency for Coast Guard approved PFDs. Currently, when a manufacturing

firm produces a Coast Guard approved PFD there is a required follow-up inspection regime to ensure that the devices continue to meet the specifications under which the Coast Guard approved them. Although the Coast Guard has not previously published a substantive minimum requirement for what constitutes a follow-up inspections regime, we set out general requirements in 46 CFR 159, 46 CFR 160.064–4, and 46 CFR 160.076–29. The Coast Guard reviews each recognized independent laboratory's follow-up services program to ensure compliance with these regulations.

Incorporating by reference ANSI/CAN/UL 9595 would provide a few key benefits to the regulated public and the testing laboratories. First, ANSI/CAN/UL 9595 is one standard to ensure consistency across all accepted and recognized independent laboratories. Second, ANSI/CAN/UL 9595 is a standard that would be widely available to the industry and transparently clarifies guidance on what constitutes a follow-up inspection regime. Third, and most importantly, ANSI/CAN/UL 9595 establishes a rating system for each facility, which would result in cost savings for the firms manufacturing at facilities with a good or superior QMS.

Costs

There are three cost items associated with the proposed adoption of ANSI/CAN/UL 9595. These costs are based on input from subject matter experts from the PFD industry on how ANSI/CAN/UL 9595 is likely to be implemented:

- (1) The two recognized independent laboratories would need to train their staff to implement ANSI/CAN/UL 9595;
- (2) Manufacturing firms could request a special inspection in the first year to certify their QMS at a given facility

¹⁵ United States Coast Guard, "2019 Recreational Boating Statistics." <https://uscgboating.org/library/accident-statistics/Recreational-Boating-Statistics-2019.pdf>.

¹⁶ United States Coast Guard, "2019 Life Jacket Wear Rate Observation Study." <https://uscgboating.org/library/national-live-jacket-wear-study/2019-Life-Jacket-Wear-Rate-Report.pdf>.

¹⁷ We cited this review from the NIH earlier in the preamble in footnote number 2. Readers should reference that footnote for a link to this article and other articles by the NIH for more information on PFD usage.

meets the requirements for Process Rating of A or B. We expect the top 13 firms to request this certification across all 27 facilities at which they manufacture. This special inspection would be expected to be in addition to the regular production inspections required for Process Rating C; and

(3) After the first year where the QMS inspection would be supplemental to standard inspections, the QMS

inspection could replace one of the mandatory inspections, but could cost more than a standard inspection at the top 13 firms with 27 facilities.

We estimate the 10-year discounted cost for inspections under this proposed provision that are associated with U.S. firms would be approximately \$93,027, or \$13,245 annualized using a 7-percent discount rate. We estimate the total 10-year discounted cost for inspections that

are associated with foreign firms would be approximately \$37,310, or \$3,000 annualized using a 7-percent discount rate. In total, we estimate the 10-year discounted costs from ANSI/CAN/UL 9595 would be \$130,337 or \$18,557 annualized using a 7-percent discount rate. We present these amounts in table 18, table 19, and table 20.

TABLE 18—ESTIMATED QMS INSPECTION COSTS TO U.S. FIRMS FROM ANSI/CAN/UL 9595

[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs	
		7%	3%
1	\$53,118	\$49,643	\$51,571
2	7,125	6,223	6,716
3	7,125	5,816	6,520
4	7,125	5,436	6,330
5	7,125	5,080	6,146
6	7,125	4,748	5,967
7	7,125	4,437	5,793
8	7,125	4,147	5,625
9	7,125	3,876	5,461
10	7,125	3,622	5,302
Total	117,243	93,027	105,431
Annualized .....	.....	13,245	12,360

TABLE 19—ESTIMATED QMS INSPECTION COSTS TO FOREIGN FIRMS FROM ANSI/CAN/UL 9595

[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs	
		7%	3%
1	\$20,376	\$19,043	\$19,783
2	3,000	2,620	2,828
3	3,000	2,449	2,745
4	3,000	2,289	2,665
5	3,000	2,139	2,588
6	3,000	1,999	2,512
7	3,000	1,868	2,439
8	3,000	1,746	2,368
9	3,000	1,632	2,299
10	3,000	1,525	2,232
Total	47,376	37,310	42,461
Annualized .....	.....	5,312	4,978

TABLE 20—TOTAL ESTIMATED QMS INSPECTION COSTS FOR ANSI/CAN/UL 9595

[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs	
		7%	3%
1	\$73,494	\$68,686	\$71,353
2	10,125	8,844	9,544
3	10,125	8,265	9,266
4	10,125	7,724	8,996
5	10,125	7,219	8,734
6	10,125	6,747	8,480
7	10,125	6,305	8,233
8	10,125	5,893	7,993
9	10,125	5,507	7,760

TABLE 20—TOTAL ESTIMATED QMS INSPECTION COSTS FOR ANSI/CAN/UL 9595—Continued
[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs	
		7%	3%
10	10,125	5,147	7,534
Total	164,619	130,337	147,892
Annualized .....	.....	18,557	17,337

Cost Savings

The proposed IBR of ANSI/CAN/UL 9595 would generate benefits in the form of cost savings for PFD manufacturing firms who have a QMS in place. Manufacturers with an audited QMS would be able to secure a higher Process Rating, which in turn, would reduce the frequency of production

inspections for PFDs based upon their higher Process Rating.

We estimate this proposed provision would generate benefits in the form of cost savings for U.S. firms of \$5,562,385, or \$791,959 annualized, over a 10-year period of analysis using a 7-percent discount rate, and we similarly estimate cost savings of \$1,331,726, or \$189,608 annualized, to foreign firms over a 10-

year period of analysis discounted at 7 percent. In total, we estimate \$6,894,111, or \$981,566 annualized, in cost savings to all firms under this proposed provision using a 10-year period of analysis and a 7-percent discount rate. We present these 10-year cost savings to U.S., foreign, and both U.S. and foreign firms in table 21, table 22, and table 23, respectively.

TABLE 21—ESTIMATED COST SAVINGS TO U.S. FIRMS FROM ANSI/CAN/UL 9595
[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted cost savings	
		7%	3%
1	\$0	\$0	\$0
2	897,438	783,857	845,921
3	916,206	747,897	838,458
4	916,206	698,969	814,037
5	916,206	653,242	790,327
6	916,206	610,506	767,308
7	916,206	570,567	744,959
8	916,206	533,240	723,261
9	916,206	498,355	702,195
10	916,206	465,752	681,743
Total	8,227,082	5,562,385	6,908,209
Annualized .....	.....	791,959	809,853

TABLE 22—ESTIMATED COST SAVINGS TO FOREIGN FIRMS FROM ANSI/CAN/UL 9595
[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted cost savings	
		7%	3%
1	\$0	\$0	\$0
2	214,989	187,780	202,648
3	219,333	179,041	200,721
4	219,333	167,328	194,875
5	219,333	156,382	189,199
6	219,333	146,151	183,688
7	219,333	136,590	178,338
8	219,333	127,654	173,144
9	219,333	119,303	168,101
10	219,333	111,498	163,204
Total	1,969,655	1,331,726	1,653,917
Annualized .....	.....	189,608	193,890

TABLE 23—ESTIMATED COST SAVINGS TO ALL FIRMS FROM ANSI/CAN/UL 9595
[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted costs savings	
		7%	3%
1	\$0	\$0	\$0
2	1,112,427	971,637	1,048,569
3	1,135,539	926,938	1,039,179
4	1,135,539	866,297	1,008,912
5	1,135,539	809,623	979,526
6	1,135,539	756,657	950,996
7	1,135,539	707,156	923,297
8	1,135,539	660,894	896,405
9	1,135,539	617,658	870,296
10	1,135,539	577,250	844,948
Total	10,196,737	6,894,111	8,562,126
Annualized .....	.....	981,566	1,003,742

Placards in Lieu of Information Pamphlets

The fourth change in the proposed rule comes from details contained within ANSI/CAN/UL 12402–4 and ANSI/CAN/UL 12402–5. These standards specify requirements for a placard to be attached to all devices certified to those standards. The placard provides information on PFDs’

performance, selection, and approval, warnings, maintenance, and general water safety information in a pictographic format. This proposed rule would amend 33 CFR 181 to permit manufacturing firms to use a placard in lieu of the informational pamphlet.

Costs

For the convenience of the reader, table 24 reproduces table 6 from the Affected Population section to list the various types of PFDs impacted by this rule, and whether they would be required to use placards to convey safety instructions or whether they could use either placards or information pamphlets.¹⁸

TABLE 24—DEVICE CATEGORY AND PERMITTED INSTRUCTION TYPES

Device category	Types of instructions allowed by the proposed rule	Types of instructions currently in use
New Level 50 Devices (ANSI/CAN/UL 12402–5)	Placard	N/A because these devices are not yet produced.
New Level 70 Devices (ANSI/CAN/UL 12402–5)	Placard	Placard.
New Level 100 Devices (ANSI/CAN/UL 12402–4)	Placard	N/A because these devices are not yet produced.
Existing Type I Commercial Devices	Placard or Information Pamphlet	Information Pamphlet.
Existing Type II Recreational Devices	Placard or Information Pamphlet	Information Pamphlet.
Existing Type III Recreational Devices	Placard or Information Pamphlet	Information Pamphlet.
Existing Type IV Throwable Devices	Information Pamphlet	Information Pamphlet.

As shown in table 24 above, the proposed changes in instruction information would either apply to PFD categories not yet produced or permit an additional compliance option. No devices would have fewer options for instruction materials than under current regulations. As a result, we estimate there would be no additional costs from replacing safety information pamphlets with placards because firms could either continue their current activities or produce placards instead.

Unquantified Benefits

There are two sources of unquantified benefits from the proposed requirement for the use of placards on new device

categories and the proposed permitting of placard use on existing device categories. The first source of unquantified benefits would occur because a placard is likely less expensive to produce than an information pamphlet. A representative from the PFD manufacturing industry told us that the placard would likely be around \$0.05 cheaper to produce than the information pamphlet because the placard would contain fewer materials than the information pamphlet. However, we could not find any data on the costs to produce information pamphlets and the costs to produce placards, so we cannot determine the relative size of this cost savings. We

believe based on the full discussion that the \$0.05 estimate is a rough approximation of the fact that placards are slightly less expensive than information pamphlets but ultimately about the same price. Additionally, we have no way of estimating how large a share of current production would switch from producing information pamphlets to placards, as placards would not be required. Due to these factors, we did not produce a quantitative estimate of the cost savings due to placards.

The second unquantified benefit would come from the fact that placards use pictorial images to communicate safety information, while information

¹⁸ Current marking requirements require a pamphlet, while the proposed new marking requirement would be for a placard or pamphlet. Because these placards and pamphlets are both

produced in factories, the Coast Guard estimates that it takes the same amount of time to produce and include either a pamphlet or a placard with a newly manufactured PFD for sale. As a result, we

do not estimate there would be any changes in the PRA burden brought on by the switch from pamphlets to placards.

pamphlets use English-language text. Pictorial information is superior to text at communicating information to non-English-reading audiences. We do not have a way of quantifying this benefit, but would like to note that approximately 21 percent of the U.S.

population has a “low” level of English literacy. For those populations, pictorial information may be better than text-based information.¹⁹

Total Costs

We display the total costs from this proposed rule to U.S. entities, foreign entities, and both U.S. and foreign entities using a 10-year period of analysis discounted at 7 percent in table 25, table 26, and table 27, respectively.

TABLE 25—ESTIMATED COSTS FOR U.S. FIRMS

[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs	
		7%	3%
1	\$601,275	\$561,939	\$583,762
2	559,607	488,782	527,483
3	67,181	54,840	61,480
4	67,181	51,252	59,689
5	67,181	47,899	57,951
6	67,181	44,766	56,263
7	67,181	41,837	54,624
8	67,181	39,100	53,033
9	67,181	36,542	51,489
10	67,181	34,151	49,989
Total	1,698,330	1,401,108	1,555,764
Annualized .....	.....	199,486	182,383

TABLE 26—ESTIMATED COSTS FOR FOREIGN FIRMS

[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs	
		7%	3%
1	\$145,677	\$136,147	\$141,434
2	134,817	117,754	127,078
3	16,552	13,511	15,147
4	16,552	12,627	14,706
5	16,552	11,801	14,278
6	16,552	11,029	13,862
7	16,552	10,308	13,458
8	16,552	9,633	13,066
9	16,552	9,003	12,686
10	16,552	8,414	12,316
Total	412,910	340,229	378,032
Annualized .....	.....	48,441	44,317

TABLE 27—TOTAL ESTIMATED COSTS FOR U.S. AND FOREIGN FIRMS

[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs	
		7%	3%
1	\$746,952	\$698,086	\$725,196
2	694,424	606,537	654,561
3	83,733	68,351	76,628
4	83,733	63,880	74,396
5	83,733	59,700	72,229
6	83,733	55,795	70,125
7	83,733	52,145	68,083
8	83,733	48,733	66,100
9	83,733	45,545	64,174

¹⁹ U.S. Department of Education, “Data Point: Adult Literacy in the United States” (July 2019). <https://nces.ed.gov/pubs2019/2019179.pdf>.

TABLE 27—TOTAL ESTIMATED COSTS FOR U.S. AND FOREIGN FIRMS—Continued
[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted costs	Discounted costs	
		7%	3%
10	83,733	42,566	62,305
Total	2,111,240	1,741,338	1,933,796
Annualized .....	.....	247,927	226,700

Total Cost Savings government, foreign firms, and all firms discounted at 7 percent in table 28, table 29, table 30, and table 31, respectively.
We display the total cost savings from this proposed rule to U.S. firms, the U.S. using a 10-year period of analysis

TABLE 28—TOTAL ESTIMATED COST SAVINGS TO U.S. FIRMS
[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted costs savings	
		7%	3%
1	\$39,734	\$37,135	\$38,577
2	937,172	818,562	883,374
3	955,940	780,331	874,820
4	955,940	729,282	849,340
5	955,940	681,572	824,602
6	955,940	636,983	800,584
7	955,940	595,311	777,266
8	955,940	556,366	754,628
9	955,940	519,968	732,648
10	955,940	485,951	711,309
Total	8,624,422	5,841,460	7,247,148
Annualized .....	.....	831,693	849,587

TABLE 29—TOTAL ESTIMATED COST SAVINGS TO FOREIGN FIRMS
[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted costs savings	
		7%	3%
1	\$17,395	\$16,257	\$16,888
2	232,384	202,973	219,044
3	236,728	193,241	216,640
4	236,728	180,599	210,330
5	236,728	168,784	204,204
6	236,728	157,742	198,256
7	236,728	147,422	192,482
8	236,728	137,778	186,875
9	236,728	128,764	181,432
10	236,728	120,341	176,148
Total	2,143,605	1,453,901	1,802,300
Annualized .....	.....	207,003	211,285

TABLE 30—TOTAL ESTIMATED COST SAVINGS TO THE UNITED STATES GOVERNMENT
[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted costs savings	
		7%	3%
1	\$3,903	\$3,648	\$3,789
2	3,903	3,409	3,679
3	3,903	3,186	3,572
4	3,903	2,978	3,468

TABLE 30—TOTAL ESTIMATED COST SAVINGS TO THE UNITED STATES GOVERNMENT—Continued
[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted costs savings	
		7%	3%
5	3,903	2,783	3,367
6	3,903	2,601	3,269
7	3,903	2,431	3,174
8	3,903	2,272	3,081
9	3,903	2,123	2,991
10	3,903	1,984	2,904
Total	39,032	27,414	33,295
Annualized .....	.....	3,903	3,903

TABLE 31—TOTAL ESTIMATED COST SAVINGS TO U.S. AND FOREIGN MANUFACTURING FIRMS AND THE U.S. GOVERNMENT
[2019 Dollars, 10-year period of analysis]

Year	Total undiscounted cost savings	Discounted costs savings	
		7%	3%
1	\$61,032	\$57,039	\$59,255
2	1,173,459	1,024,945	1,106,098
3	1,196,571	976,758	1,095,032
4	1,196,571	912,858	1,063,138
5	1,196,571	853,139	1,032,173
6	1,196,571	797,326	1,002,109
7	1,196,571	745,164	972,922
8	1,196,571	696,415	944,584
9	1,196,571	650,855	917,072
10	1,196,571	608,276	890,361
Total	10,807,059	7,322,776	9,082,743
Annualized .....	.....	1,042,599	1,064,775

Net Cost Savings

We display the total net cost savings from this proposed rule to U.S. firms,

the U.S. government, foreign firms, and all entities using a 10-year period of analysis discounted at 7 percent in table

32, table 33, table 34, and table 35, respectively.

TABLE 32—TOTAL ESTIMATED NET COST SAVINGS TO U.S. FIRMS
[2019 Dollars, 10-year period of analysis]

Year	Net undiscounted cost savings	Net discounted costs savings	
		7%	3%
1	– \$561,541	– \$524,805	– \$545,185
2	377,565	329,780	355,891
3	888,759	725,492	813,340
4	888,759	678,030	789,651
5	888,759	633,673	766,651
6	888,759	592,217	744,321
7	888,759	553,474	722,642
8	888,759	517,266	701,594
9	888,759	483,426	681,159
10	888,759	451,800	661,320
Total	6,926,092	4,440,352	5,691,384
Annualized .....	.....	632,206	667,204

TABLE 33—TOTAL ESTIMATED NET COST SAVINGS TO FOREIGN FIRMS
[2019 Dollars, 10-year period of analysis]

Year	Net undiscounted cost savings	Net discounted costs savings	
		7%	3%
1	– \$128,282	– \$119,890	– \$124,546
2	97,567	85,219	91,966
3	220,176	179,729	201,492
4	220,176	167,971	195,624
5	220,176	156,983	189,926
6	220,176	146,713	184,394
7	220,176	137,115	179,023
8	220,176	128,145	173,809
9	220,176	119,761	168,747
10	220,176	111,926	163,832
Total	1,730,695	1,113,672	1,424,268
Annualized .....	.....	158,562	166,968

TABLE 34—TOTAL ESTIMATED COST SAVINGS TO THE UNITED STATES GOVERNMENT
[2019 Dollars, 10-year period of analysis]

Year	Net undiscounted cost savings	Net discounted costs savings	
		7%	3%
1	\$3,903	\$3,648	\$3,789
2	3,903	3,409	3,679
3	3,903	3,186	3,572
4	3,903	2,978	3,468
5	3,903	2,783	3,367
6	3,903	2,601	3,269
7	3,903	2,431	3,174
8	3,903	2,272	3,081
9	3,903	2,123	2,991
10	3,903	1,984	2,904
Total	39,032	27,414	33,295
Annualized .....	.....	3,903	3,903

TABLE 35—TOTAL ESTIMATED NET COST SAVINGS TO ALL ENTITIES
[2019 Dollars, 10-year period of analysis]

Year	Net undiscounted cost savings	Net discounted costs savings	
		7%	3%
1	– \$685,920	– \$641,047	– \$665,942
2	479,035	418,408	451,536
3	1,112,838	908,407	1,018,404
4	1,112,838	848,979	988,742
5	1,112,838	793,438	959,944
6	1,112,838	741,531	931,984
7	1,112,838	693,020	904,839
8	1,112,838	647,682	878,485
9	1,112,838	605,310	852,898
10	1,112,838	565,710	828,056
Total	8,695,819	5,581,438	7,148,947
Annualized .....	.....	794,671	838,075

Alternatives

We identified three alternatives to the current proposed rule:

(1) Incorporate ANSI/CAN/UL 12402–5 for the approval of Level 70 PFDs only, prohibiting the approval of Level 50 PFDs;

(2) Require placards for existing Type I, II, and III PFDs instead of providing the option to continue the use of informational pamphlets; and

(3) Adopt ANSI/CAN/UL 12402–4 and ANSI/CAN/UL 12402–5 by policy.

Alternative 1: Incorporate ANSI/CAN/UL 12402–5 for Level 70 PFDs only.

We considered an alternative that would incorporate ANSI/CAN/UL 12402–5, but limit approval to Level 70 PFDs only. Level 50 PFDs would not be eligible for Coast Guard approval and would not meet carriage requirements on any vessel. If the Coast Guard were to choose this alternative, the market for Level 50 devices would not be viable because Level 50 devices would no longer meet carriage requirements. We therefore expect there would be no benefits from a new market as the market would not exist. The expected qualitative benefit of increased wear-rates associated with more comfortable and innovative Level 50 PFDs would be lost with this alternative. We would also be restricting recreational boaters to one category of PFD when Level 50 PFDs could better suit their purpose. As a result, we rejected this alternative because we expect wear rates and therefore benefits would be lower.

Alternative 2: Require Placards Instead of the Option of Placards or Pamphlets

Under this proposed rule, we require that only new Level 50, 70, and 100 devices use placards. We considered the alternative of requiring that PFD manufacturers use placards instead of information pamphlets for all existing PFDs. While we observe that the cost of producing a placard is generally less than the cost of producing an information pamphlet, we also observe that some manufacturers may have already printed pamphlets or may not choose to use placards. As a result, we rejected this alternative.

Alternative 3: Adopt ANSI/CAN/UL 12402–4 and ANSI/CAN/UL 12402–5 by Policy

Another alternative we considered would be to adopt ANSI/CAN/UL 12402–4 and ANSI/CAN/UL 12402–5 by policy instead of incorporating them by reference into the CFR. Under 46 CFR 159.005–7(c), the Coast Guard has the authority to approve an item of equipment that does not meet all the

requirements of 46 CFR 160.055 if it has equivalent performance characteristics. The Coast Guard has already used this authority to partially adopt ANSI/CAN/UL 12402–4 and ANSI/CAN/UL 12402–5 by policy. Because this authority is limited to the approval of equipment with equivalent performance characteristics, we cannot fully adopt these standards by policy. In particular, Level 50 PFDs, youth inflatable PFDs, and inflatable Level 100 PFDs could not be approved by policy because they are not equivalent to any current Coast Guard standards. For that reason, we rejected this alternative.

B. Small Entities

Under the Regulatory Flexibility Act (RFA), 5 United States Code (U.S.C.) 601–612, we have prepared this Initial Regulatory Flexibility Analysis (IRFA) that examines the impacts of the proposed rule on small entities.

Per the RFA, a small entity may be a small independent business, defined as one independently owned and operated, organized for profit, and not dominant in its field under the Small Business Act (5 U.S.C. 632); a small not-for-profit organization, defined as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field; or a small governmental jurisdiction, defined as a locality with fewer than 50,000 people.

Section 603(b) of the RFA prescribes the content of the IRFA, which addresses the following:

(1) A description of the reasons why action by the agency is being considered;

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and

(6) A description of any significant alternatives to the rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.

1. A Description of the Reasons Why Action by the Agency Is Being Considered

The Coast Guard proposes to amend the lifejacket approval requirements and follow-up program requirements by incorporating three new binational standards. At the same time, the Coast Guard proposes to amend lifejacket and PFD carriage requirements to allow for the use of equipment approved to the new standards, and to remove obsolete equipment approval requirements. The new standards are intended to replace the legacy standards. The proposed amendments will streamline the process for approval of PFDs and allow manufacturers the opportunity to produce equipment that meets the approval requirements of both Canada and the United States, while reducing the burden for manufacturers in both the approval process and follow-up program.

2. A Succinct Statement of the Objective of, and Legal Basis for, the Proposed Rule

This proposed rule would harmonize PFD approval standards with those used in Canada, lead to net cost savings for PFD manufacturers, and introduce a new type of PFD that may better meet the needs of some recreational boaters.

This proposed rule is discretionary and not issued because of a statutory mandate. The Coast Guard will use its existing rulemaking authority provided under Title 46, U.S. Code, sections 3306(a), 4102(a) and (b), 4302(a) and (c), and 4502(a) and (c)(2)(B).

Title 46 U.S.C. 3306 provides the Coast Guard with the general authority to prescribe regulations for the design, construction, performance, testing, carriage, use, and inspection of lifesaving equipment on commercial and recreational vessels. Title 46 U.S.C. 4102 and 4302 provide more specific authority to prescribe regulations about life preservers and other life saving devices on uninspected and recreational vessels, respectively.

3. A Description—and, Where Feasible, an Estimate of the Number—of Small Entities to Which the Proposed Rule Will Apply

This proposed rule has four major provisions:

(1) It would incorporate by reference ANSI/CAN/UL 12402–4, replacing Type I device approval with Level 100 device approval.

(2) It would incorporate by reference ANSI/CAN/UL 12402–5, introducing new Level 50 device approvals.

(3) It would incorporate by reference ANSI/CAN/UL 9595, setting new

standards for follow-on production inspections.

(4) It would permit the use of placards in lieu of instruction pamphlets.

Across these four provisions, we estimate that this proposed rule would directly affect two Coast Guard recognized laboratories and 57 PFD manufacturers.

We researched these two Coast Guard recognized laboratories and 57 PFD manufacturers to determine if they are U.S. companies or foreign companies based on the location of their parent

company's headquarters. We found one Coast Guard recognized laboratory to be a U.S. company and one to be a foreign company. We found 37 of the 57 PFD manufacturers to be U.S. companies and 20 to be foreign companies. We then researched each of these 38 U.S. companies (1 testing laboratory and 37 PFD manufacturers) to determine its North American Industry Classification System (NAICS) code and its size standard using the Small Business Administration's (SBA) size standard

table. Next, we reviewed each U.S. parent company's revenue or employee information to determine whether the company would be small or not small according to SBA size standards. We present the results of our research in table 36. We found the U.S. Coast Guard recognized laboratory to be small, and of the 37 U.S. manufacturers, we found 30 of them to be small entities according to SBA size standards; we did not find any U.S. small entities to be small governmental jurisdictions.

TABLE 36—NUMBER OF SMALL ENTITIES AFFECTED BY THE PROPOSED RULE

NAICS code	NAICS code and industry type	Size standard type	Size standard used	Number of U.S. companies	Number of small entities
314910	Textile Bag and Canvas Mills	Employees ..	500	1	1
314999	All Other Miscellaneous Store Retailers (except Tobacco Stores)	Revenue	\$8.0	2	2
315280	Other Cut and Sew Apparel Manufacturing	Employees ..	750	1	1
315990	Apparel Accessories and Other Apparel Manufacturing	Employees ..	500	1	1
326199	All Other Plastics Product Manufacturing	Employees ..	750	2	0
326299	All Other Rubber Product Manufacturing	Employees ..	500	1	1
327120	Clay Building Material and Refractories Manufacturing	Employees ..	750	1	1
336612	Boat Building	Employees ..	1,000	2	2
339920	Sporting and Athletic Goods Manufacturing	Employees ..	750	4	3
339999	All Other Miscellaneous Manufacturing	Employees ..	500	1	1
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers	Employees ..	100	1	1
441222	Boat Dealers	Revenue	\$35.0	5	4
448140	Family Clothing Stores	Revenue	\$41.5	1	0
448150	Clothing Accessories Stores	Revenue	\$16.5	2	1
451110	Sporting Goods Stores	Revenue	\$16.5	2	2
452319	All Other General Merchandise Stores	Revenue	\$35.0	1	1
453930	Manufactured (Mobile) Home Dealers	Revenue	\$16.5	1	0
541380	Testing Laboratories	Revenue	\$16.5	1	0
541870	Advertising Material Distribution Services	Revenue	\$16.5	1	1
561990	All Other Support Services	Revenue	\$12.0	1	1
713930	Marinas	Revenue	\$8.0	1	1
Unknown ..	Unknown	Unknown	Unknown	5	5
				38	30

Each proposed provision would affect a different subset of the 30 small entities from above and have a different distribution of costs, cost savings, and transfers across those small entities. We will discuss each proposed provision separately below and then summarize each provision's impacts.

Provision 1: Incorporation by Reference of ANSI/CAN/UL 12402–4

The first proposed provision, the IBR of ANSI/CAN/UL 12402–4, would affect seven small entities, six of which have known revenues. The first provision would result in costs to PFD manufacturing firms that are small entities that would intend to sell Level 100 devices in only one market (the United States or Canada). Firms wishing to sell Level 100 devices in both United States and Canadian markets would no longer conduct duplicative approvals

and facility inspections, leading to cost savings.

Whether small entities would or would not experience cost savings depends on whether each small entity would prefer to sell their device in only the United States or Canada or in both markets. The Coast Guard does not know which small entities would prefer a cheaper set of tests with only the ability to sell in one market and which would prefer a more expensive set of tests with the ability to sell in both markets. We therefore compare both the costs and cost savings estimates to each small entity.

In the RA, we estimate the Level 100 approval would be \$4,280 more expensive than the current Type I approval. While in the RA we estimate that testing laboratories would receive an application for approval to Level 100 standards 0.45 times per year, each small entity would experience this cost

only when they submit a new application. Each small entity would likely apply for an approval once they develop a new device. The Coast Guard cannot ascertain when each small entity might submit a new application, so instead we retain the cost of \$4,280 as an estimate of a one-time (initial year cost) per small entity cost of ANSI/CAN/UL 12402–4.

We estimate the cost savings for small entities that wish to sell in two markets would be \$35,720 per new Level 100 approval, \$4,746 per revision of an existing approval with testing, and \$1,172 per revision of an existing approval without testing. As with costs of ANSI/CAN/UL 12402–4, each small entity would experience the cost savings only when it submits each application. The Coast Guard does not know when small entities might seek new approvals or revisions in the future, so we estimate

these as one-time cost savings to small entities from ANSI/CAN/UL 12402–4. Specifically, we estimate each small entity would experience a one-time total cost savings of \$41,638 for each approval, which is the sum of the Level 100 approvals and revisions to approvals with or without testing (\$35,720 + \$4,746 + \$1,172). Each of these seven small entities would also experience an ongoing (annual) cost savings of \$1,155.92 from reduced facility inspection frequency.²⁰

Provision 2: Incorporation by Reference of ANSI/CAN/UL 12402–5

Incorporating by reference ANSI/CAN/UL 12402–5 would permit small entities to seek Coast Guard approval to produce and sell Level 50 devices. The Coast Guard has not previously approved these devices. We estimate that this provision would affect all 30 small entities, 24 of which have known revenues.

In the RA, we estimate that the introduction of Level 50 devices would most likely result in a 5-percent growth in the North American PFD market. The growth in the market would be composed of new types of PFDs. We assume the 5-percent growth in the market would also be a proxy for the growth in the number of approved devices (for a growth of 38 device approvals). The initial approvals would represent a one-time (initial year) cost to small entities. Small entities would also experience an annual cost of additional production inspections based on the volume of Level 50 PFDs produced.

We estimate a new Level 50 device approval would cost a small entity about \$34,028. We do not know which small entities would seek Coast Guard approval for a Level 50 device or how many devices for which each small entity might seek approval. As a result, we treat each small entity as seeking approval for one Level 50 device costing

\$34,028. This would be a one-time (initial year) cost to small entities.

Production and revenue are not distributed equally across the small entities that produce PFDs for the North American market. Instead, some small entities produce vastly more PFDs than others. In the RA, we estimate the market share of the 13 largest firms to be collectively about 95 percent, and we estimate the remaining 44 firms' market share collectively to be about 5 percent. We do not know the relative market share of the 44 firms, so we divide the 5 percent equally across the 44 firms. Therefore, we treat each of the 44 firms as accounting for roughly about 0.11 percent of the PFD market.²¹ For the 30 small entities that would use the ANSI/CAN/UL 12402–5 standard, 22 of them are in the set of 44 firms composing 5 percent of the market, and we assume each has a market share of 0.11 percent. Based on conversations with PFD manufacturing executives, we estimate 5 of the 30 firms have a market share of 2.5 percent each, 1 has a market share of 7.5 percent, 1 has a market share of 15 percent, and 1 has a market share of 25 percent.²² We could not find revenue data for six small entities.

In the RA, we estimate that the annual cost of production inspections across the whole industry would be \$71,682. Because we do not know which small entities would seek Level 50 approval, we estimate the additional costs from production inspections from Level 50 device sales for each small entity by multiplying each small entity's market share by the total costs. For example, if we use a small entity that has a market share of 0.11 percent, then we would estimate the small entity's additional production inspection costs would be about \$78.85 (\$71,682 × 0.0011, rounded) annually.

Provision 3: Incorporation by Reference of ANSI/CAN/UL 9595

Incorporating ANSI/CAN/UL 9595 by reference would establish production testing standards for the PFD manufacturing industry. ANSI/CAN/UL 9595 would lead to reductions in testing frequency for PFD manufacturing entities with a QMS in place. We estimate that eight small entities would be affected by this provision, seven of which have known revenue.

Small entities would experience one-time costs of an initial QMS inspection, and they would experience ongoing costs because a QMS inspection is more expensive than the facility inspection it would replace in years after the first year. We estimate that each small entity has two facilities with the largest small entity having three facilities, and QMS inspection costs would occur per facility. We estimated 7 of the firms in the top 13 are small entities, including the top firm. In the RA, we estimate that the total costs to U.S. firms for the ANSI/CAN/UL 9595 standard would be about \$53,118 for 19 facilities. Because we do not know where each small entity's facilities are located, to estimate each small entity's one-time costs, we multiply \$53,118 by each small entity's share of the 19 facilities yielding \$5,591.37 ($2 \div 19 \times \$53,118$) for all but the largest small entity and \$8,387.05 ($3 \div 19 \times \$53,118$) for the largest small entity. We estimate annual costs would be about \$375 per facility, which is the difference between eight hours of billed QMS inspector time and eight hours of a regular inspector's time. The largest small entity has three facilities, so would experience \$1,125 ($\$375 \times 3$) in additional costs. All the other small entities have two facilities, and they would experience about \$750 ($\$375 \times 2$) in annual costs. In table 37, we present the costs per small entity from the IBR of ANSI/CAN/UL 9595.

TABLE 37—COSTS PER SMALL ENTITY FROM ANSI/CAN/UL 9595

Entity type	Number of facilities	Total one-time costs	Annual costs
The largest	3	\$8,387.05	\$1,125
All others	2	5,591.37	750

The small entities that would achieve a higher process rating according to the ANSI/CAN/UL 9595 standard would also experience annual cost savings

based on each small entity's market share and the rigor of the QMS system that would be in place. As mentioned previously, we estimate that only the

top 13 firms would experience savings from ANSI/CAN/UL 9595, and we estimate 7 of those firms are small entities.

²⁰ Facility inspections last four hours and include the billed cost of the inspector's time, or \$234.45, and the opportunity cost of a Quality Manager's time, or \$54.53 per hour as a loaded weighted average. ($\$234.45 + \$54.53$) × 4 = \$1,155.92. Readers

should refer to the section of the RA discussing the ANSI/CAN/UL 12402–4 standard.

²¹ We divided 5 percent (or 0.05) by 44 firms to obtain 0.11 percent of the market for each one.

²² For more details on how we calculated market share, see the initial regulatory analysis in the docket.

Cost savings would be different for each of the seven small entities. To estimate the cost savings per small entity, we need to estimate the number of reductions in inspections per small entity and then multiply by \$2,346 (\$1,876 of billed inspector time and \$470 of weighted average quality manager loaded wages). To calculate the reductions in inspections for each small entity, we take the share of current inspections for each small entity and then estimate the number of inspections that would take place under Process Rating A or B. Next, we subtract the reduced inspection frequency per small entity from the current inspection frequency yielding a reduction in inspection frequency for current production. In the RA, we also estimate cost savings from reduced inspection frequency on Level 50 devices that entities do not yet produce. In the RA, we estimate that U.S. firms would experience 16 fewer inspections on Level 50 devices. We then multiply the 16 inspections by each small entity's

share of reduction in current inspections.

For example, assume that a small entity had a 10 percent market share, half of which would be at Process Rating A and half of which would be at Process Rating B. We first would take the total number of current inspections on U.S. firms (587) and multiply by the small entity's market share relative to the total affected U.S. market share, or 10 percent ÷ 77.5 percent × 587, yielding 76 rounded. Then we would derive the reduced number of inspections at B and the reduced number of inspections at A by multiplying the reduced inspection frequency at B (194) by the share of the small entity's Process Rating at B relative to all other U.S. firms at B, or 5 percent ÷ 51 percent, yielding 19 rounded. To estimate the reduced inspection frequency at A, we take the number of facilities at A (one) and multiply by two, accounting for the number of inspections that would occur once the facility is at Process Rating A. Next, we add to it the multiplication of

the number of commercial PFD production inspections at A (7) and the small entity's relative share of production at A, or 5 percent ÷ 26.5 percent, yielding 3 rounded (2×1 + 7×5 percent ÷ 26.5 percent). Taken together the small entity's reduced inspection frequency would be 22 (19 + 3) meaning the small entity would experience 54 fewer production inspections annually (76 – 22). To calculate the number of reduced Level 50 inspections, we take the small entity's share of U.S. firm inspection reduction (54 ÷ 376) and multiply by the 16 total reduction in inspections, yielding 2 rounded. We add the reduction in Level 50 inspections (2) and the reduction in current inspections (54) together and multiply by the cost of each inspection (\$2,346) yielding \$131,376 [(2 + 54) × \$2,346] or the small entity's annual cost savings from reduced inspection frequency. We perform this process for each of the eight small entities. We record these calculations in table 38; the results are rounded.

TABLE 38—COST SAVINGS FOR A REPRESENTATIVE SMALL ENTITY

Total market share	Market share at B	Market share at A	Current inspection frequency	Inspection frequency at B	Inspection frequency at A	Total inspection reduction	Reduced level 50 inspections	Total cost savings
A	B = A ÷ 2	C = A ÷ 2	D = 587 × A ÷ 77.5%	E = 194 × B ÷ 51%	F = (2 × 1 + 7 × C ÷ 26.5%)	G = D – E – F	H = G ÷ 376 × 16	(G + H) × \$2,346
10%	5%	5%	76	19	3	54	2	\$131,376

Provision 4: Replacement of Information Pamphlets With Placards

We did not predict any costs or cost savings from this provision, so we do

not project any impact on small entities. We summarize the number of small entities affected, cost impacts, cost

savings impacts, and transfers per provision in table 39.

TABLE 39—NUMBER OF AFFECTED SMALL ENTITIES, COSTS, AND COST SAVINGS PER PROVISION

Provision	PFD manufacturing population affected	Costs	Cost savings
ANSI/CAN/UL 12402–4	7 small entities of the 30; 6 small entities with known revenues.	One-time testing to Level 100 would cost \$4,280 more than testing to Legacy Type I standards for entities wishing to sell in only Canada or the United States.	One-time testing to Level 100 would be \$35,720 less than testing to Type I standards for entities wishing to sell in both the United States and Canada. Small entities would also save costs from cheaper revisions with and without testing, \$4,746 and \$1,172 respectively. Together, small entities would save \$41,638. Small entities would also experience \$1,155.92 in annual cost savings from reduced facility inspections.
ANSI/CAN/UL 12402–5	30 small entities, 24 small entities with known revenues.	One-time (initial year) testing to Level 50 standards would cost about \$34,028. Additional ongoing costs from inspections would be between \$78.85 and \$17,920.50 based on each small entity's market share (small entities with larger market shares would experience greater costs).	No estimated cost savings for these small entities.

TABLE 39—NUMBER OF AFFECTED SMALL ENTITIES, COSTS, AND COST SAVINGS PER PROVISION—Continued

Provision	PFD manufacturing population affected	Costs	Cost savings
ANSI/CAN/UL 9595	8 small entities, 7 small entities with known revenues.	One-time (initial year) cost from an additional QMS inspection of about \$8,387.05 for the largest small entity based on three facilities and \$5,591.37 for all other small entities with two facilities. Ongoing (annual) costs would result from a QMS inspection and would be more than a regular inspection. We estimate ongoing costs to be about \$375 per facility or \$1,125 for the largest small entity with three facilities and \$750 for each other small entity with two facilities.	Small entities would save through reduced inspection frequencies based on each small entity's market share and each small entity's QMS in place. We estimate these 8 small entities would experience between \$21,114 and \$229,908 in savings based on their market share and QMS ratings per year.
Information Pamphlets	30 small entities, 24 small entities with known revenues.	No estimated costs	No estimated cost savings.

We provide a list of the range of costs, estimated overall net cost savings proposed rule across all provisions from cost savings, and net cost savings per revenue impact per small entity of this total costs in table 41. entity in table 40. We report the

TABLE 40—RANGE OF IMPACTS PER ENTITY

	One-time impacts		Ongoing impacts	
	Lowest per entity	Highest per entity	Lowest per entity	Highest per entity
Cost	\$34,028.00	\$46,695.05	\$78.85	\$60,683.50
Cost Savings .....	.....	41,638.00	.....	231,063.92
Net Cost Savings	(39,619.37)	3,330.00	(40,560.93)	170,380.42

TABLE 41—PERCENTAGE OF ESTIMATED REVENUE IMPACT ON SMALL ENTITIES FROM OVERALL IMPACT (NET COST SAVINGS) OF THIS PROPOSED RULE

% Revenue impact	One-time net cost savings		Ongoing net cost savings	
	Small entities with known revenue	Portion of small entities with known revenue	Small entities with known revenue	Portion of small entities with known revenue
<1%	17	71	20	83
1–3%	2	8	2	8
>3%	5	21	2	8

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirements and the Type of Professional Skills Necessary for Preparation of the Report or Record

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

5. An Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

There are no relevant Federal rules that may duplicate, overlap, or conflict with this NPRM.

6. A Description of Any Significant Alternatives to the Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize any Significant Economic Impact of the Proposed Rule on Small Entities

The Coast Guard identified three alternatives:

(1) Incorporate ANSI/CAN/UL 12402–5 for the approval of Level 70 PFDs

only, prohibiting the approval of Level 50 PFDs;

(2) Require placards instead of permitting either placards or pamphlets; and

(3) Adopt ANSI/CAN/UL 12402–4 and ANSI/CAN/UL 12402–5 by policy.

Alternative 1: Incorporate by Reference ANSI/CAN/UL 12402–5 for Level 70 PFDs Only

Under the first alternative, we could have chosen to incorporate ANSI/CAN/UL 12402–5, but limit approval to Level 70 PFDs only. Level 50 PFDs would not be eligible for Coast Guard approval and would not meet carriage requirements on any vessel. If the Coast Guard chose this alternative, the market for Level 50 devices would not be viable because

Level 50 devices would no longer partially substitute for Level 70 or Type III devices. Small entities would be unable to sell these new devices and would not experience a positive revenue impact from this alternative.

As a result, we rejected this alternative because it does not maximize small entities' revenue.

Alternative 2: Require Placards Instead of Permitting Either Placards or Pamphlets

We considered the alternative of requiring that PFD manufacturers use placards instead of their choice of either placards or information pamphlets for the mandatory PFD instructional materials. While the cost of producing placards is generally less than the costs of producing information pamphlets, some manufacturers may not be ready to switch to producing placards. As such, if we required that manufacturers use placards, we could place undue burden on small entities in the PFD industry by requiring that they acquire new equipment to produce placards. We do not know how large these costs could be, but small entities would experience greater compliance costs. As a result, we ultimately rejected this alternative.

Alternative 3: Adopt ANSI/CAN/UL 12402–4 and ANSI/CAN/UL 12402–5 by Policy

Another alternative that we considered would be to adopt ANSI/CAN/UL 12402–4 and ANSI/CAN/UL 12402–5 by policy instead of incorporating them by reference in the regulations. Under 46 CFR 159.005–7(c), the Coast Guard has the authority to approve an item of equipment that does not meet all the requirements of 46 CFR 160.055 if it has equivalent performance characteristics. The Coast Guard has used this authority to partially adopt ANSI/CAN/UL 12402–4 and ANSI/CAN/UL 12402–5 by policy. However, because this authority is limited to the approval of equipment with equivalent performance characteristics, we cannot fully adopt these standards by policy. Namely, Level 50 PFDs, youth inflatable PFDs, and inflatable Level 100 PFDs cannot be approved by policy. As a result, small entities would not receive the additional revenue from the sale of Level 50 devices or the cost savings on Level 100 inflatable device approvals as compared to Type I device approvals. For these reasons, we rejected this alternative.

7. Conclusion

We are interested in the potential impacts from this rule on small businesses and we request public

comment on these potential impacts. If you think that this rule will have a significant economic impact on you, your business, or your organization, please submit a comment to the docket at the address under the Public Participation and Request for Comments section of this preamble. In your comment, explain why, how, and to what degree you think this rule will have an economic impact on you.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

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).

D. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on 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 proposed rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. *See* the Supreme Court's decision in *United States v. Locke* and *Intertanko v. Locke*, 529 U.S. 89, 120 S.Ct. 1135 (2000). The statutory authorities upon which this rulemaking is based—46 U.S.C. 3306(a), 4102(a), 4302(a), and 4502(a) and (c)(2)(B)—all generally preempt State and local law. Therefore, because the States may not regulate within these categories, this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

F. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 0336; 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 million (adjusted for inflation) or more in any one year. Although this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, (Civil Justice Reform), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This proposed rule is not an economically significant rule and would

not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it would 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.

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule uses the following voluntary consensus standards:

- ANSI/CAN/UL 9595, Standard for Buoyant Cushions, Fourth Edition, April 20, 2007 (including revisions through January 10, 2020).
- ANSI/CAN/UL 12402–4, Standard for Personal Flotation Devices—Part 4: Lifejackets, Performance Level 100—Safety Requirements, First Edition, July 9, 2020.
- ANSI/CAN/UL 12402–5, Standard for Personal Flotation Devices—Part 5: Buoyancy Aids (Level 50)—Safety Requirements, First Edition, December 31, 2015 (including revisions through January 27, 2022).
- ANSI/UL 1123, Standard for Marine Buoyant Devices, Seventh Edition,

October 1, 2008 (including revisions through November 23, 2020).

- ANSI/UL 1175, Standard for Buoyant Cushions, Fourth Edition, April 20, 2007 (including revisions through January 10, 2020).

The proposed sections that reference these standards and the locations where these standards are available are listed in 46 CFR 160.045–5, 160.055–5, 160.060–5, 160.064–5, 160.076–5, 160.255–5, 160.264–5, and 160.276–5.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. This proposed rule would be categorically excluded under paragraph L52 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. Paragraph L52 pertains to regulations concerning vessel operation safety standards.

This proposed rule involves approval requirements and follow-up program requirements for lifejackets. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 181

Incorporation by reference, Labeling, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 25

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 28

Alaska, Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 108

Fire prevention, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

46 CFR Part 117

Marine safety, Passenger vessels.

46 CFR Part 133

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 141

Incorporation by reference, Marine safety, Occupational health and safety, Reporting and recordkeeping requirements, Towing vessels.

46 CFR Part 160

Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 180

Marine safety, passenger vessels.

46 CFR Part 199

Cargo vessels, Marine safety, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 181 and 46 CFR parts 25, 28, 108, 117, 133, 141, 160, 169, 180, and 199 as follows:

Title 33—Navigation and Navigable Waters

PART 181—MANUFACTURER REQUIREMENTS

- 1. The authority citation for part 181 is revised to read as follows:

Authority: 46 U.S.C. 4302; DHS Delegation 00170.1, Revision No. 01.2, paragraph (II)(92)(a).

- 2. Revise the title of Subpart G to read as follows:

Subpart G—Instruction Pamphlet or Placard for Personal Flotation Devices

§ 181.4 [Removed and Reserved]

- 3. Remove and reserve § 181.4.

§ 181.701 [Amended]

- 4. Amend § 181.701 by adding the words “Coast Guard approved” after the word “all”.
- 5. Revise § 181.702 to read as follows:

§ 181.702 Information pamphlet or placard: requirement to furnish.

(a) Each manufacturer of a Coast Guard approved personal flotation device (PFD) must furnish with each PFD that is sold or offered for sale for use on a recreational boat, an information pamphlet or placard accepted by the Commandant (CG-ENG-4) or meeting the requirements in the applicable subpart of 46 CFR part 160.

(b) No person may sell or offer for sale for use on a recreational boat, a Coast Guard approved PFD unless an information pamphlet or placard required by this section is attached in such a way that it can be read prior to purchase.

§ 181.703 [Removed]

■ 6. Remove § 181.703.

§ 181.704 [Removed]

■ 7. Remove § 181.704.

§ 181.705 [Removed]

■ 8. Remove § 181.705.

Title 46—Shipping**PART 25—REQUIREMENTS**

■ 9. The authority citation for part 25 is revised to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 2103, 3306, 4102, 4302; DHS Delegation 00170.1, Revision No. 01.2, paragraphs (II)(77), (92)(a), 92(b).

■ 10. Amend § 25.25–5 by:

■ a. Removing in paragraph (b)(2), the text “or 160.176” and adding, in its place, the text “160.176, or 160.255”; and

■ b. Revising the introductory text to paragraph (c)(2).

The addition and revision read as follows:

§ 25.25–5 Life preservers and other lifesaving equipment required.

* * * * *

(c) * * *

(2) On each vessel, regardless of length and regardless of whether carrying passengers for hire, a commercial hybrid PFD approved under former approval series 160.077 prior to [EFFECTIVE DATE OF FINAL RULE], may be substituted for a PFD approved under approval series 160.055, 160.155, 160.176, or 160.255 if it is in good and serviceable condition and—

* * * * *

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

■ 11. The authority citation for part 28 is revised to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 8103, 10603; DHS Delegation 00170.1, Revision No. 01.2, paragraph (II)(92)(a).

■ 12. Revise § 28.110(a) to read as follows:

§ 28.110 Life preservers or other personal flotation devices.

(a) Except as provided by § 28.305 of this chapter, each vessel must be equipped with at least one immersion suit, exposure suit, or wearable personal flotation device of the proper size for each individual on board as specified in Table 1 to § 28.110(a) and part 25, subpart 25.25 of this chapter. Notwithstanding the provisions of paragraphs (c) and (d) of § 25.25–1 of this chapter, each commercial fishing industry vessel propelled by sail, and each manned barge employed in commercial fishing activities, must meet the requirements of this paragraph.

TABLE 1 TO § 28.110—PERSONAL FLOTATION DEVICES AND IMMERSION SUITS

Applicable waters	Vessel type	Devices required	Other regulations
Seaward of the Boundary Line and North of 32 °N or South of 32 °S; and Lake Superior.	Documented Vessel	Immersion suit or exposure suit ...	28.135; 25.25–9(a); 25.25–13; 25.25–15.
Coastal Waters on the West Coast of the United States north of Point Reyes, CA; Beyond Coastal Waters, cold water; and Lake Superior.	All vessels	Immersion suit or exposure suit ...	28.135; 25.25–9(a); 25.25–13; 25.25–15.
All other waters (Includes all Great Lakes except Lake Superior).	40 feet (12.2 meters) or more in length.	Wearable PFD approved under approval series 160.055, 160.155, or 160.176, or 160.255 immersion suit, or exposure suit ¹ .	28.135; 25.25–5(e); 25.25–5(f); 25.25–9(a); 25.25–13; 25.25–15.
	Less than 40 feet (12.2 meters) in length.	Wearable PFD approved under subchapter Q of this chapter immersion suit, or exposure suit ¹ .	28.135; 25.25–5(e); 25.25–5(f); 25.25–9(a); 25.25–13; 25.25–15.

¹A commercial hybrid approved under former approval series 160.077 prior to [EFFECTIVE DATE OF FINAL RULE] may be substituted for a PFD approved under approval series 160.055, 160.155, 160.176, or 160.255 if it is in good and serviceable condition, used in accordance with the conditions marked on the PFD and in the owner's manual, and labeled for use on commercial vessels.

PART 108—DESIGN AND EQUIPMENT

■ 13. The authority citation for part 108 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3102, 3306; DHS Delegation 00170.1, Revision No. 01–2, paragraph (II)(92)(a).

§ 108.580 [Amended]

■ 14. Amend § 108.580(b) introductory text by removing the text “, 160.176 or

160.177” and replace it with the text “or 160.176”.

PART 117—LIFESAVING EQUIPMENT AND ARRANGEMENTS

■ 15. The authority citation of part 117 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp.,

p.277; DHS Delegation 00170.1, Revision No. 01.2, paragraph (II)(92)(a).

■ 16. Amend § 117.71 by:

■ a. Revising the section heading and paragraph (c);

■ b. Removing paragraph (d); and

■ c. Redesignating paragraph (e) as paragraph (d).

The revisions read as follows:

§ 117.71 Lifejackets.

* * * * *

(c) Each lifejacket must be approved under approval series §§ 160.002, 160.005, 160.055, 160.155, 160.176, or 160.255 in subchapter Q of this chapter, or other standard specified by the Commandant. An inflatable lifejacket approved under approval series 160.255 must include a full back-up inflation chamber.

* * * * *

■ 17. Amend § 117.72 by revising the section heading and paragraphs (b) and (d) to read as follows:

§ 117.72 Personal flotation devices carried in addition to lifejackets.

* * * * *

(b) Wearable PFDs approved in accordance with §§ 160.064, 160.076, 160.264, or 160.276 in subchapter Q of this chapter, or other standard specified by the Commandant, may be carried as additional equipment.

* * * * *

(d) A commercial hybrid PFD approved under former approval series 160.077 prior to [EFFECTIVE DATE OF FINAL RULE] may be carried as additional equipment for use by persons working near or over the water if it is in good and serviceable condition, used in accordance with the conditions marked on the PFD and in the owner's manual, of the same or similar design, and has the same method of operation as each other hybrid PFD carried on board.

PART 133—LIFESAVING SYSTEMS

■ 18. The authority citation for part 133 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3307; DHS Delegation 00170.1, Revision No. 01.2, paragraph (II)(92)(a).

§ 133.70 [Amended]

■ 19. Amend § 133.70(b) introductory text by removing the text “160.177” and adding, in its place, the text “160.255”.

PART 141—LIFESAVING

■ 20. The authority citation for part 141 is revised to read as follows:

Authority: 46 U.S.C. 3103, 3301, 3306, 3308, 3316, 8104, 8904; 33 CFR 1.05; DHS Delegation 00170.1, Revision No. 01.2, paragraph (II)(92)(a).

§ 141.340 [Amended]

■ 21. Amend § 141.340 by:

- a. Removing in paragraph (a), the text “or 160.176,” and adding, in its place, the text “160.176, or 160.255”; and
- b. Adding new paragraph (i).

The additions read as follows:

§ 141.340 Lifejackets.

* * * * *

(i) Wearable PFDs approved in accordance with §§ 160.064, 160.076, 160.264, or 160.276 in subchapter Q of this chapter, or other standard specified by the Commandant, may be carried as additional equipment. Additional equipment is not acceptable in lieu of any portion of the required lifejackets.

PART 160—LIFESAVING EQUIPMENT

■ 22. The authority citation for part 160 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703 and 4302; E.O. 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; and DHS Delegation 00170.1, Revision No. 01.2, paragraph (II)(92)(a).

Subpart 160.001 [Removed and Reserved]

■ 23. Remove and reserve subpart 160.001, consisting of §§ 160.001–1 through 160.001–5.

Subpart 160.002 [Removed and Reserved]

■ 24. Remove and reserve subpart 160.002, consisting of §§ 160.002–1 through 160.002–7.

Subpart 160.005 [Removed and Reserved]

■ 25. Remove and reserve subpart 160.005, consisting of §§ 160.005–1 through 160.005–7.

Subpart 160.006 [Removed and Reserved]

- 26. Remove and reserve subpart 160.006, consisting of § 160.006–2.
- 27. Add subpart 160.045, consisting of §§ 160.045–1 through 160.045–25, to read as follows:

Subpart 160.045 Recreational Throwable PFDs**§ 160.045–1 Scope.**

(a) This subpart contains structural and performance standards for approval of throwable PFDs for use on recreational vessels, as well as requirements for production follow-up inspections, associated manuals, information pamphlets or placards, and markings.

(b) Throwable PFDs approved under this subpart may rely entirely on inherently buoyant material, or rely entirely or partially upon inflation to achieve the minimum buoyancy.

(c) Throwable PFDs approved under this subpart are intended to meet the carriage requirements for uninspected commercial vessels under 40 ft (12 m) not carrying passengers for hire and

recreational boats, in accordance with 33 CFR part 175.

§ 160.045–3 Definitions.

The following definitions apply to this subpart:

Commandant means the Chief of the Lifesaving and Fire Safety Standards Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509; email TypeApproval@uscg.mil.

First quality workmanship means construction that is free from any defect materially affecting appearance or serviceability.

Recognized laboratory means an independent laboratory accepted by the Commandant in accordance with 46 CFR subpart 159.010, with a valid memorandum of understanding in accordance with 46 CFR 159.010–7.

§ 160.045–5 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations.html or email: fr.inspection@nara.gov. The material may be obtained from UL, 333 Pfingsten Road, Northbrook, IL 60062–2002; phone 847–272–8800; website: www.ul.com.

(a) ANSI/CAN/UL 9595:2021, Standard for Factory Follow-Up on Personal Flotation Devices (PFDs), First Edition, June 4, 2020 (including revisions through September 9, 2021) (“ANSI/CAN/UL 9595”); IBR approved for § 160.045–15(e).

(b) ANSI/UL 1123, Standard for Marine Buoyant Devices, Seventh Edition, October 1, 2008 (including revisions through November 23, 2020) (“ANSI/UL 1123”); IBR approved for §§ 160.045–7(e); 160.045–13(d).

(c) ANSI/UL 1175, Standard for Buoyant Cushions, Fourth Edition, April 20, 2007 (including revisions through January 10, 2020) (“ANSI/UL 1175”); IBR approved for §§ 160.045–7(e); 160.045–13(d).

§ 160.045–7 Design, construction, and performance of throwable PFDs.

(a) *General.* Every throwable PFD must conform to the requirements as accepted by the Commandant for listing and labeling by a recognized laboratory, and must be of such design, materials, and construction as to meet the requirements specified in this section.

(b) *Designs and constructions.*

Throwable PFDs must not provide means for adjustment or close fitting to the body. Methods of construction must provide strengths, with reinforcements where necessary, to be adequate for the intended use and purpose of the device.

(c) *Materials.* All materials used in any device covered by this subpart must meet the applicable requirements of subpart 164.019 of this chapter, must be all new materials, must be suitable for the purpose intended, and must be at least equivalent to corresponding materials specified for standard buoyant cushions. Hardware or fastenings must be of sufficient strength for the purpose of the device and must be of inherently corrosion-resistant material, such as stainless steel, brass, bronze, certain plastics, etc. Decorative platings of any thickness are permissible. Fabrics, coated fabrics, tapes, and webbing must be either mildew-resistant or treated for mildew resistance. Buoyancy provided by inherently buoyant material must not be dependent upon loose, granulated material.

(d) *Standard construction.* A standard foam cushion that is designed to be thrown must be 2 inches or more in thickness and must have 225 or more square inches of top surface area.

(e) *Nonstandard construction.* A nonstandard throwable PFD must meet the requirements in ANSI/UL 1123 or ANSI/UL 1175 (both incorporated by reference, see § 160.045–5) and any additional requirements that the Commandant may prescribe to approve unique or novel designs.

(f) *Buoyancy.* (1) Ring life buoys must have 16½ pounds or more of buoyancy.

(2) Foam cushions must have 18 pounds or more of buoyancy.

(3) A device other than those standard devices specified in paragraph (f)(1) or (2) of this section must have 20 pounds or more of buoyancy.

(g) *Workmanship.* Throwable PFDs must be of first quality workmanship and must be free from any defects materially affecting their appearance or serviceability.

§ 160.045–9 Approval procedures for throwable PFDs.

(a) Each application for approval of a throwable PFD must be submitted

directly to a Coast Guard recognized laboratory.

(b) The recognized laboratory must determine if a throwable PFD with novel design features requires a preliminary review by the Coast Guard prior to testing. Submissions requiring preliminary review must be sent to TypeApproval@uscg.mil, and must include a full description and drawings. Pictures, samples, and preliminary test results may also be submitted.

§ 160.045–11 Recognized laboratory.

(a) The approval inspections and tests required by § 160.045–13, and production inspections, tests, and quality control required by § 160.045–15, must be conducted by an independent laboratory recognized by the Coast Guard under 46 CFR subpart 159.010 to perform such functions. A list of recognized independent laboratories is available from the Commandant and online at <https://cgmix.uscg.mil>.

(b) The same laboratory that performs the approval tests must also perform production oversight unless the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing, as determined by the Commandant.

§ 160.045–13 Approval inspections and tests.

(a) Each throwable PFD must be certified by a recognized laboratory as meeting the requirements of this subpart. Approval tests must be conducted or supervised by a recognized laboratory using PFDs constructed in accordance with the plans and specifications submitted with the application for approval.

(b) Each throwable PFD design must be visually examined for compliance with the construction and performance requirements of this subpart.

(c) Standard PFDs must be submerged in fresh water for 24 or more continuous hours. The measured buoyancy after the 24 hours of submersion must be the buoyancy specified in § 160.045–7(f).

(d) Non-standard throwable PFDs must be subjected to approval tests specified in ANSI/UL 1123 or ANSI/UL 1175 (both incorporated by reference, see § 160.045–5) or another test program accepted by the Commandant. Approval tests must be conducted or supervised by a recognized laboratory using throwable PFDs constructed in accordance with the plans and specifications submitted with the application for approval.

(e) The Commandant may prescribe additional tests for approval of novel or unique designs.

§ 160.045–15 Production inspections, tests, and quality control of throwable PFDs.

(a) *Manufacturer's inspection and tests.* Manufacturers of approved throwable PFDs must maintain quality control of the materials used, manufacturing methods and the finished product to meet the applicable requirements, and make sufficient inspections and tests of representative samples and components produced to maintain the quality of the finished product. Records of tests conducted by the manufacturer and records of materials, including affidavits by suppliers that applicable requirements are met, must be made available to the recognized laboratory inspector or to the Coast Guard marine inspector, or both, for review upon request.

(b) *Laboratory inspections and tests.* The laboratory inspector will conduct examinations, inspections, and tests for listed and labeled devices, as required by the recognized laboratory, at the place of manufacture or other location at the option of the laboratory.

(c) *Test facilities.* The laboratory inspector, or the Coast Guard marine inspector assigned by the Commander of the District in which the factory is located, or both, must be admitted to any place in the factory where work is being done on listed and labeled products. Either or both inspectors may take samples of parts or materials entering construction or final assemblies, for further examinations, inspections, or tests. The manufacturer must provide a suitable place and the apparatus necessary for the performance of the tests done at the place of manufacture.

(d) *Additional tests, etc.*

Unannounced examinations, tests, and inspections of samples obtained either directly from the manufacturer or through commercial channels may be made to determine the suitability of a product for listing and labeling, or to determine conformance of a labeled product to the applicable requirements. These may be conducted by the recognized laboratory or by the United States Coast Guard.

(e) *Follow-up program.* A follow-up program in accordance with ANSI/CAN/UL 9595 (incorporated by reference, see § 160.045–5) meets the requirements of this section.

§ 160.045–17 Marking and Labeling.

(a) Each throwable PFD must be marked in accordance with the

recognized laboratory's listing and labeling requirements in accordance with § 160.045–3(a). At a minimum, all labels must include—

- (1) Size information, as appropriate;
- (2) The Coast Guard approval number;
- (3) Manufacturer's contact information;
- (4) Model name/number;
- (5) Lot number, manufacturer date; and

(6) Any limitations or restrictions on approval or special instructions for use.

(b) Marking must be of a type that will be durable and legible for the expected life of the device.

(c) The Commandant may prescribe additional marking requirements for special purpose devices or unique or novel designs.

§ 160.045–21 PFD manuals.

(a) An owner's manual must be provided with each fully or partially inflatable throwable PFD sold or offered for sale. The text of each manual is reviewed with the application for approval.

(b) The Commandant may prescribe additional information in the manual for special purpose devices or unique or novel designs.

(c) Additional information, instructions, or illustrations may be included in the owner's manual if there is no contradiction to the required information.

§ 160.045–23 Procedure for approval of design or material change.

(a) The manufacturer must submit any proposed changes in design, material, or construction to the recognized laboratory for approval before changing throwable PFD production methods.

(b) Determinations of equivalence of design, construction, and materials may be made only by the Commandant or a designated representative.

§ 160.045–25 Suspension or termination of approval.

As provided in 46 CFR 159.005–15, the Commandant may suspend or terminate the approval of a throwable PFD if the manufacturer fails to comply with this subpart or the recognized laboratory's accepted procedures or requirements.

Subpart 160.047 [Removed and Reserved]

- 28. Remove and reserve subpart 160.047, consisting of §§ 160.047–1 through 160.047–7.

Subpart 160.048 [Removed and Reserved]

- 29. Remove and reserve subpart 160.048, consisting of §§ 160.048–1 through 160.048–8.

Subpart 160.052 [Removed and Reserved]

- 30. Remove and reserve subpart 160.052, consisting of §§ 160.052–1 through 160.052–9.

Subpart 160.055—Life Preservers, Unicellular Plastic Foam, Adult and Child, for Merchant Vessels

- 31. Revise § 160.055–1 to read as follows:

§ 160.055–1 Scope.

(a) This subpart contains requirements for production follow-up inspections for life preservers approved under this subpart prior to [EFFECTIVE DATE OF FINAL RULE].

(b) Life preservers approved under this subpart rely upon inherently buoyant material to achieve the minimum buoyancy.

(c) Life preservers approved under this subpart are intended to meet the carriage requirements for wearable PFDs for uninspected passenger vessels, uninspected commercial vessels over 40 ft (12m), and for inspected vessels.

(d) Each life preserver specified in this subpart is a:

- (1) Standard, bib type, vinyl dip coated:
 - (i) Model 62, adult (for persons weighing over 90 pounds); or
 - (ii) Model 66, child (for persons weighing less than 90 pounds); or
- (2) Standard, bib type, cloth covered:
 - (i) Model 63, adult (for persons weighing over 90 pounds); or
 - (ii) Model 67, child (for persons weighing less than 90 pounds); or
- (3) Nonstandard, shaped type:
 - (i) Model,¹ adult (for persons weighing over 90 pounds); or
 - (ii) Model,¹ child (for persons weighing less than 90 pounds).

¹ A model designation for each nonstandard life preserver is to be assigned by the manufacturer. That designation must be different from any standard lifesaving device designation.

§ 160.055–2 [Removed and Reserved]

- 32. Remove and reserve § 160.055–2.
- 33. Revise § 160.055–3 to read as follows:

§ 160.055–3 Definitions.

The following definitions apply to this subpart:

Commandant means the Chief of the Lifesaving and Fire Safety Standards

Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509; email TypeApproval@uscg.mil.

First quality workmanship means construction that is free from any defect materially affecting appearance or serviceability.

Inspector means a recognized laboratory representative assigned to perform, supervise, or oversee the duties described in § 160.255–15 or any Coast Guard representative performing duties related to the approval.

Recognized laboratory means an independent laboratory accepted by the Commandant in accordance with 46 CFR 159.010, with a valid memorandum of understanding in accordance with 46 CFR 159.010–7.

§ 160.055–4 [Removed and Reserved]

- 34. Remove and reserve § 160.055–4.
- 35. Revise § 160.055–5 to read as follows:

§ 160.055–5 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations.html or email: fr.inspection@nara.gov. The material may be obtained from UL, 333 Pfingsten Road, Northbrook, IL 60062–2002 phone (847) 272–8800; website: www.ul.com.

(a) ANSI/CAN/UL 9595:2021, Standard for Factory Follow-Up on Personal Flotation Devices (PFDs), First Edition, June 4, 2020 (including revisions through September 9, 2021) (“ANSI/CAN/UL 9595”); IBR approved for § 160.055–15(a).

(b) [Reserved]

§ 160.055–6 [Removed and Reserved]

- 36. Remove and reserve § 160.055–6.

§ 160.055–7 [Removed and Reserved]

- 37. Remove and reserve § 160.055–7.

§ 160.055–8 [Removed and Reserved]

- 38. Remove and reserve § 160.055–8.

§ 160.055–9 [Removed and Reserved]

- 39. Remove and reserve § 160.055–9.

■ 40. Add § 160.055–11 to read as follows:

§ 160.055–11 Independent laboratory.

The production inspections, tests, and quality control required by this subpart must be conducted by an independent laboratory accepted by the Coast Guard under 46 CFR subpart 159.010 to perform such functions. A list of accepted independent laboratories is available from the Commandant and online at <https://cgmix.uscg.mil>.

■ 41. Add § 160.055–15 to read as follows:

§ 160.055–15 Production inspections, tests, and quality control of life preservers.

(a) *General.* Production tests and inspections must be conducted in accordance with this section, subpart 159.007 of this chapter, and the independent laboratory's procedures for production inspections and tests as accepted by the Commandant. The Commandant may prescribe additional production tests and inspections necessary to maintain quality control and to monitor compliance with the requirements of this subchapter. A follow-up program in accordance with ANSI/CAN/UL 9595 (incorporated by reference, see § 160.055–5), meets the requirements of this subpart.

(b) *Oversight.* In addition to responsibilities set out in part 159 of this chapter and the accepted laboratory procedures for production inspections and tests, each manufacturer of a life preserver and each laboratory inspector must comply with the following, as applicable:

(1) *Manufacturer.* Each manufacturer must—

(i) perform all tests and examinations necessary to show compliance with this subpart on each lot before any inspector's tests and inspection of the lot;

(ii) follow established procedures for maintaining quality control of the materials used, manufacturing operations, and the finished product; and

(iii) allow an inspector to take samples of completed units or of component materials for tests required by this subpart and for tests relating to the safety of the design.

(2) *Laboratory.* An inspector from the accepted laboratory must oversee production in accordance with the laboratory's procedures for production inspections and tests accepted by the Commandant. During production oversight, the inspector must not perform or supervise any production test or inspection unless—

(i) the manufacturer has a valid approval certificate; and

(ii) the inspector has first observed the manufacturer's production methods and any revisions to those methods.

(3) At least quarterly, the inspector must check the manufacturer's compliance with the company's quality control procedures, examine the manufacturer's required records, and observe the manufacturer perform each of the required production tests.

(c) *Test facilities.* The manufacturer must provide a suitable place and apparatus for conducting the tests and inspections necessary to determine compliance of life preservers with this subpart. The manufacturer must provide means to secure any test that is not continuously observed, such as the 48-hour buoyancy test. The manufacturer must have the calibration of all test equipment checked in accordance with the test equipment manufacturer's recommendation and interval but not less than at least once every year.

(d) *Lots.* A lot must not consist of more than 1000 life preservers. A lot number must be assigned to each group of life preservers produced. Lots must be numbered serially. A new lot must be started whenever any change in materials or a revision to a production method is made, and whenever any substantial discontinuity in the production process occurs. The lot number assigned, along with the approval number, must enable the PFD manufacturer to determine the supplier's identifying information for the component lot.

(e) *Samples.* (1) From each lot of life preservers, manufacturers must randomly select a number of samples from completed units at least equal to the applicable number required by table 1 to § 160.055–15(e)(1) for buoyancy testing. Additional samples must be selected for any tests, examinations, and inspections required by the laboratory's production inspections and tests procedures.

TABLE 1 TO § 160.055–15(e)(1)—
SAMPLING FOR BUOYANCY TESTS

Lot size	Number of life preservers in sample
100 and under	1
101 to 200	2
201 to 300	3
301 to 500	4
501 to 750	6
751 to 1,000	8

(2) For a lot succeeding one from which any sample life preserver failed the buoyancy test, the sample must consist of not less than ten specimen life

preservers to be tested for buoyancy in accordance with paragraph (f) of this section.

(f) *Buoyancy test.* The buoyancy of the life preservers must be determined by measuring the upward force exerted by the individual submerged unit. The buoyancy measurement must be made at the end of the 48 hours of submersion, during which period the pad inserts must not be disturbed.

(g) *Buoyancy required.* The buoyant pad inserts from Model 3 adult life preservers must provide not less than 25 pounds buoyancy in fresh water, and the pads from Model 5 child life preservers must provide not less than 16.5 pounds buoyancy.

(h) *Lot inspection.* On each lot, the laboratory inspector must perform a final lot inspection to be satisfied that the life preservers meet this subpart. Each lot must demonstrate—

(1) first quality workmanship;
(2) that the general arrangement and attachment of all components, such as body straps, closures, tie tapes, and drawstrings, are as specified in the approved plans and specifications;
(3) compliance with the marking requirements; and

(4) the information pamphlet or placard specified in 33 CFR part 181 subpart G, if required, is securely attached to the device, with the PFD selection information visible and accessible prior to purchase.

(i) *Lot acceptance.* When the independent laboratory has determined that the life preservers in the lot are of a type officially approved in the name of the company, and that such life preservers meet the requirements of this subpart, they must be plainly marked in waterproof ink with the independent laboratory's name or identifying mark.

(j) *Lot rejection.* Each nonconforming unit must be rejected. If three or more nonconforming units are rejected for the same kind of defect, lot inspection must be discontinued and the lot rejected.

The inspector must discontinue lot inspection and reject the lot if examination of individual units or the records for the lot shows noncompliance with either this subchapter or the laboratory's or the manufacturer's quality control procedures. A rejected unit or lot may be resubmitted for testing and inspection if the manufacturer first removes and destroys each defective unit or, if authorized by the laboratory, reworks the unit or lot to correct the defect. A rejected lot or rejected unit must not be sold or offered for sale under the representation that it meets this subpart or that it is Coast Guard approved.

■ 42. Add § 160.055–19 to read as follows:

§ 160.055–19 Pamphlet or placard.

Each life preserver sold or offered for sale for use on recreational boats must be provided with a pamphlet or placard that a prospective purchaser can read prior to purchase, as specified in 33 CFR part 181 subpart G.

■ 43. Add § 160.055–23 to read as follows:

§ 160.055–23 Procedure for approval of design or material change.

(a) The manufacturer must submit any proposed changes in design, material, or construction to ypeapproval@uscg.mil for approval before changing life preserver production methods.

(b) Only the Commandant or a designated representative may make determinations of equivalence of design, construction, and materials.

■ 44. Add § 160.055–25 to read as follows:

§ 160.055–25 Suspension or termination of approval.

As provided in 46 CFR 159.005–15, the Commandant may suspend or terminate the approval if the manufacturer fails to comply with this subpart or the recognized laboratory's accepted procedures or requirements.

Subpart 160.060—Specification for a Buoyant Vest, Unicellular Polyethylene Foam, Adult and Child

■ 45. Revise § 160.060–1 to read as follows:

§ 160.060–1 Scope.

(a) This subpart contains requirements for production follow-up inspections for buoyant vests approved under this subpart prior to [EFFECTIVE DATE OF FINAL RULE].

(b) Buoyant vests approved under this subpart rely upon inherently buoyant material to achieve the minimum buoyancy.

(c) Buoyant vests approved under this subpart are intended to meet the carriage requirements for wearable PFDs for uninspected passenger vessels, uninspected commercial vessels over 40 ft (12m), and for inspected vessels.

(d) Each buoyant vest specified in this subpart is a standard model:

(1) Standard:

(i) Model AY, adult (for persons weighing over 90 pounds); or

(ii) Model CYM, child, medium (for children weighing from 50 to 90 pounds); or

(iii) Model CYS, child, small (for children weighing less than 50 pounds).

(2) Nonstandard:

(i) Model,¹ adult (for persons weighing over 90 pounds); or

(ii) Model,¹ child, medium (for persons weighing from 50 to 90 pounds); or

(iii) Model,¹ child, small (for persons weighing less than 50 pounds).

¹A model designation for a nonstandard vest is to be assigned by the individual manufactured and must be different from any standard vest.

§ 160.060–2 [Removed and Reserved]

■ 46. Remove and reserve § 160.060–2.

■ 47. Revise § 160.060–3 to read as follows:

§ 160.060–3 Definitions.

The following definitions apply to this subpart:

Commandant means the Chief of the Lifesaving and Fire Safety Standards Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509; email TypeApproval@uscg.mil.

First quality workmanship means construction that is free from any defect materially affecting appearance or serviceability.

Inspector means a recognized laboratory representative assigned to perform, supervise, or oversee the duties described in § 160.255–15 or any Coast Guard representative performing duties related to the approval.

Recognized laboratory means an independent laboratory accepted by the Commandant in accordance with 46 CFR subpart 159.010, with a valid memorandum of understanding in accordance with 46 CFR 159.010–7.

§ 160.060–3a [Removed and Reserved]

■ 48. Remove and reserve § 160.060–3a.

§ 160.060–4 [Removed and Reserved]

■ 49. Remove and reserve § 160.060–4.

■ 50. Revise § 160.060–5 to read as follows:

§ 160.060–5 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/

cfr/ibr-locations.html or email:

fr.inspection@nara.gov. The material may be obtained from UL, 333 Pfingsten Road, Northbrook, IL 60062–2002; phone (847) 272–8800; website: www.ul.com.

(a) ANSI/CAN/UL 9595:2021, Standard for Factory Follow-Up on Personal Flotation Devices (PFDs), First Edition, June 4, 2020 (including revisions through September 9, 2021) (“ANSI/CAN/UL 9595”); IBR approved for § 160.060–15(h).

(b) [Reserved]

§ 160.060–6 [Removed and Reserved]

■ 51. Remove and reserve § 160.060–6.

§ 160.060–7 [Removed and Reserved]

■ 52. Remove and reserve § 160.060–7.

§ 160.060–8 [Removed and Reserved]

■ 53. Remove and reserve § 160.060–8.

§ 160.060–9 [Removed and Reserved]

■ 54. Remove and reserve § 160.060–9.

■ 55. Add § 160.060–11 to read as follows:

§ 160.060–11 Independent laboratory.

(a) The production inspections, tests, and quality control required by this subpart must be conducted by an independent laboratory recognized by the Coast Guard under 46 CFR 159.010 to perform such functions. A list of recognized independent laboratories is available from the Commandant and online at <https://cgmix.uscg.mil>.

(b) The same laboratory that performs the approval tests must also perform production oversight unless the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing, as determined by the Commandant.

■ 56. Add § 160.060–15 to read as follows:

§ 160.060–15 Production inspections, tests, and quality control.

(a) *General*. Manufacturers of listed and labeled buoyant vests must—

(1) Maintain quality control of the materials used, the manufacturing methods, and the finished product to meet the applicable requirements of this subpart by conducting sufficient inspections and tests of representative samples and components produced;

(2) Make available to the recognized laboratory inspector or the Coast Guard inspector, upon request, records of tests conducted by the manufacturer and records of materials used during production of the device, including affidavits by suppliers; and

(3) Permit any examination, inspection, or test required by the

recognized laboratory or the Coast Guard for a produced listed and labeled device, either at the place of manufacture or some other location.

(b) *Lot size and sampling.*

(1) A lot must consist of 500 buoyant vests or fewer;

(2) A new lot begins after any change or modification in materials used or manufacturing methods employed;

(3) The manufacturer of the buoyant vests must notify the recognized laboratory when a lot is ready for inspection;

(4) The manufacturer must select samples in accordance with the requirements in Table 1 to § 160.060–15(b)(4) from each lot of buoyant vests to be tested for buoyancy in accordance with paragraph (e) of this section; and

TABLE 1 TO § 160.060–15(b)(4)—
SAMPLE FOR BUOYANCY TESTS

Lot size	Number of vests in sample
100 and under	1
101 to 200	2
201 to 300	3
301 to 500	4

(5) If a sample vest fails the buoyancy test, the sample from the next succeeding lot must consist of 10 specimen vests or more to be tested for buoyancy in accordance with paragraph (e) of this section.

(c) *Additional compliance tests.* An inspector may conduct an examination, test, and inspection of a buoyant device obtained from the manufacturer or through commercial channels to determine the suitability of the device for listing and labeling, or to determine its conformance to applicable requirements.

(d) *Test facilities.* The manufacturer must admit the inspector to any part of the premises at the place of manufacture of a listed and labeled device to—

(1) Examine, inspect, or test a sample of a part or a material that is included in the construction of the device; and

(2) Conduct any examination, inspection, or test in a suitable place and with appropriate apparatus provided by the manufacturer.

(e) *Buoyancy.*

(1) *Buoyancy test method.* Remove the buoyant inserts from the vests. Securely attach the spring scale in a position directly over the test tank. Suspend the weighted wire basket from the scale in such a manner that the basket can be weighed while it is completely under water. In order to measure the actual buoyancy provided by the inserts, the underwater weight of the empty basket

must exceed the buoyancy of the inserts. To obtain the buoyancy of the inserts, proceed as follows:

(i) Weigh the empty wire basket under water.

(ii) Place the inserts inside the basket and submerge it so that the top of the basket is at least 2 inches below the surface of the water. Allow the inserts to remain submerged for 24 hours. The tank must be locked or sealed during this 24-hour submergence period. It is important that after the inserts have once been submerged they remain submerged for the duration of the test, and at no time during the course of the test removed from the tank or otherwise exposed to air.

(iii) After the 24-hour submergence period, unlock or unseal the tank and weigh the wire basket with the inserts inside while both are still under water.

(iv) The buoyancy is computed as paragraph (e)(1)(i) of this section minus paragraph (e)(1)(iii) of this section.

(2) *Buoyancy required.* The buoyant inserts from adult size buoyant vests must provide not less than 151 2044;2 pounds of buoyancy in fresh water; the inserts from the child medium size buoyant vests must provide not less than 11 pounds buoyancy; and the inserts from the child small size buoyant vests must provide not less than 7 pounds buoyancy.

(f) *Body strap test.* The complete body strap assembly, including hardware must be tested for strength by attaching the D-ring to a suitable support such that the assembly hangs vertically its full length. A weight of 150 pounds for an adult size and 115 pounds for a child size must be attached to the other end on the snap hook for 10 minutes. The specified weight must not break or excessively distort the body strap assembly.

(g) *Additional approval tests for nonstandard vests.* Tests in addition to those required by this section may be conducted by the inspector for a nonstandard vest to determine performance equivalence to a standard vest. Such additional tests may include determining performance in water, suitability of materials, donning time, ease of adjustment, and similar equivalency tests. Costs for any additional tests must be assumed by the manufacturer.

(h) *Follow-up program.* A follow-up program in accordance with ANSI/CAN/UL 9595 (incorporated by reference, see § 160.060–5) meets the requirements of this section.

■ 57. Add § 160.060–19 to read as follows:

§ 160.060–19 Pamphlet or placard.

Each buoyant vest sold or offered for sale for use on recreational boats must be provided with a pamphlet or placard that a prospective purchaser can read prior to purchase, as specified in 33 CFR part 181 subpart G.

■ 58. Add § 160.060–23 to read as follows:

§ 160.060–23 Procedure for approval of design or material change.

(a) The manufacturer must submit any proposed changes in design, material, or construction to typeapproval@uscg.mil for approval before changing PFD production methods.

(b) Only the Commandant or a designated representative may make determinations of equivalence of design, construction, and materials.

■ 59. Add § 160.060–25 to read as follows:

§ 160.060–25 Suspension or termination of approval.

As provided in 46 CFR 159.005–15, the Commandant may suspend or terminate the approval if the manufacturer fails to comply with this subpart or the recognized laboratory's accepted procedures or requirements.

Subpart 160.064—Marine Buoyant Devices

■ 60. Revise § 160.064–1 to read as follows:

§ 160.064–1 Scope.

(a) This subpart contains requirements for production follow-up inspections for wearable PFDs and throwable PFDs approved under this subpart prior to [EFFECTIVE DATE OF FINAL RULE].

(b) PFDs approved under this subpart are intended to meet the carriage requirements for PFDs for uninspected commercial vessels under 40 ft (12m) not carrying passengers for hire and recreational boats, in accordance with 33 CFR 175 and 46 CFR 25.25.

(c) PFDs covered by this subpart are of two general types: those intended to be worn on the body and those intended to be thrown.

§ 160.064–2 [Removed and Reserved]

■ 61. Remove and reserve § 160.064–2.

■ 62. Revise § 160.064–3 to read as follows:

§ 160.064–3 Definitions.

The following definitions apply to this subpart:

Commandant means the Chief of the Lifesaving and Fire Safety Standards Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety

Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593-7509; email TypeApproval@uscg.mil.

First class workmanship means construction that is free from any defect materially affecting appearance or serviceability.

Inspector means a recognized laboratory representative assigned to perform, supervise, or oversee the duties described in § 160.264-15 or any Coast Guard representative performing duties related to the approval.

Recognized laboratory means an independent laboratory accepted by the Commandant in accordance with 46 CFR subpart 159.010, with a valid memorandum of understanding in accordance with 46 CFR 159.010-7.

§ 160.064-4 [Removed and Reserved]

- 63. Remove and reserve § 160.064-4.
- 64. Add § 160.064-5 to read as follows:

§ 160.064-5 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact Commandant (CG-ENG-4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593-7509. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations.html or email: fr.inspection@nara.gov. The material may be obtained from UL, 333 Pfingsten Road, Northbrook, IL 60062-2002; phone (847) 272-8800; website: www.ul.com.

(a) ANSI/CAN/UL 9595:2021, Standard for Factory Follow-Up on Personal Flotation Devices (PFDs), First Edition, June 4, 2020 (including revisions through September 9, 2021) ("ANSI/CAN/UL 9595"); IBR approved for § 160.064-15(e).

(b) [Reserved]

§ 160.064-6 [Removed and Reserved]

- 65. Remove and reserve § 160.064-6.

§ 160.064-7 [Removed and Reserved]

- 66. Remove and reserve § 160.064-7.
- 67. Add § 160.064-11 to read as follows:

§ 160.064-11 Recognized laboratory.

(a) The production inspections, tests, and quality control required by this subpart must be conducted by an

independent laboratory recognized by the Coast Guard under 46 CFR subpart 159.010 to perform such functions. A list of recognized independent laboratories is available from the Commandant and online at <https://cgmix.uscg.mil>.

(b) The same laboratory that performs the approval tests must also perform production oversight unless the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing, as determined by the Commandant.

- 68. Add § 160.064-15 to read as follows:

§ 160.064-15 Production inspections, tests, and quality control of PFDs.

(a) *Manufacturer's inspection and tests.* Manufacturers of approved PFDs must maintain quality control of the materials used, manufacturing methods, and the finished product to meet the applicable requirements, and make sufficient inspections and tests of representative samples and components produced to maintain the quality of the finished product. Records of tests conducted by the manufacturer and records of materials, including affidavits by suppliers that applicable requirements are met, must be made available to the recognized laboratory inspector or to the Coast Guard marine inspector, or both, for review upon request.

(b) *Laboratory inspections and tests.* The laboratory inspector will conduct examinations, inspections, and tests for listed and labeled devices, as required by the recognized laboratory, at the place of manufacture or other location at the option of the laboratory.

(c) *Test facilities.* The laboratory inspector, or the Coast Guard marine inspector assigned by the Commander of the District in which the factory is located, or both, must be admitted to any place in the factory where work is being done on listed and labeled products. Either or both inspectors may take samples of parts or materials entering construction or final assemblies, for further examinations, inspections, or tests. The manufacturer must provide a suitable place and the apparatus necessary for the performance of the tests done at the place of manufacture.

(d) *Additional tests, etc.* Unannounced examinations, tests, and inspections of samples obtained either directly from the manufacturer or through commercial channels may be made to determine the suitability of a product for listing and labeling, or to

determine conformance of a labeled product to the applicable requirements. These may be conducted by the recognized laboratory or the United States Coast Guard.

(e) *Follow-up program.* A follow-up program in accordance with ANSI/CAN/UL 9595 (incorporated by reference, see § 160.064-5) meets the requirements of this section.

- 69. Add § 160.064-23 to read as follows:

§ 160.064-23 Procedure for approval of design or material change.

(a) The manufacturer must submit any proposed changes in design, material, or construction to the recognized laboratory for approval before changing PFD production methods.

(b) Determinations of equivalence of design, construction, and materials must be made only by the Commandant or a designated representative.

- 70. Add § 160.064-25 to read as follows:

§ 160.064-25 Suspension or termination of approval.

As provided in 46 CFR 159.005-15, the Commandant may suspend or terminate the approval of a PFD design if the manufacturer fails to comply with this subpart or the recognized laboratory's accepted procedures or requirements.

Subpart 160.076—Inflatable Recreational Personal Flotation Devices

- 71. Revise § 160.076-1 to read as follows:

§ 160.076-1 Scope.

(a) This subpart contains requirements for production follow-up inspections for inflatable recreational personal flotation devices (PFDs) approved prior to [EFFECTIVE DATE OF FINAL RULE].

(b) Inflatable PFDs approved under this subpart rely partially or entirely upon inflation for buoyancy.

- 72. Revise § 160.076-5 to read as follows:

§ 160.076-5 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact Commandant (CG-ENG-4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin

Luther King Jr. Avenue SE, Washington, DC 20593-7509. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations.html or email: fr.inspection@nara.gov. The material may be obtained from UL, 333 Pfingsten Road, Northbrook, IL 60062-2002; phone (847) 272-8800 website: www.ul.com.

(a) ANSI/CAN/UL 9595:2021, Standard for Factory Follow-Up on Personal Flotation Devices (PFDs), First Edition, June 4, 2020 (including revisions through September 9, 2021) (“ANSI/CAN/UL 9595”); IBR approved for § 160.076-29(a).

(b) [Reserved].

§ 160.076-11 [Removed and Reserved]

■ 73. Remove and reserve § 160.076-11.

§ 160.076-13 [Removed and Reserved]

■ 74. Remove and reserve § 160.076-13.

§ 160.076-21 [Removed and Reserved]

■ 75. Remove and reserve § 160.076-21.

§ 160.076-23 [Removed and Reserved]

■ 76. Remove and reserve § 160.076-23.

§ 160.076-25 [Removed and Reserved]

■ 77. Remove and reserve § 160.076-25.

■ 78. Amend § 160.076-29 by:

- a. Revising the first sentence of paragraph (a);
- b. Removing in paragraph (c)(1)(i), the text “Except as provided in paragraph (e)(2) of this section, perform” and adding, in its place, the text “Perform”;
- c. Removing paragraphs (c)(5), (6), (e)(3) through (5), (f), and (g); and
- d. Redesignating paragraph (h) as paragraph (f).

The revisions read as follows:

§ 160.076-29 Production oversight.

(a) Production tests and inspections must be conducted in accordance with ANSI/CAN/UL 9595 (incorporated by reference, see § 160.076-5) or an alternative follow-up procedure accepted by the Commandant. * * *

* * * * *

§ 160.76-31 [Amended]

- 79. Amend § 160.076-31 by:
- a. Removing in paragraph (a), the text “§ 160.076-29(e)” and adding, in its place, the words “the sampling plan accepted by the Commandant”;
- b. Removing in paragraph (b)(1), the text “in paragraphs (c)(2) through (c)(8) of this section” and adding, in its place, the words “specified in the follow-up program accepted by the Commandant”;
- c. Removing in paragraph (b)(2), the text “in paragraphs (c)(4) through (c)(8) of this section” and adding, in its place, the words “specified in the follow-up program accepted by the Commandant”;

- d. Removing paragraph (c);
- e. Redesignating paragraphs (d) and (e) as (c) and (d); and
- f. Removing the second sentence of redesignated paragraph (c)(1).

§ 160.76-33 [Amended]

- 80. Amend § 160.076-33 by removing and reserving paragraph (b)(6).
- 81. Revise § 160.076-35 to read as follows:

§ 160.076-35 Information pamphlet or placard.

A pamphlet or placard accepted by the Commandant must be attached to each inflatable PFD sold or offered for sale in such a way that a prospective purchaser can read the pamphlet prior to purchase. The pamphlet or placard text and layout must be submitted to the Commandant for approval. The text must be printed in each pamphlet or placard exactly as approved by the Commandant. Additional information, instructions, or illustrations must not be included within the approved text and layout. Sample pamphlet text and layout may be obtained by contacting the Commandant. This pamphlet or placard may be combined with the manual required by § 160.076-37 if PFD selection and warning information is provided on the PFD packaging in such a way that it remains visible until purchase.

- 82. Revise § 160.076-37 to read as follows:

§ 160.076-37 Owner’s manual.

(a) *General.* The manufacturer must provide an owner’s manual with each inflatable PFD sold or offered for sale.

(b) *Manual contents.* The manual must contain the information as approved by the Commandant. If the PFD is conditionally approved, an explanation of the meaning of and reasons for the approval conditions must be included.

§ 160.076-39 [Amended]

- 83. In the introductory text to § 160.076-39, removing the text “specified in UL 1180 (incorporated by reference, see § 160.076-11)” and adding, in its place, the words “approved by the Commandant”.

Subpart 160.077 [Removed and Reserved]

- 84. Remove and reserve subpart 160.077, consisting of §§ 160.077-1 through 160.077-31.
- 85. Add subpart 160.255, consisting of §§ 160.255-1 through 160.255-27, to read as follows:

Subpart 160.255—Commercial Lifejackets

§ 160.255-1 Scope.

(a) This subpart contains structural and performance standards for approval of Level 100 lifejackets, as well as requirements for production follow-up inspections, markings, information placards, and associated manuals.

(b) Lifejackets approved under this subpart must rely upon inherently buoyant material, inflation, or a combination to achieve the minimum buoyancy.

(c) Lifejackets approved under this subpart are intended to meet the carriage requirements for wearable PFDs for uninspected passenger vessels, uninspected commercial vessels over 40 ft (12m) and for inspected vessels.

§ 160.255-3 Definitions.

The following definitions apply to this subpart:

Commandant means the Chief of the Lifesaving and Fire Safety Standards Division. Address: Commandant (CG-ENG-4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593-7509; email TypeApproval@uscg.mil.

First quality workmanship means construction that is free from any defect materially affecting appearance or serviceability.

Inspector means a recognized laboratory representative assigned to perform, supervise, or oversee the duties described in § 160.255-15 or any Coast Guard representative performing duties related to the approval.

Recognized laboratory means an independent laboratory accepted by the Commandant in accordance with 46 CFR subpart 159.010, with a valid memorandum of understanding in accordance with 46 CFR 159.010-7.

§ 160.255-5 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact Commandant (CG-ENG-4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593-7509. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations.html or email: fr.inspection@nara.gov. The material

may be obtained from UL, 333 Pfingsten Road, Northbrook, IL 60062–2002; phone (847) 272–8800; website: www.ul.com.

(a) ANSI/CAN/UL 9595:2021, Standard for Factory Follow-Up on Personal Flotation Devices (PFDs), First Edition, June 4, 2020 (including revisions through September 9, 2021) (“ANSI/CAN/UL 9595”); IBR approved for § 160.255–15(a).

(b) ANSI/CAN/UL 12402–4:2020, Standard for Personal Flotation Devices—Part 4: Lifejackets, Performance Level 100—Safety Requirements, First Edition, July 9, 2020 (“ANSI/CAN/UL 12402–4”); IBR approved for §§ 160.255–7(a); 160.255–13(a) and (b); 160.255–17(a); 160.255–19; 160.255–21(a).

§ 160.255–7 Design, construction, and performance of lifejackets.

(a) Each Level 100 lifejacket design must—

(1) Meet the requirements in ANSI/CAN/UL 12402–4 (incorporated by reference, see § 160.255–5) for a Level 100 device, and the requirements of this subpart; and

(2) For novel or unique designs, meet any additional requirements that the Commandant may prescribe.

(b) Lifejackets must be of first quality workmanship and must be free from any defects materially affecting their appearance or serviceability.

(c) Lifejackets must not provide means intended for fastening or securing the device to a boat.

§ 160.255–9 Approval procedures for lifejackets.

(a) Each application for approval of a Level 100 lifejacket must be submitted directly to a Coast Guard recognized laboratory.

(b) The recognized laboratory must determine if a lifejacket with novel design features requires a preliminary review by the Coast Guard prior to testing. Submissions requiring preliminary review must be sent to TypeApproval@uscg.mil, and must include a full description and drawings. Pictures, samples, and preliminary test results may also be submitted.

§ 160.255–11 Recognized laboratory.

(a) The approval inspections and tests, production inspections, tests, and quality control required by this subpart must be conducted by an independent laboratory recognized by the Coast Guard under 46 CFR subpart 159.010 to perform such functions. A list of recognized independent laboratories is available from the Commandant and online at <https://cgmix.uscg.mil>.

(b) The same laboratory that performs the approval tests must also perform production oversight unless the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing, as determined by the Commandant.

§ 160.255–13 Approval inspections and tests.

(a) Each lifejacket must be certified by a recognized laboratory as meeting the requirements of ANSI/CAN/UL 12402–4 (incorporated by reference, see § 160.255–5). Approval tests specified in ANSI/CAN/UL 12402–4 must be conducted or supervised by a recognized laboratory using prototype lifejackets constructed in accordance with the plans and specifications submitted with the application for approval.

(b) Each lifejacket design must be visually examined for compliance with the construction and performance requirements of this subpart and ANSI/CAN/UL 12402–4 (incorporated by reference, see § 160.255–5).

(c) The Commandant may prescribe additional tests for approval of novel or unique designs.

§ 160.255–15 Production inspections, tests, and quality control of lifejackets.

(a) *General.* Production tests and inspections must be conducted in accordance with ANSI/CAN/UL 9595 (incorporated by reference, see § 160.255–5), or an alternative follow-up procedure accepted by the Commandant. To maintain approval, the manufacturer must be in good standing under an accepted follow-up procedure.

(b) *Manufacturer's inspection and tests.* Manufacturers of approved lifejackets must maintain quality control of the materials used, manufacturing methods, and the finished product so as to meet the applicable requirements, and make sufficient inspections and tests of representative samples and components produced to maintain the quality of the finished product. Records of tests conducted by the manufacturer and records of materials, including affidavits by suppliers that applicable requirements are met, must be made available to the recognized laboratory inspector or to the Coast Guard marine inspector, or both, for review upon request.

(c) *Laboratory inspections and tests.* The laboratory inspector will conduct examinations, inspections, and tests for listed and labeled devices, as required by the recognized laboratory, at the

place of manufacture or other location at the option of the laboratory.

(d) *Test facilities.* The inspector must be admitted to any place in the factory where work is being done on listed and labeled products, and the inspector may take samples of parts or materials entering construction or final assemblies, for further examinations, inspections, or tests. The manufacturer must provide a suitable place and the apparatus necessary for the performance of the tests done at the place of manufacture.

(e) *Additional tests, etc.*

Unannounced examinations, tests, and inspections of samples obtained either directly from the manufacturer or through commercial channels may be made to determine the suitability of a product for listing and labeling, or to determine conformance of a labeled product to the applicable requirements. These may be conducted by the recognized laboratory or the United States Coast Guard.

§ 160.255–17 Marking and Labeling.

(a) Each lifejacket must be marked with the appropriate label as specified in Figure 6DV of ANSI/CAN/UL 12402–4 (incorporated by reference, see § 160.255–5).

(b) The Commandant may prescribe additional marking requirements for special purpose devices or unique or novel designs.

§ 160.255–19 Placard.

Each lifejacket sold or offered for sale must be provided with a placard that a prospective purchaser can read prior to purchase, as specified in Figure 8DV.1.1a and Figure 8DV.1.1b, Choose the Device You Will Want to Wear, of ANSI/CAN/UL 12402–4 (incorporated by reference, see § 160.255–5). The required placard text must be printed exactly as set out in ANSI/CAN/UL 12402–4, unless otherwise approved by the Commandant.

§ 160.255–21 Lifejacket manuals.

(a) An owner's manual in accordance with Figure 7DV of ANSI/CAN/UL 12402–4 (incorporated by reference, see § 160.255–5), must be provided with each inflatable lifejacket sold or offered for sale. The text of each manual is reviewed with the application for approval.

(b) The Commandant may prescribe additional information in the manual for special purpose devices or unique or novel designs.

(c) Additional information, instructions, or illustrations may be included in the owner's manual if there is no contradiction to the required information.

§ 160.255–23 Procedure for approval of design or material change.

(a) The manufacturer must submit any proposed changes in design, material, or construction to the recognized laboratory for approval before changing lifejacket production methods.

(b) Determinations of equivalence of design, construction, and materials must be made only by the Commandant or a designated representative.

§ 160.255–25 Suspension or termination of approval.

As provided in 46 CFR 159.005–15, the Commandant may suspend or terminate the approval of a lifejacket design if the manufacturer fails to comply with this subpart or the recognized laboratory's accepted procedures or requirements.

§ 160.255–27 Servicing for fully and partially inflatable lifejackets.

(a) *General.* Each lifejacket that relies fully or partially on inflation and is approved under this subchapter must be serviced at approved facilities at 12-month intervals according to this section.

(1) Each manufacturer of an approved inflatable lifejacket must provide one or more Coast Guard-approved facilities for servicing those lifejackets. The manufacturer must notify the Commandant whenever an approved facility under its organization no longer provides servicing of a lifejacket make and model listed in the guidelines required by paragraph (d) of this section.

(2) Each manufacturer of an approved inflatable lifejacket must make replacement parts available to Coast Guard-approved independent servicing facilities.

(b) *Servicing facilities.* Each Coast Guard-approved servicing facility must meet the requirements of this paragraph and paragraph (d) of this section to receive and keep its approval for each make and model of lifejacket. Approval is obtained according to § 160.255–5(c) of this part.

(1) Each servicing facility must conduct lifejacket servicing according to its servicing guidelines and follow the procedures in the service manual required by this section.

(2) Each servicing facility must have a suitable site for servicing that must be clean, well lit, free from excessive dust, drafts, and strong sunlight, and have appropriate temperature and humidity control as specified in the service manual.

(3) Each servicing facility must have the appropriate service, repair, and test equipment and spare parts for performing required tests and repairs.

(4) Each servicing facility must have a current manufacturer's service manual for each make and model of lifejacket serviced.

(5) A servicing facility may have more than one servicing site provided that each site meets the requirements of paragraph (b)(2) of this section.

(6) Each servicing facility must be inspected at intervals not exceeding six months by an accepted independent laboratory, and a report of the inspections must be submitted to the Commandant at least annually. The report must contain enough information to show compliance with paragraphs (b)(1) through (4) of this section and paragraph (d) of this section. Where a facility uses more than one site the report must show compliance at each site at least biennially.

(c) *Service manual.* (1) Each manufacturer of an approved inflatable lifejacket must prepare a service manual for the lifejacket. The service manual must be approved by the Commandant according to § 160.176–5(b) of this part.

(2) The manufacturer must make the service manual, service manual revisions, and service bulletins available to each approved servicing facility.

(3) Each service manual must contain the following:

(i) Detailed procedures for inspecting, servicing, and repackaging the lifejacket;

(ii) A list of approved replacement parts and materials to be used for servicing and repairs, if any;

(iii) A requirement to mark the date and servicing facility name on each lifejacket serviced;

(iv) Frequency of servicing; and

(v) Any specific restrictions or special procedures prescribed by the Coast Guard or manufacturer.

(4) Each service manual revision and service bulletin which authorizes the modification of a lifejacket, or which affects a requirement under this subpart, must be approved by the Commandant. Other revisions and service bulletins are not required to be approved, but a copy of each must be sent to the Commandant when it is issued. At least once each year, the manufacturer must provide to the Commandant and to each servicing facility approved to service its lifejackets a bulletin listing each service manual revision and bulletin in effect.

(d) *Servicing facilities guidelines.* Each servicing facility must have written guidelines that include the following:

(1) Identification of each make and model of lifejacket that may be serviced by the facility as well as the manual and revision to be used for servicing;

(2) Identification of the person, by title or position, who is responsible for the servicing program;

(3) Training and qualifications of servicing technicians;

(4) Provisions for the facility to retain a copy of its current letter of approval from the Coast Guard at each site; and

(5) Requirements to—

(i) Ensure each inflatable lifejacket serviced under its Coast Guard approval is serviced in accordance with the manufacturer's service manual;

(ii) Keep servicing technicians informed of each approved servicing manual revision and bulletin and ensure servicing technicians understand each change and new technique related to the lifejackets serviced by the facility;

(iii) Calibrate each pressure gauge, weighing scale, and mechanically operated barometer at intervals of not more than one year;

(iv) Ensure each inflatable lifejacket serviced under the facility's Coast Guard approval is serviced by or under the supervision of a servicing technician who meets the requirements of paragraph (d)(3) of this section;

(v) Specify each make and model of lifejacket the facility is approved to service when it represents itself as approved by the U.S. Coast Guard; and

(vi) Not service any lifejacket for a U.S. registered commercial vessel, unless it is approved by the U.S. Coast Guard to service the make and model of lifejacket.

(e) *Servicing records.* Each servicing facility must maintain records of all completed servicing. These records must be retained for at least 5 years after they are made, be made available to any Coast Guard representative and independent laboratory inspector upon request, and include at least the following:

(1) Date of servicing, number of lifejackets serviced, lot identification, approval number, and test results data for the lifejackets serviced;

(2) Identification of the person conducting the servicing;

(3) Identity of the vessel receiving the serviced lifejackets; and

(4) Date of return to the vessel.

■ 86. Add new subpart 160.264, consisting of §§ 160.264–1 through 160.264–25, to read as follows:

Subpart 160.264—Wearable Recreational Personal Flotation Devices (PFDs)**§ 160.264–1 Scope.**

(a) This subpart contains structural and performance standards for approval of Level 50 and Level 70 inherently buoyant personal flotation devices

(PFDs), as well as requirements for production follow-up inspections, markings, information placards, and associated manuals.

(b) PFDs approved under this subpart rely entirely upon inherently buoyant material to achieve the minimum buoyancy.

(c) PFDs approved under this subpart are intended to meet the carriage requirements for wearable PFDs for uninspected commercial vessels under 40 ft (12m) not carrying passengers for hire and recreational boats, in accordance with 33 CFR part 175 and 46 CFR 25.25.

§ 160.264-3 Definitions.

The following definitions apply to this subpart:

Commandant means the Chief of the Lifesaving and Fire Safety Standards Division. Address: Commandant (CG-ENG-4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593.-7509; email TypeApproval@uscg.mil.

First quality workmanship means construction that is free from any defect materially affecting appearance or serviceability.

Inspector means a recognized laboratory representative assigned to perform, supervise, or oversee the duties described in § 160.264-15 or any Coast Guard representative performing duties related to the approval.

Recognized laboratory means an independent laboratory accepted by the Commandant in accordance with 46 CFR subpart 159.010, with a valid memorandum of understanding in accordance with 46 CFR 159.010-7.

§ 160.264-5 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact Commandant (CG-ENG-4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593-7509. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations.html or email: fr.inspection@nara.gov. The material may be obtained from UL, 333 Pfingsten Road, Northbrook, IL 60062-2002; phone (847) 272-8800; website: www.ul.com.

(a) ANSI/CAN/UL 9595:2021, Standard for Factory Follow-Up on Personal Flotation Devices (PFDs), First Edition, June 4, 2020 (including revisions through September 9, 2021) (“ANSI/CAN/UL 9595”); IBR approved for § 160.264-15(a).

(b) ANSI/CAN/UL 12402-5:2022, Standard for Personal Flotation Devices—Part 5: Buoyancy Aids (Level 50)—Safety Requirements, First Edition, December 31, 2015 (including revisions through January 27, 2022) (“ANSI/CAN/UL 12402-5”); IBR approved for §§ 160.264-7(a) and (b); 160.264-13(a) and (b); 160.264-17(a); 160.264-19; 160.264-21(a).

§ 160.264-7 Design, construction, and performance of PFDs.

(a) Each Level 70 PFD design must—

(1) Meet the requirements in ANSI/CAN/UL 12402-5 (incorporated by reference, see § 160.264-5) for a Level 70 device; and

(2) For novel or unique designs, meet any additional requirements that the Commandant may prescribe.

(b) Each Level 50 PFD design must—

(1) Meet the requirements in ANSI/CAN/UL 12402-5 (incorporated by reference, see § 160.264-5) for a Level 50 device;

(2) Be marked to indicate that the device must be worn to be counted as equipment required by vessels meeting USCG regulations; and

(3) For novel or unique designs, meet any additional requirements that the Commandant may prescribe.

(c) Buoyancy is to be provided by inherently buoyant material and not depend on loose, granulated material, gas compartments, or inflation.

(d) PFDs must be of first quality workmanship and must be free from any defects materially affecting their appearance or serviceability.

(e) PFDs must not provide means intended for fastening or securing the device to a boat.

§ 160.264-9 Approval procedures for PFDs.

(a) Each application for approval of a Level 50 or Level 70 PFD must be submitted directly to a Coast Guard recognized laboratory.

(b) The recognized laboratory must determine if a PFD with novel design features requires a preliminary review by the Coast Guard prior to testing. Submissions requiring preliminary review must be sent to TypeApproval@uscg.mil, and must include a full description and drawings. Pictures, samples, and preliminary test results may also be submitted.

§ 160.264-11 Recognized laboratory.

(a) The approval inspections and tests, production inspections, tests, and quality control required by this subpart must be conducted by an independent laboratory recognized by the Coast Guard under 46 CFR subpart 159.010 to perform such functions. A list of recognized independent laboratories is available from the Commandant and online at <https://cgmix.uscg.mil>.

(b) Production oversight must be performed by the same laboratory that performs the approval tests unless, as determined by the Commandant, the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing.

§ 160.264-13 Approval inspections and tests.

(a) Each PFD must be certified by a recognized laboratory as meeting the requirements of ANSI/CAN/UL 12402-5 (incorporated by reference, see § 160.264-5) for an inherently buoyant Level 50 or Level 70 PFD. Approval tests specified in ANSI/CAN/UL 12402-5 must be conducted or supervised by a recognized laboratory using PFDs constructed in accordance with the plans and specifications submitted with the application for approval.

(b) Each PFD design must be visually examined for compliance with the construction and performance requirements of this subpart and ANSI/CAN/UL 12402-5 (incorporated by reference, see § 160.264-5).

(c) The Commandant may prescribe additional tests for approval of novel or unique designs.

§ 160.264-15 Production inspections, tests, and quality control of PFDs.

(a) *General.* Production tests and inspections must be conducted in accordance with ANSI/CAN/UL 9595 (incorporated by reference, see § 160.264-5) or an alternative follow-up procedure accepted by the Commandant. To maintain approval, the manufacturer must be in good standing under an accepted follow-up procedure.

(b) *Manufacturer's inspection and tests.* Manufacturers of approved PFDs must maintain quality control of the materials used, manufacturing methods, and the finished product to meet the applicable requirements, and make sufficient inspections and tests of representative samples and components produced to maintain the quality of the finished product. Records of tests conducted by the manufacturer and records of materials, including affidavits by suppliers that applicable

requirements are met, must be made available to the recognized laboratory inspector or to the Coast Guard marine inspector, or both, for review upon request.

(c) *Laboratory inspections and tests.* The laboratory inspector will conduct examinations, inspections, and tests for listed and labeled devices, as required by the recognized laboratory, at the place of manufacture or other location at the option of the laboratory.

(d) *Test facilities.* The laboratory inspector, or the Coast Guard marine inspector assigned by the Commander of the District in which the factory is located, or both, must be admitted to any place in the factory where work is being done on listed and labeled products. Either or both inspectors may take samples of parts or materials entering construction or final assemblies, for further examinations, inspections, or tests. The manufacturer must provide a suitable place and the apparatus necessary for the performance of the tests done at the place of manufacture.

(e) *Additional tests, etc.* Unannounced examinations, tests, and inspections of samples obtained either directly from the manufacturer or through commercial channels may be made to determine the suitability of a product for listing and labeling, or to determine conformance of a labeled product to the applicable requirements. These may be conducted by the recognized laboratory or the United States Coast Guard.

§ 160.264–17 Marking and Labeling.

(a) Each PFD must be marked with the appropriate label as specified in Figure 6DV of ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.264–5).

(b) The Commandant may prescribe additional marking requirements for special purpose devices or unique or novel designs.

§ 160.264–19 Placard.

Each PFD sold or offered for sale must be provided with a placard that a prospective purchaser can read prior to purchase, as specified in Figure 8DV.1.1a and Figure 8DV.1.1b, Choose the Device You Will Want to Wear, of ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.264–5). The required placard text must be printed exactly as set out in ANSI/CAN/UL 12402–5.

§ 160.264–21 PFD manuals.

(a) An owner's manual in accordance with Figure 7DV of ANSI/CAN/UL 12402–5 (incorporated by reference, see

§ 160.264–5), may be provided with each inherently buoyant PFD sold or offered for sale. The text of each manual is reviewed with the application for approval.

(b) The Commandant may prescribe additional information in the manual for special purpose devices or unique or novel designs.

(c) Additional information, instructions, or illustrations may be included in the owner's manual if there is no contradiction to the required information.

§ 160.264–23 Procedure for approval of design or material change.

(a) The manufacturer must submit any proposed changes in design, material, or construction to the recognized laboratory for approval before changing PFD production methods.

(b) Determinations of equivalence of design, construction, and materials must be made only by the Commandant or a designated representative.

§ 160.264–25 Suspension or termination of approval.

As provided in 46 CFR 159.005–15, the Commandant may suspend or terminate the approval of a PFD design if the manufacturer fails to comply with this subpart or the recognized laboratory's accepted procedures or requirements.

■ 87. Add subpart 160.276, consisting of §§ 160.276–1 through 160.276–25, to read as follows:

Subpart 160.276—Wearable Recreational Inflatable Personal Flotation Devices

§ 160.276–1 Scope.

(a) This subpart contains structural and performance standards for approval of Level 50 and Level 70 inflatable recreational personal flotation devices (PFDs), as well as requirements for production follow-up inspections, associated manuals, information placards, and markings.

(b) Inflatable PFDs approved under this subpart rely entirely or partially upon inflation to achieve the minimum buoyancy.

(c) PFDs approved under this subpart are intended to meet the carriage requirements for uninspected commercial vessels under 40 ft (12m) not carrying passengers for hire and recreational boats, in accordance with 33 CFR part 175 and 46 CFR 25.25.

§ 160.276–3 Definitions.

The following definitions apply to this subpart:

Commandant means the Chief of the Lifesaving and Fire Safety Standards

Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509; email TypeApproval@uscg.mil.

First quality workmanship means construction that is free from any defect materially affecting appearance or serviceability.

Inspector means a recognized laboratory representative assigned to perform, supervise, or oversee the duties described in § 160.276–15 or any Coast Guard representative performing duties related to the approval.

Recognized laboratory means an independent laboratory accepted by the Commandant in accordance with 46 CFR 159.010, with a valid memorandum of understanding in accordance with 46 CFR 159.010–7.

§ 160.276–5 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the Coast Guard Headquarters and at the National Archives and Records Administration (NARA). Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations.html or email: fr.inspection@nara.gov. The material may be obtained from UL, 333 Pfingsten Road, Northbrook, IL 60062–2022; phone (847) 272–8800; website: www.ul.com.

(a1) ANSI/CAN/UL 9595:2021, Standard for Factory Follow-Up on Personal Flotation Devices (PFDs), First Edition, June 4, 2020 (including revisions through September 9, 2021) (“ANSI/CAN/UL 9595”); IBR approved for § 160.276–15(a).

(b) ANSI/CAN/UL 12402–5:2022, Standard for Personal Flotation Devices—Part 5: Buoyancy Aids (Level 50)—Safety Requirements, First Edition, December 31, 2015 (including revisions through January 27, 2022) (“ANSI/CAN/UL 12402–5”); IBR approved for §§ 160.276–7(a) and (b); 160.276–13(a) and (b); 160.276–17(a) and (b); 160.276–19; 160.276–21(a).

§ 160.276–7 Design, construction, and performance of inflatable PFDs.

(a) Each Level 70 inflatable PFD design must—

(1) Meet the requirements in ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.276–5) for a Level 70 device; and

(2) For novel or unique designs, meet any additional requirements that the Commandant may prescribe.

(b) Each Level 50 inflatable PFD design must—

(1) Meet the requirements in ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.276–5) for a Level 50 device;

(2) Be marked to indicate that the device must be worn to be counted as equipment required by vessels meeting USCG regulations; and

(3) For novel or unique designs, meet any additional requirements that the Commandant may prescribe.

(c) Buoyancy is to be provided by inflation, or a combination of inherently buoyant material and inflation.

(d) PFDs must be of first quality workmanship and must be free from any defects materially affecting their appearance or serviceability.

(e) PFDs must not provide means intended for fastening or securing the device to a boat.

§ 160.276–9 Approval procedures for PFDs.

(a) Each application for approval of a Level 50 or Level 70 PFD must be submitted directly to a Coast Guard recognized laboratory.

(b) The recognized laboratory must determine if a PFD with novel design features requires a preliminary review by the Coast Guard prior to testing. Submissions requiring preliminary review must be sent to *TypeApproval@uscg.mil*, and must include a full description and drawings. Pictures, samples, and preliminary test results may also be submitted.

§ 160.276–11 Recognized laboratory.

(a) The approval inspections and tests and production inspections, tests, and quality control required by this subpart must be conducted by an independent laboratory recognized by the Coast Guard under 46 CFR subpart 159.010 to perform such functions. A list of recognized independent laboratories is available from the Commandant and online at <https://cgmix.uscg.mil>.

(b) The same laboratory that performs the approval tests must also perform production oversight unless the employees of the laboratory performing production oversight receive training and support equal to that of the laboratory that performed the approval testing, as determined by the Commandant.

§ 160.276–13 Approval inspections and tests.

(a) Each PFD must be certified by a recognized laboratory as meeting the requirements of ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.276–5) for an inflatable Level 50 or Level 70 PFD. Approval tests specified in ANSI/CAN/UL 12402–5 must be conducted or supervised by a recognized laboratory using PFDs constructed in accordance with the plans and specifications submitted with the application for approval.

(b) Each PFD design must be visually examined for compliance with the construction and performance requirements of this subpart and ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.276–5).

(c) The Commandant may prescribe additional tests for approval of novel or unique designs.

§ 160.276–15 Production inspections, tests, and quality control of PFDs.

(a) *General.* Production tests and inspections must be conducted in accordance with ANSI/CAN/UL 9595 (incorporated by reference, see § 160.276–5) or an alternative follow-up procedure accepted by the Commandant. To maintain approval, the manufacturer must be in good standing under an approved follow-up procedure.

(b) *Manufacturer's inspection and tests.* Manufacturers of approved PFDs must maintain quality control of the materials used, manufacturing methods, and the finished product to meet the applicable requirements, and make sufficient inspections and tests of representative samples and components produced to maintain the quality of the finished product. Records of tests conducted by the manufacturer and records of materials, including affidavits by suppliers that applicable requirements are met, must be made available to the recognized laboratory inspector or to the Coast Guard marine inspector, or both, for review upon request.

(c) *Laboratory inspections and tests.* The laboratory inspector will conduct examinations, inspections, and tests for listed and labeled devices, as required by the recognized laboratory, at the place of manufacture or other location at the option of the laboratory.

(d) *Test facilities.* The laboratory inspector, or the Coast Guard marine inspector assigned by the Commander of the District in which the factory is located, or both, must be admitted to any place in the factory where work is being done on listed and labeled products. Either or both inspectors may

take samples of parts or materials entering construction or final assemblies, for further examinations, inspections, or tests. The manufacturer must provide a suitable place and the apparatus necessary for the performance of the tests done at the place of manufacture.

(e) *Additional tests, etc.*

Unannounced examinations, tests, and inspections of samples obtained either directly from the manufacturer or through commercial channels may be made to determine the suitability of a product for listing and labeling, or to determine conformance of a labeled product to the applicable requirements. These may be conducted by the recognized laboratory or the United States Coast Guard.

§ 160.276–17 Marking and Labeling.

(a) Each inflatable PFD must be marked as specified in Figure 6DV of ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.276–5).

(b) In addition to the information required by ANSI/CAN/UL 12402–5, Figure 6DV, each Level 50 inflatable PFD must be marked with a statement that the device must be worn to be counted as equipment required by vessels meeting USCG regulations; and

(c) The Commandant may prescribe additional marking requirements for special purpose devices or unique or novel designs.

§ 160.276–19 Placard.

Each inflatable PFD sold or offered for sale must be provided with a placard that a prospective purchaser can read prior to purchase, as specified in Figure 8DV.1.1a and Figure 8DV.1.1b, Choose the Device You Will Want to Wear, of ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.276–5). The required placard text must be printed exactly as set out in ANSI/CAN/UL 12402–5.

§ 160.276–21 PFD manuals.

(a) An owner's manual in accordance with Figure 7DV of ANSI/CAN/UL 12402–5 (incorporated by reference, see § 160.276–5), must be provided with each inflatable PFD sold or offered for sale. The text of each manual is reviewed with the application for approval.

(b) The Commandant may prescribe additional information in the manual for special purpose devices or unique or novel designs.

(c) Additional information, instructions, or illustrations may be included in the owner's manual if there is no contradiction to the required information.

§ 160.276–23 Procedure for approval of design or material change.

(a) The manufacturer must submit any proposed changes in design, material, or construction to the recognized laboratory for approval before changing PFD production methods.

(b) Determinations of equivalence of design, construction, and materials must be made only by the Commandant or a designated representative.

§ 160.276–25 Suspension or termination of approval.

As provided in 46 CFR 159.005–15, the Commandant may suspend or terminate the approval of an inflatable PFD design if the manufacturer fails to comply with this subpart or the recognized laboratory's accepted procedures or requirements.

PART 169—SAILING SCHOOL VESSELS

■ 88. The authority citation for part 169 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; Pub. L. 103–206, 107 Stat. 2439; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; DHS Delegation 00170.1, Revision No. 01.2, paragraph (II)(92)(a); § 169.117 also issued under the authority of 44 U.S.C. 3507.

§ 169.539 [Amended]

■ 89. Amend § 169.539 by:

- a. Removing in paragraph (a), the text “160.055, 160.002, or 160.005”, and adding in its place the text “160.002, 160.005, 160.055, or 160.255,”;
- b. Removing in paragraph (b), the text “or 160.077”, and adding in its place the text “, 160.077, or 160.264”; and
- c. Removing in paragraph (c), the text “160.064”, and adding in its place the text “160.064 or 160.264”.

PART 180—LIFESAVING EQUIPMENT AND ARRANGEMENTS

■ 90. The authority citation for part 180 is revised to read as follows:

Authority: 46 U.S.C. 2104, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; DHS Delegation 00170.1, Revision No. 01.2, paragraph (II)(92)(a).

■ 91. Amend § 180.71 by:

- a. Revising the section heading and paragraph (c);
- b. Removing paragraph (d); and
- c. Redesignating paragraph (e) as paragraph (d).

The revisions read as follows:

§ 180.71 Lifejackets.

* * * * *

(c) Each lifejacket must be approved under approval series 160.002, 160.005, 160.055, 160.115, 160.176, or 160.255 in subchapter Q of this chapter, or other standard specified by the Commandant. An inflatable lifejacket approved under approval series 160.255 must include a full back-up inflation chamber.

* * * * *

■ 92. Amend § 180.72 by:

- a. Revising the section heading;
- b. Removing in paragraph (a), the words “life jackets” wherever they appear and adding, in their place, the word “lifejackets”; and
- c. Revising paragraphs (b) and (d).

The revisions read as follows:

§ 180.72 Personal flotation devices carried in addition to lifejackets.

* * * * *

(b) Wearable marine buoyant devices approved in accordance with § 160.064, 160.076, 160.264, or 160.276 in subchapter Q of this chapter, or other standard specified by the Commandant, may be carried as additional equipment.

* * * * *

(d) A commercial hybrid approved under former approval series 160.077 prior to [EFFECTIVE DATE OF FINAL

RULE] may be carried as additional equipment for use by persons working near or over the water if it is in good and serviceable condition, used in accordance with the conditions marked on the PFD and in the owner's manual, and of the same or similar design and has the same method of operation as each other hybrid PFD carried on board.

PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

■ 93. The authority citation for part 199 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; DHS Delegation 00170.1, Revision No. 01.2, paragraph (II)(92)(a).

§ 199.70 [Amended]

■ 94. Amend § 199.70(b) introductory text by removing the text “, 160.176 or 160.177”, and adding, in its place, the text “or 160.176”.

§ 199.620 [Amended]

■ 95. Revise § 199.620(c) to read as follows:

§ 199.620 Alternatives for all vessels in a specified service.

* * * * *

(c) *Lifejackets approval series.* As an alternative to a lifejacket meeting the approval requirements in § 199.70, vessels may carry a lifejacket approved under approval series 160.002, 160.005, 160.055, or 160.077, or 160.255. An inflatable lifejacket approved under approval series 160.255 must include a full back-up inflation chamber.

* * * * *

Dated: March 24, 2023.

W.R. Arguin,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2023–06504 Filed 4–6–23; 8:45 am]

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